

File No. 180683

Committee Item No. 15

Board Item No. 45

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Sub-Committee

Date July 12, 2018

Board of Supervisors Meeting

Date July 24, 2018

Cmte Board

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<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Resolution
<input type="checkbox"/>	<input type="checkbox"/>	Ordinance
<input type="checkbox"/>	<input type="checkbox"/>	Legislative Digest
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Budget and Legislative Analyst Report
<input type="checkbox"/>	<input type="checkbox"/>	Youth Commission Report
<input type="checkbox"/>	<input type="checkbox"/>	Introduction Form
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Department/Agency Cover Letter and/or Report
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OTHER

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Completed by: Linda Wong

Date July 5, 2018

Completed by: Linda Wong

Date July 18, 2018

7/12/18

FILE NO. 180683

RESOLUTION NO.

1 [Port Ground Lease and Port/Mayor's Office of Housing and Community Development
2 Memorandum of Understanding - 88 Broadway Family, L.P. - 735 Davis Street - Seawall Lot
3 322-1 - \$20,000 Annual Base Rent]

4 **Resolution adopting the Mitigation Monitoring and Reporting Program under the**
5 **California Environmental Quality Act for an affordable housing project at Seawall Lot**
6 **322-1 (the "Port Property" or the "Development") along with an affordable housing**
7 **project on city-owned property at 735 Davis Street (collectively, the "Project");**
8 **affirming the Port Commission's Public Trust findings; adopting findings that the**
9 **Project is consistent with the General Plan, and the eight priority policies of Planning**
10 **Code, Section 101.1; and approving and authorizing the execution of a Ground Lease**
11 **for the Property with 88 Broadway Family, L.P. ("Lease") with an annual base rent of**
12 **\$20,000 for a term of 57 years with a 18-year extension option for the development and**
13 **operation of 124 affordable rental housing units, one manager housing unit, and**
14 **ancillary ground level uses, and a Memorandum of Understanding between the Port**
15 **and the Mayor's Office of Housing and Community Development for payment of fair**
16 **market value for the Port Property and other interdepartmental coordination; and**
17 **authorizing and directing the Executive Director of the Port of San Francisco and the**
18 **Director of the Mayor's Office of Housing and Community Development to execute**
19 **documents and take necessary actions to implement this Resolution, as defined**
20 **herein.**

21
22 WHEREAS, California Statutes of 1968, Chapter 1333 ("Burton Act") and Charter,
23 Sections 4.114 and B3.581, empower the City and County of San Francisco, acting through
24 the San Francisco Port Commission ("Port"), with the power and duty to use, conduct,
25 operate, maintain, manage, regulate and control the lands within Port Commission jurisdiction

1 consistent with the public trust for commerce, navigation and fisheries and the Burton Act
2 (collectively, the "Public Trust"); and

3 WHEREAS, The Port owns Seawall Lot 322-1, also known by its street address as "88
4 Broadway" (the "Port Property"), a land parcel with approximately 37,810 square feet area
5 bounded by Broadway, Front, and Vallejo Streets and on its eastern boundary buildings and
6 an adjacent City-own parcel at 735 Davis Street, (the "City Property"); and

7 WHEREAS, The California Legislature has previously found that rectifying the
8 deteriorating conditions along the San Francisco waterfront, the preservation of the numerous
9 historic piers and other historic structures on Port land, and the construction of waterfront
10 plazas and open space, are matters of statewide importance that will further the purposes of
11 the Public Trust; and

12 WHEREAS, To provide funding for these improvements to Port property and to
13 address affordable housing needs, the California Legislature adopted SB 815 (Chapter 660 of
14 the Statutes of 2007) as amended by AB 2649 (Chapter 757 of the Statutes of 2012) and AB
15 2797 (Chapter 529 of the Statutes of 2016) (collectively, the "State Legislation") to allow
16 temporary termination of the Public Trust use restrictions and authorize nontrust leases of
17 designated seawall lots, including Seawall Lot 322-1, on specific conditions, and subject to
18 certain findings by the Port Commission and the California State Lands Commission; and

19 WHEREAS, In November 2012, the Board of Supervisors adopted Ordinance No. 232-
20 12 which allows the Port and the Mayor's Office of Housing and Community Development
21 ("MOHCD") to enter into a Memorandum of Understanding (the "Pre-Development MOU") for
22 development of the Property for affordable housing and providing for Port to receive Jobs
23 Housing Linkage Program ("JHLP") credits equal to the difference in the value of a Port
24 below-market lease and the fair market value of the Property; and
25

1 WHEREAS, Port and MOHCD staff have since decided that the preferred payment
2 strategy for the Development is to utilize the anticipated affordable in lieu fees paid to
3 MOHCD from a future developer of Pier 70 Parcel K North ("PKN"), a site to be sold by the
4 Port in connection with funding the Pier 70 project, with the condition that if the sale of PKN
5 or the construction of the PKN project is delayed or never materializes, MOHCD will need to
6 pay the Port the Property's fair market value from another source; and

7 WHEREAS, Between April 2014 and May 2018, the Port and MOHCD entered into the
8 Pre-Development MOU and completed most of the tasks enumerated, including (i) MOHCD's
9 competitive solicitation and selection of the Developer led by BRIDGE Housing Corporation
10 ("BRIDGE") and the John Stewart Company ("JSCo") which formed 88 Broadway Family LP
11 (the "Developer") to undertake the proposed development; (ii) the Port's consent to MOHCD's
12 selection; (iii) the Developer's submission of its initial development proposal; (iv) the Port's
13 determination to exclude a public parking garage from the development due to financial
14 infeasibility; (v) MOHCD provision of predevelopment funding for the Development; (vi) Port,
15 MOHCD, and the Developer negotiation and drafting required transaction documents ; and
16 (vii) the Developer's completion of a number of entitlement tasks, including completion of
17 CEQA and receipt of other land use authorizations required for the Development; and

18 WHEREAS, Staff of the Port, MOHCD, and the Developer have collectively conducted
19 extensive community outreach and solicited comments and feedback from stakeholders to
20 form a general consensus on the goals/objectives of the Development, including its
21 architectural design, compatibility with the Historic District and its targeting of a wide spectrum
22 of households with limited incomes and MOHCD hired a joint venture team of Mark
23 Cavagnero Architects and Cary Bernstein Architects which conducted site design analysis
24 and held a community design workshop, where design criteria were discussed with the public
25 for the Property, and an adjacent City Parcel was added to provide housing for seniors, and

1 these outreach efforts took over 36 months and resulted in the overall Project consisting of
2 both buildings being supported by almost all stakeholders including members of the
3 Northeastern Waterfront Advisory Group; and

4 WHEREAS, The Developer's initial proposed development had included up to 130
5 affordable, rental family housing units with ground level spaces for retail, commercial, other
6 ancillary uses, and open spaces on the Property (the "Family Project") and, as mentioned
7 above, in response to the community's desire for seniors to benefit from the development as
8 well, MOHCD sought and received City's consent to add the adjacent City property located at
9 735 Davis Street ("City Parcel") to the overall proposal to provide up to 50 to 55 senior
10 housing units (the "Senior Project"); and

11 WHEREAS, The Property and the City Parcel currently operated as surface parking
12 lots will be demolished and then improved with two, new six-story, mixed-use residential
13 buildings for family and senior housing, respectively, and the Family and Senior projects will
14 be connected by open mid-block passageways as shown on the Development Schematic
15 Design, a copy of which is in Board File No. 180683; and

16 WHEREAS, The Family Project will include approximately 18 studio units, 37 one-
17 bedroom units, 45 two-bedroom units, 24 three-bedroom units, and a manager unit for a total
18 of 125 affordable units with approximately 137,100 gross square feet (gsf) of residential
19 dwelling space and approximately 8,700 gsf of nonresidential space with residents having
20 access to a common, community room on the ground floor, an open podium courtyard on the
21 second floor, two open decks on the fifth and sixth floors, a rooftop terrace and garden, and
22 ancillary ground-level uses which could include retail/commercial, a childcare center with an
23 outdoor play area, and a childcare arcade, subject to the passage of AB 1423
24 (Assemblymember Chiu; 2018) which includes technical amendments to the State Legislation;
25 and

1 WHEREAS, The Senior Project will include approximately 23 studio units, 29 one-
2 bedroom units and a manager unit for approximately 53 affordable units with approximately
3 44,136 gsf of residential dwelling space and approximately 1,260 gsf of non-residential space
4 and seniors in this project will have access to a community room, an open courtyard on the
5 first floor, a roof deck on the fifth floor, and ground-level uses which could include
6 retail/commercial and a community room; and

7 WHEREAS, The Department of City Planning ("Planning Department") prepared a
8 Draft Initial Study/Preliminary Mitigated Negative Declaration ("PMND") and Mitigation
9 Monitoring and Reporting Program ("MMRP") for the Project and published the Draft PMND
10 and MMRP for public review on October 25, 2017, which were available for public comment
11 until November 27, 2017; and

12 WHEREAS, The Planning Commission held a public hearing on the PMND and found
13 that the contents of the PMND and the procedures through which the PMND was prepared,
14 publicized, and reviewed complied with the California Environmental Quality Act (California
15 Public Resources Code, Sections 21000 et seq.) (CEQA), 14 California Code of Regulations
16 Sections 15000 et seq. (the "CEQA Guidelines") and Chapter 31 of the San Francisco
17 Administrative Code ("Chapter 31") and finalized the PMND (the Final MND); and

18 WHEREAS, On March 9, 2018, the Environmental Review Officer signed the FMND for
19 the Project and the Final MND was issued in compliance with CEQA, the CEQA Guidelines
20 and Chapter 31; and

21 WHEREAS, On May 3, 2018, the Planning Director found the FMND was adequate,
22 accurate and objective, reflected the independent analysis and judgment of the Planning
23 Director, and adopted the FMND and the MMRP, and authorized the Project in the Affordable
24 Housing Project Authorization; and
25

1 WHEREAS, The Historic Preservation Commission approved with conditions the
2 Certificate of Appropriateness Motion No. 0335) for the Project on April 4, 2018, on file with
3 the Clerk of the Board of Supervisors in File No. 180683, and incorporated herein by this
4 reference; and

5 WHEREAS, The Planning Department Commission Secretary is the custodian of
6 record for the file for Case No. 2016-007850PRJ at 1650 Mission Street, Suite 400, San
7 Francisco, California; and

8 WHEREAS, The FMND and the MMRP has been made available to the public, the Port
9 Commission and the Board of Supervisors for their review and action and which is on file with
10 the Clerk of the Board of Supervisors in File No. 180683, and incorporated herein by this
11 reference; and

12 WHEREAS, The Port Commission, by Resolution 18-42 found that the FMND is
13 adequate for its use as the decision-making body for the Development, that there is no
14 substantial evidence that the Development will have a significant effect on the environment
15 with the adoption of the measures contained in the MMRP to avoid potentially significant
16 environmental effects associated with the Development, and adopted the MMRP and found
17 that all required mitigation measures identified in the FMND and contained in the MMRP will
18 be included in the Port's Lease; and

19 WHEREAS, Port and Developer have negotiated and the Port Commission has
20 approved by Resolution 18-42 an Option to Lease Agreement which includes the form of
21 ground lease (the "Option Agreement") a copy of which is included in Board File No. 180683)
22 to provide the Developer with evidence of site control to support its application for an
23 allocation of low-income housing tax credits from the California Tax Credit Allocation
24 Committee, and Developer must exercise its option by June 30, 2020 subject to extension;
25 and

1 WHEREAS, The Port and MOHCD have negotiated a new Memorandum of
2 Understanding for interdepartmental coordination to be effective during the Lease term (the
3 "Port-MOHCD MOU") including, among other things, the amount and manner in which
4 MOHCD will pay the Port the Property's fair market value, MOHCD's consent to the Lease,
5 and coordination between the departments in administering and enforcing the Lease; and

6 WHEREAS, Under Charter, Section B7.320, the Board of Supervisors may approve a
7 memorandum of understanding between the Port Commission and another department of the
8 City, approved by the Port Commission by resolution; and

9 WHEREAS, A copy of the form of Lease and the Port MOHCD MOU as approved by
10 the Port Commission in Port Commission Resolution 18-42 are in Board File No. 180683 and
11 are incorporated in this resolution by reference; and

12 WHEREAS, The Developer has been formed by BRIDGE and JSCo to lease the Port
13 Property and develop the Family Project and the Senior Project and BRIDGE and JSCo each
14 has the requisite qualifications and the wherewithal to perform as co-developers and project
15 managers and have developed several projects in San Francisco with similar complexity
16 profiles; and

17 WHEREAS, MOHCD is providing the Developer with financial assistance for the
18 development of Family and Senior Projects and to leverage equity from an allocation of low-
19 income housing tax credits and other funding sources to construct and operate the
20 Development; and

21 WHEREAS, The Developer is required to execute the Lease substantially in the form of
22 the Lease attached to the Option Agreement and included in Board File No. 180683; and

23 WHEREAS, The material terms of the Lease include: (i) a term of 57 years with an
24 extension option for 18 additional years; (ii) tenant responsibility for all property taxes and
25 assessments levied against the Property; (iii) use only for affordable housing with residential

1 tenant rent and income levels set at between 30% to 120% of the area median income ("AMI")
2 and other ancillary purposes permitted by the State Legislation and AB 1423 if enacted into
3 law; (iv) annual base rent for the residential portion of \$20,000 with escalation every five years
4 in line with changes to the AMI; (v) except as provided in (vii) residual rent to the Port under
5 certain circumstances in the event of sale or refinancing of the residual portion; (vi) at Lease
6 termination, the Port Property with or without the building, at Port's sole discretion, shall revert
7 to the Port; (vii) 15% of net proceeds from any refinancing or sales of the retail/restaurant
8 space paid to Port as additional rent; (viii) 30% of the net revenues from retail subleases or
9 15% of the gross revenue from all other nonresidential subleases are paid to Port as
10 additional rent; (ix) tenant responsibility for construction, operation and maintenance of the
11 Property; (x) Port ownership fee title to the land and tenant ownership of fee title to all
12 improvements; (xi) Port notice of defaults to the tenant and MOHCD, and the tenant's limited
13 partners and lenders and allow any such parties the right to cure such default; and (xii)
14 encumbrance of the leasehold interest to secure loans, subject to approval by the Port and
15 MOHCD; and

16 WHEREAS, The Director of Property, in consultation with the Port (and the
17 California State Lands Commission through the Port), conducted an appraisal of the
18 Property dated June 29, 2018 with an indicated value of \$14,900,000; and

19 WHEREAS, On July 10, 2018, by Resolution 18-42, the Port Commission found,
20 among other things that: 1) Seawall Lot 322-1 is no longer needed for Public Trust
21 purposes, 2) the combined consideration under the Port MOHCD MOU and Lease is
22 equal to fair market value, and 3) the Lease includes terms that are consistent with
23 prudent land management practices as defined in the State Legislation (collectively, the
24 "Public Trust Findings"); and
25

1 WHEREAS, By letter dated June 15, 2018, the Department of City Planning adopted
2 and issued a General Plan Consistency Finding, a copy of which is on file with the Clerk of the
3 Board in Board File No. 180683 and incorporated in this resolution by reference, wherein the
4 Department of City Planning found that the Project is consistent with the General Plan, and
5 with the eight priority policies under Planning Code, Section 101.1; and

6 WHEREAS, Port Commission Resolution 18-42 also approved the Option
7 Agreement, the form of the Lease and the Port-MOHCD MOU; recommended Board of
8 Supervisors' approval of the Lease and the Port-MOHCD MOU and, subject to
9 approval by the Board of Supervisors and the California State Lands Commission,
10 approved the Lease (collectively, the "Transaction Documents") and authorizes the
11 Port's Executive Director to enter into other additions, amendments, ancillary
12 agreements, consents covenants and property documents necessary to implement the
13 transactions contemplated by the Transaction Documents, and to enter into any
14 additions, amendments or other modifications to the Transaction Documents including
15 preparation and attachment of, or changes to, any or all of the attachments and
16 exhibits that the Executive Director, in consultation with the City Attorney, determines
17 are consistent with approvals made by the California State Lands Commission and,
18 when taken as a whole, are in the best interests of the Port, do not materially decrease
19 the benefits or materially increase the obligations or liabilities of the Port, and are
20 necessary or advisable to complete the transaction; now, therefore, be it

21 RESOLVED, That the Board of Supervisors has reviewed and considered the FMND
22 and the record as a whole, finds that the FMND is adequate for its use as the decision-making
23 body for the Project, that there is no substantial evidence that the Project will have a
24 significant effect on the environment with the adoption of the measures contained in the
25

1 MMRP to avoid potentially significant environmental effects associated with the Project; and,
2 be it

3 FURTHER RESOLVED, That the Board of Supervisors hereby adopts the MMRP
4 incorporated herein as part of this Resolution by this reference thereto and finds that all
5 required mitigation measures identified in the FMND and contained in the MMRP will be
6 included in the Port Lease; and, be it

7 FURTHER RESOLVED, That the Board of Supervisors hereby finds that the Project is
8 consistent with the General Plan, and with the eight priority policies of Planning Code, Section
9 101.1 for the same reasons as set forth in the letter of the Department of City Planning, dated
10 June 15, 2018, and hereby incorporates such findings by reference as though fully set forth in
11 this Resolution; and, be it

12 FURTHER RESOLVED, That the Board of Supervisors hereby adopts the Port
13 Commission's Public Trust Findings as its own and finds that this resolution is consistent with
14 the common law public trust doctrine and the Burton Act, as modified by the State Legislation;
15 and, be it

16 FURTHER RESOLVED, That the Board of Supervisors approves the form and
17 substance of the Lease, and, if the Developer properly exercises the Option, authorizes the
18 Executive Director of the Port (or her designee) to execute the Lease and the Director of
19 MOHCD (or her designee) to consent to the Lease and any such other documents that are
20 necessary or advisable to complete the lease transaction contemplated by this Resolution;
21 and, be it

22 FURTHER RESOLVED, That the Board of Supervisors authorizes the Executive
23 Director of the Port (or her designee) to enter into any additions, amendments or other
24 modifications to the form of lease or Lease (including, without limitation, preparation and
25 attachment or, or changes to, any of all of the exhibits and ancillary agreements), and any

1 other documents or instruments necessary in connection therewith, that the Executive
2 Director of the Port in consultation with the City Attorney, determines 1) are consistent with
3 the approval of the form of lease or Lease as approved by the California State Lands
4 Commission, and 2) when taken as whole, are in the best interests of the Port, do not
5 materially decrease the benefits to the Port or the City with respect to the Port Property, do
6 not materially increase the obligations or liabilities of the Port and the City, or materially
7 decrease the public benefits accruing to the Port or City, and are necessary or advisable to
8 complete the transaction contemplated and effectuate the purpose and intent of this
9 Resolution, such determination to be conclusively evidenced by the execution and delivery by
10 the Executive Director of the Port (or her designee) of any such additions, amendments, or
11 other modifications and authorizes the Director of MOHCD (or her designee) to consent to
12 such changes; and, be it

13 FURTHER RESOLVED, That the Board of Supervisors approves the Port MOHCD
14 MOU under Charter, Section B7.320 and authorizes the Executive Director of the Port (or her
15 designee) and the Director of MOHCD (or her designee) to execute and implement the Port
16 MOHCD MOU; and, be it

17 FURTHER RESOLVED, The Board of Supervisors authorizes and delegates to the
18 Executive Director of the Port and the Director of MOHCD, or their designees, the authority to
19 make changes to the Port MOHCD MOU and take any and all steps, including but not limited
20 to, the attachment of exhibits and the making of corrections, which they, in consultation with
21 the City Attorney, 1) are consistent with the approval of the form of MOU as approved by the
22 California State Lands Commission, and 2) determine when taken as whole, are necessary or
23 appropriate to consummate the Port MOHCD MOU in accordance with this Resolution,
24 including entering into subsequent interagency memoranda of understanding regarding the
25 Project; provided, however, that such changes and steps do not materially decrease the

1 benefits to or materially increase the obligations or liabilities of the City or the Port, and are in
2 compliance with all applicable laws; and, be it

3 FURTHER RESOLVED, That all actions authorized and directed by this Resolution
4 and heretofore taken are hereby ratified, approved and confirmed by this Board of
5 Supervisors; and, be it

6 FURTHER RESOLVED, That within thirty (30) days of the execution of the Port
7 MOHCD MOU and Option Agreement and Lease being fully executed by all parties, the Port
8 shall provide copies of the agreements to the Clerk of the Board for inclusion into the official
9 file.

Item 15

File 18-0683

Department:

Mayor's Office

EXECUTIVE SUMMARY**Legislative Objectives**

- The proposed resolution approves several actions to enable development of affordable housing at 88 Broadway, which is under the jurisdiction of the Port, including (1) approving the Mitigation Monitoring and Reporting program under the California Environmental Quality Act (CEQA), (2) affirming the Port Commission's findings regarding the Public Trust, and adopting findings that the proposed project is consistent with the General Plan, (3) authorizing an option to ground lease for up to 75 years and the form of the ground lease between the Port and the property developer, 88 Broadway Family, L.P. (a partnership between the nonprofit housing developer BRIDGE Housing Corporation and the private developer John Stewart Company), and (4) authorizing a Memorandum of Understanding between the Port and the Mayor's Office of Housing and Community Development (MOHCD) for MOHCD to pay the fair market value of the ground lease.

Key Points

- State Assembly Bill (AB) 2649, adopted in 2012, allowed development of affordable housing at 88 Broadway for up to 75 years, subject to State Lands Commission approval. In 2015, MOHCD selected 88 Broadway Family, L.P. through a competitive process to develop low and moderate income housing on the property.
- Approval of the proposed option to ground lease is to be calendared at the July 10, 2018 Port Commission meeting. Therefore, approval of the proposed resolution by the Board of Supervisors is contingent on approval of the option agreement by the Port Commission. Also, as of the writing of this report, the State Lands Commission has not granted final approval of the proposed use of 88 Broadway for affordable housing.

Fiscal Impact

- AB 2649 requires that the City pay fair market value for the use of Port property for affordable housing, appraised at \$14.9 million. MOHCD and the Port expect that inclusionary housing fees generated by market-rate housing development on Parcel K North' adjacent to the Pier 70 Special Use District, would be used as a source of funds for MOHCD to pay the fair market value of the 75-year ground lease for 88 Broadway.
- Under the proposed ground lease, 88 Broadway Family L.P (the tenant) would pay base rent to the Port of \$20,000 in the first year, which would be increased every five years based on increases in the Area Median Income (AMI) but would not be less than \$20,000. The Port projects base rent revenues of \$4,075,442 over the course of a 75 year lease.
- In addition, six percent of the floor space at 88 Broadway will be dedicated to commercial/retail activities. Under the proposed ground lease, 88 Broadway Family L.P will pay rent to the Port equal to 30 percent of net revenues from the retail operation. The Port projects revenues of \$1,445,166 over the course of a 75 year lease.

Recommendation

- Approve the proposed resolution contingent on final approval of the project by the Port Commission and the State Lands Commission.

MANDATE STATEMENT

City Charter Section 9.118(c) states that any lease of real property for a period of ten years or more or that has revenue to the City of \$1 million or more is subject to Board of Supervisors approval.

BACKGROUND

The San Francisco Port owns land at 88 Broadway which is currently being used as a parking lot. State Assembly Bill (AB) 2649, adopted in 2012, allowed development of affordable housing at 88 Broadway for up to 75 years, subject to State Lands Commission approval that the site is no longer necessary for public trust or Burton Act purposes.¹

In 2014 the Port Commission approved a Memorandum of Understanding (MOU) between the Port and the Mayor's Office of Housing and Community Development (MOHCD) to explore the feasibility of developing the site for affordable housing.

In 2015, MOHCD issued a Request for Proposals (RFP) to develop affordable senior and family rental housing on the Broadway site. Nonprofit housing developer BRIDGE Housing Corporation collaborated with the John Stewart Company, a private corporation, to respond to the RFP. The two groups were selected as the most qualified developer of two respondents and jointly established 88 Broadway Family, L.P.

In June 2018, Clifford Advisory, L.L.C. appraised the fair market value of the property at \$14,900,000.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would:

- (1) Adopt the Mitigation Monitoring and Reporting Program under the California Environmental Quality Act (CEQA) for an affordable housing project at 88 Broadway along with an affordable housing project on city-owned property at 735 Davis Street;
- (2) Affirm the Port Commission's Public Trust findings and adopt findings that the Project is consistent with the General Plan, and the eight priority policies of Planning Code, Section 101.1;
- (3) Authorize an option to ground lease the property to 88 Broadway Family, L.P.; the option would be in effect from the Board of Supervisors approval of the proposed resolution through June 30, 2019 with a 12-month option to extend through June 30, 2020. The terms of the lease are: an initial 57-year ground lease, with one 18-year option to extend², between the City as landlord and 88 Broadway Family, L.P. as tenant

¹ The Burton Act granted tidelands within the city limits to San Francisco in 1968, which gave control of these lands to the Port subject to the trust agreement. Under the trust agreement, use of Port land is generally restricted to maritime commerce and recreational uses.

² MOHCD typically develops 99 year ground leases for affordable housing development; the lease at 88 Broadway is 75 years in total to comply with the Burton Act.

for \$20,000 annual base rent to construct 124 units of multifamily rental housing for low and moderate income persons at 88 Broadway;

- (4) Authorize the execution of a Memorandum of Understanding between the Port and the Mayor's Office of Housing and Community Development for payment of fair market value for the Port Property and other interdepartmental coordination
- (5) Authorize the Acting Director of Real Estate and Director of MOHCD to execute documents, make certain modifications, and take certain actions in furtherance of the resolution.

Low and Moderate Income Housing Development

88 Broadway Family, L.P will demolish the surface parking lot currently located at 88 Broadway in order to build two six-story, mixed use residential buildings for 124 affordable apartments for family and senior housing, plus one manager unit. The apartments would consist of 18 studios, 37 one-bedroom apartments, 46 two-bedroom apartments, and 24 three-bedroom apartments. The 124 apartments would be leased to families at the following income levels: 5 units are reserved for households at or below 30 percent of the Area Median Income (AMI); 44 units are reserved for households at or below 50 percent AMI; 55 units are reserved for households at or below 60 percent AMI; 11 units are reserved for households at or below 80 percent AMI; 5 units are reserved for households at or below 100 percent AMI; 5 units are reserved for households at or below 120 percent AMI. In addition, the residential buildings would include retail/commercial space taking up approximately six percent of the usable floor space.³

Total development costs for 88 Broadway are estimated to be \$90,729,865. Development is funded by federal Low Income Housing Tax Credits, loans and grants from the State of California, developer equity, MOHCD gap financing, and other sources.

The key provisions of the Ground Lease are shown in Table 1 below.

Table 1: Key Provisions of Ground Lease

Lease Terms: 88 Broadway

Size of Property	37,810 square feet
Lease Period	57 years (approximately March 2019 through March 2076)
Options to extend lease	Tenant has one 18-year option to extend the lease through 2094 for a total lease term of 75 years
Base rent	\$20,000 per year
Adjustments to base rent	Base rent will be adjusted every fifth year; Rent is adjusted by taking base rent multiplied by the percent change in AMI, unless AMI has decreased
Taxes, insurance, maintenance, utilities	Paid by tenant
Appraised Value	\$14,900,000, appraised June 15, 2018
Number of Units	124 Affordable rental housing units

Source: Lease between 88 Broadway Family, L.P and the City and County of San Francisco

³The building will have a total of 145,800 square feet; 8,700 square feet are reserved for commercial use.

Planning Department Determination

In March 2018, the Planning Department completed an environmental review which determined that the project could not have a significant effect on the environment. The Department also put mitigation measures in place to avoid potentially significant environmental effects. In April 2018 the Historic Preservation Commission approved the project and issued a Certificate of Appropriateness. Finally, in June 2018, the Planning Department found the project to be in conformity with the General Plan and the eight priority policies of Planning Code Section 101.1.

Additional approvals required

Approval of the proposed option to ground lease is to be calendared at the July 10, 2018 Port Commission meeting. Therefore, approval of the proposed resolution by the Board of Supervisors is contingent on approval of the option agreement by the Port Commission.

Also, as noted above, AB 2649, allowed development of affordable housing at 88 Broadway for up to 75 years, subject to State Lands Commission approval that the site is no longer necessary for public trust or Burton Act purposes. As of the writing of this report, the State Lands Commission has not granted final approval of the proposed use of 88 Broadway for affordable housing.

FISCAL IMPACT

According to the proposed Memorandum of Understanding (MOU) between the Port and MOHCD, as compensation for the ground lease for use of 88 Broadway as affordable housing, the Port will be paid (1) fair market value of the 75-year ground lease by MOHCD at the current appraised value of \$14.9 million,⁴ and (2) rent paid by the property tenant to the Port.

Fair Market Value of 88 Broadway

AB 2649 requires that the City pay fair market value for the use of Port property for affordable housing.⁵ Under the proposed MOU between the Port and MOHCD, MOHCD will pay the fair market value from any source of funds available to MOHCD. MOHCD and the Port expect that inclusionary housing fees generated by market-rate housing development on Parcel K North⁶, adjacent to the Pier 70 Special Use District, would be used as a source of funds for MOHCD to pay the fair market value of the 75-year ground lease for 88 Broadway.⁷

⁴ According to the MOU, if the ground lease does not close within 9 months, the property will need to be re-appraised.

⁵ The Board of Supervisors adopted an ordinance in 2012 (File 12-0816, Ordinance No. 232-12) that stated: "The Port would be authorized to enter into a lease for affordable housing at below market rents if the Port receives fair market value by other means".

⁶ Parcel K North is Port-owned land outside of the public trust, which the Port plans to sell to a private developer for development of market rate housing. Market rate housing developed on Parcel K North is subject to the City's inclusionary housing requirements.

⁷ The Port would continue to own the land; payment of fair market value by MOHCD to the Port is compensation for the 75-year ground lease.

According to Ms. Faith Kirkpatrick, MOHCD project manager, MOHCD estimates that inclusionary housing fees generated by market rate housing development on Parcel K North will be sufficient to cover the fair market value of 88 Broadway plus interest. Ms. Kirkpatrick states that these inclusionary housing fees have not been dedicated to other MOHCD affordable housing development.

Rent Paid by Tenant

Under the proposed ground lease, 88 Broadway Family L.P (the tenant) would pay base rent to the Port of \$20,000 in the first year, which would be increased every five years based on increases in the Area Median Income (AMI) but would not be less than \$20,000. If the base rent were to remain at \$20,000 for the duration of the initial 57 year term, the Port would receive \$1,140,000 in total base rent. Should the tenant agree to extend the lease for an additional 18 years, the City would receive an additional \$360,000. According to Mr. Ricky Tijani, Port Development Project Manager, the Port projects base rent revenues of \$4,075,442 over the course of a 75 year lease.

In addition, six percent of the floor space at 88 Broadway will be dedicated to commercial/retail activities. Under the proposed ground lease, 88 Broadway Family L.P will pay rent to the Port equal to 30 percent of net revenues from the retail operation. According to Mr. Tijani, the Port expects to receive approximately \$16,000 in average annual revenues from commercial and retail subleases. The Port projects revenues of \$1,445,166 over the course of a 75 year lease.

If 88 Broadway Family L.P subleases to wireless communication sites, advertising, or other uses, 88 Broadway Family L.P will pay the Port 50 percent of sublease rent. Since none of these subleases are contemplated at this time, the Port does not have estimates for these additional revenues at this time.

RECOMMENDATION

Approve the proposed resolution contingent on final approval of the project by the Port Commission and the State Lands Commission.

EXHIBIT D
FORM OF GROUND LEASE

Port Draft 070618



CITY AND COUNTY OF SAN FRANCISCO
MARK FARRELL, MAYOR

GROUND LEASE NO. L-16408

BY AND BETWEEN

**THE CITY AND COUNTY OF SAN FRANCISCO
OPERATING BY AND THROUGH THE
SAN FRANCISCO PORT COMMISSION**

AND

**88 BROADWAY FAMILY LP,
A CALIFORNIA LIMITED PARTNERSHIP**

GROUND LEASE FOR SEAWALL LOT 322-1

**ELAINE FORBES
EXECUTIVE DIRECTOR**

SAN FRANCISCO PORT COMMISSION

**KIMBERLY BRANDON, PRESIDENT
WILLIE ADAMS, VICE PRESIDENT
GAIL GILMAN, COMMISSIONER
VICTOR MAKRAS, COMMISSIONER
DOREEN WOO HO, COMMISSIONER**

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EXHIBIT	FORM OF ARCHITECT'S CERTIFICATION
EXHIBIT	FORM CONSENT TO SUBLEASE

SCHEDULE 1	PREMISES CONDITIONS REPORT(S)
SCHEDULE 2	FEMA DISCLOSURE NOTICE
SCHEDULE 3	HAZARDOUS MATERIALS DISCLOSURE

GROUND LEASE AGREEMENT

This Ground Lease Agreement is by and between the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation ("**City**"), operating by and through the San Francisco Port Commission ("**Port**"), as landlord, and 88 Broadway Family LP, a California Limited Partnership as Tenant ("**Tenant**"). The exhibits, schedules and this Lease Agreement are and shall be construed as a single instrument and are referred to herein as this "**Lease**".

This Lease is made with reference to the following facts and circumstances:

A. Port is an agency of the City, exercising its functions and powers over property under its jurisdiction and organized and existing under the Burton Act and the City's Charter. The Port of San Francisco Waterfront Land Use Plan, including the Waterfront Design and Access Element ("**WLUP**") is Port's adopted land use document for property within Port jurisdiction, which provides the policy foundation for waterfront development and improvement projects.

B. Most Port property consists of tidelands and submerged lands that are subject to the common law public trust doctrine, the California Constitution, the Burton Act, and the related transfer agreement under which the State of California (the "**State**") transferred most of the San Francisco waterfront to the City in 1969.

C. As further described and depicted in *Exhibit A-1*, Seawall Lot 322-1 ("**SWL 322-1**") is a rectangular land parcel, assigned AP Lot 007, Block 0140, with frontages on Broadway, Front and Vallejo Streets and is located in the Northeast Waterfront area of the WLUP. SWL 322-1 is also known by its address as "**88 Broadway**". SWL 322-1 is located in the Northeast Waterfront Historic District and is within a C-2 (Community Business) zoning district, Waterfront Special Use District No. 3, and a 65-X Height and Bulk district.

D. The WLUP and the Planning Department's Northeastern Waterfront Subarea Plan and Northeast Embarcadero Study list hotel, entertainment, theatre and public open space as acceptable uses for the Sea Wall Lots.

E. Port and the San Francisco Mayor's Office of Housing and Community Development ("**MOHCD**") have been jointly working to site an affordable housing development on the Premises under state legislation (Senate Bill 815 (Chapter 660) (2007); Assembly Bill 2649 (Chapter 757) (2012); and Assembly Bill 2797 (Chapter 529) (2016)) ("**State Legislation**") that permits lifting Public Trust use restrictions otherwise applicable from the Premises to allow development of affordable housing for a 75-year term ("**Project**"). In March 2014, Port and MOHCD executed a Memorandum of Understanding (the "**Predevelopment MOU**") that sets forth their respective roles and responsibilities with respect to the Project (Port Commission Reso. 14-16). As contemplated by the Predevelopment MOU, in 2015/2016, MOHCD conducted a competitive solicitation process to select a developer responsible for predevelopment, construction, and operation of the Project. In April 2016, MOHCD awarded the opportunity to a developer-team led by BRIDGE Housing Corporation ("**BRIDGE**") and the John Stewart Company ("**JSCo**") who formed 88 Broadway Family LP (the Tenant under this Lease) to serve as the developer for the Project.

F. On or about July 1, 2017, Port, MOHCD and Tenant entered into an Agreement On Term Sheet And Port Transaction Documents For The Implementation Of 88 Broadway Project On Seawall Lot 322-1 at Broadway and Front Streets, San Francisco to set forth the process, terms, and conditions upon which the parties to that agreement would negotiate terms for the transaction documents for the pre-development phase and development and operation of the proposed Project ("**Negotiation Agreement**") including terms for an option agreement and a long-term ground lease with the Port as well as other related agreements and documents to which the Tenant and Port are parties (collectively, the "**Transaction Documents**"). The term of the Negotiation Agreement is coterminous with the term of the Predevelopment MOU. Both the

Negotiation Agreement and Predevelopment MOU will terminate on the commencement date of this Lease.

G. The Project includes developing the Premises with up to 120-130 affordable rental family housing units, ground floor retail/commercial space of less than 5,000 square feet each, ~~other ancillary uses and open space consisting of two mid-block passages to allow for~~ neighborhood passage to the Northeast Waterfront and public art (the “**Initial Improvements**”) as further described in the Project Description/Scope of Development attached hereto as **Exhibit B**.

H. Concurrently with its development of the Project, Tenant intends to construct or cause construction of an estimated 50 to 55 units of senior housing at 735 Davis Street (“**Davis Street Project**”), which is a property adjacent to the Premises and controlled by MOHCD. The Davis Street Project is not subject to the provisions of this Agreement.

I. MOHCD will finance a portion of the development costs of the Project, including pre-development costs pursuant to that certain Loan Agreement dated May 12, 2017 between MOHCD and Tenant. MOHCD and Port entered into a Memorandum of Understanding (the “**Development MOU**”) under which MOHCD will, prior to execution of the ground lease, pay Port the fair market value of the Premises as appraised based on its value for its highest and best use without restriction no more than ninety (90) days prior to ground lease execution. In exchange for such fair market value payment, the Port will impose restrictions limiting the Premises to affordable housing uses for the term of the ground lease. Rent under this Lease shall be twenty thousand dollars (\$20,000) per year plus a share of any cash flow generated by any commercial uses, which is the fair market value of the leasehold interest with the affordable housing restrictions imposed. The Development MOU will replace the Predevelopment MOU and the Development MOU will have a term concurrent with the term of this Lease. Given MOHCD’s financial commitments to the Project and because it is the City agency responsible for matters relating to affordable housing, including compliance with laws governing affordable housing, this Lease is subject to MOHCD’s consent and MOHCD will assist Port with certain enforcement activities and will have an opportunity to cure certain tenant defaults as provided in this Lease.

J. Tenant intends to develop the Project with tax-exempt bonds, 4% Low Income Housing Tax Credits, San Francisco Federal Home Loan Bank Affordable Housing Program funding, City financing through MOHCD and other sources, if necessary.

K. City has been advised that State Legislation can be read as placing certain restrictions on uses of the Property other than certain types of housing units (AB 2649; § 5). The City is currently seeking legislation, which would not become operative until January 1, 2019 at the soonest, to explicitly exempt from the restrictions other types of housing units and uses ancillary to the provision of affordable housing, such that the Project could include Middle Income Households.

L. The Planning Department reviewed the Project combined with the adjacent Davis Street Project and issued a Preliminary Mitigated Negative Declaration (2017-007850ENV) on October 25, 2017. The Mitigated Negative Declaration became final on March 9, 2018. The Mitigation Measures and Improvement Measures in the Final Mitigated Negative Declaration will be enforceable conditions of the Mitigation Monitoring and Reporting Program which will be incorporated into the lease.

M. As required by Assembly Bill 2649, which authorized Port to submit to the procedures set forth in the Planning Code for obtaining a Certificate of Appropriateness or comparable determination, on April 4, 2018, the Historic Preservation Commission adopted a Certificate of Appropriateness with conditions by Motion No.0335 for the Project.

N. On May 3, 2018, the Director of the SF Planning Department adopted the Final Mitigated Negative Declaration and authorized the Project and the Davis Street Project pursuant

to its authorization under SF Planning Code Section 315 and found that, on balance, the Project is consistent with the City's General Plan.

O. On [____], 2018, by Resolution No. XX-XX, the Port Commission adopted the Final Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program; and, among other things: approved an option agreement for the Premises ("**Option Agreement**") setting forth the specific terms and conditions under which Port and Tenant would enter into a ground lease, including the conditions for exercising the option and for execution and delivery of a ground lease and a form of ground lease ("**Form Ground Lease**"); approved the schematic design for the Project attached hereto as **Exhibit C** ("**Schematic Design**"); made findings that the Project is consistent with the State Legislation; and authorized the Executive Director to seek necessary approvals from the Board of Supervisors and the California State Lands Commission.

P. On [____], 2018, by Resolution No. XX-XX, the Board of Supervisors confirmed the Port Commission's trust-related findings and approved the Form of Ground Lease and adopted the Mitigation Monitoring and Reporting Program.

Q. On [____], 2018, as required by and in accordance with the State Legislation, State Lands made a favorable Consistency Determination, lifted the Public Trust use restrictions, and made the required findings and approved the form of ground lease and the consideration to be received by the Port under the ground lease and the Development MOU. which consideration from MOHCD limits the Property to affordable housing uses.

R. On or about [date], 2018, Tenant and Port entered into the Option Agreement. On or about [date], Tenant exercised its option. The Parties have finalized this Lease based on the Form of Ground Lease with no material changes and all conditions to close escrow on this Lease have been satisfied or waived and the Parties now desire to enter into this Lease upon all of the terms and conditions hereof.

NOW THEREFORE, in consideration of the mutual promises and covenants, the purposes stated in the above Recitals, and other for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Port and Tenant enter into this Lease on the following terms and conditions.

1. RECITALS

The foregoing recitals are true and correct and are incorporated herein by this reference as if fully set forth herein.

2. DEMISE.

In consideration of the agreements, terms and conditions to be performed by Tenant in this Lease, Port does hereby lease to Tenant, and Tenant does hereby hire and take from Port, that certain real property located in the City and County of San Francisco, as legally described in **Exhibit A-1** and depicted on the Site Plan attached as **Exhibit A-2** comprised of a rectangular parcel of approximately 37,810 square feet of paved land located at the northeast corner of Front and Broadway Streets (Assessor Parcel Number 0140- 007) also known as Seawall lot 322-1 (the "**Real Property**"), together with all improvements now located on the Real Property and all the rights and privileges appurtenant to the Real Property and owned by Port, and the Improvements to be hereafter constructed on the Real Property (subject to Section 16.1 (Title to Improvements)), for the Permitted Uses (the "**Premises**").

3. KEY LEASE TERMS.

In the event of any conflict or inconsistency between the Key Lease Terms set forth in this Section and any other provision of this Lease, the provisions of this *Section 2* (Key Lease Terms) will control.

<i>Landlord's Address:</i>	Port of San Francisco Pier 1 San Francisco, California 94111 Attention: Director of Real Estate Telephone: (415) 274-0400 Facsimile: (415) 274-0494
<i>Tenant's Address:</i>	88 Broadway Family LP, a California limited partnership 600 California Street, Suite 900 San Francisco, CA 94108
<i>Contact Information for Tenant's Agent for Service of Process (including address):</i>	Rebecca V Hlebasko 88 Broadway Family LP, a California limited partnership 600 California Street, Suite 900. San Francisco, CA 94108 Telephone: 415-989-1111 x7075 Facsimile: 415-498-4898
<i>Commencement Date; Expiration Date:</i>	<p>This Lease will become effective as of the Close of Escrow ("Commencement Date") and shall expire on the date that is fifty-seven (57) years from the Commencement Date. Promptly following the Commencement Date, Port and Tenant shall execute a Commencement Date and Expiration Date Memorandum substantially in the form attached hereto as Exhibit D, confirming the actual Commencement Date, Anniversary Date and Expiration Date, but either party's failure to do so shall not affect such dates.</p> <p>The Parties agree that, upon Port's issuance of a Certificate of Final Completion and Occupancy for the Residential Portion of the Building as provided in Section 14.9 (Certificate of Final Completion and Occupancy), the Expiration Date will be automatically extended to the date that is fifty-seven (57) years from the date of the Certificate of Final Completion and Occupancy for the Residential Portion of the Building without further action by the Parties. Promptly following the Port's issuance of the Certificate of Final Completion and Occupancy for the Residential Portion, Port and Tenant shall execute a revised Commencement Date and Expiration Date Memorandum substantially in the form attached hereto as Exhibit D, confirming the revised Anniversary Date and Expiration Date, and a Lease Memorandum substantially in the form attached hereto as Exhibit E, confirming the extended Expiration Date, but either party's failure to do so shall not affect the extended Expiration Date.</p> <p>In no event shall the Term (including the Extended Term) extend beyond December 31, 2105.</p>
<i>Extension Term:</i>	As provided by and subject to Section 6.1(a) (Option to Extend Term), Tenant, in its sole discretion, shall have one (1) option to extend ("Extension Option") the Term for eighteen (18) years

	("Extended Term").
<i>Initial Improvements:</i>	As further described in the Project Description/Scope of Development attached hereto as Exhibit B and the Construction Documents, Tenant shall construct the Initial Improvements (sometimes referred to herein as the " Building ") in accordance with the dates specified in the Schedule of Performance, attached hereto as Exhibit F .
<i>Permitted Use and Occupancy Restrictions:</i>	<p>The Premises shall be used solely for the construction and operation of the Improvements with the following uses:</p> <p>(A) Residential Units: One Hundred Twenty-Four (124) units of affordable rental housing with One Hundred Three (103) units restricted for Low Income Households and Twenty-one (21) units restricted for Moderate Income Households, plus one manager's unit (collectively, the "Residential Portion"). Notwithstanding the foregoing, in the event state law is amended, the Residential Portion may consist of a maximum of five (5) units for Middle Income Households, a maximum of sixteen (16) for Moderate Income Households, a minimum of ninety eight (98) units for Low Income Households, and a minimum of five (5) units for Extremely Low Income Households. Changes to the levels of affordability of Residential Portion as provided in this Section are prohibited without MOHCD's prior written approval.</p> <p>For purposes of this Lease, the Residential Portion will include residential units in the Ground Floor Units, if any, and common areas, service areas for loading, building services and Building Systems regardless of whether such areas also service the Ground Floor Units.</p> <p>Upon the Completion of construction, one hundred percent (100%) of the Residential Units (except for the manager's unit) must be occupied or held vacant and available for rental by Extremely Low Income Households, Low Income Households, Moderate Income Households, and Middle Income Households (if permitted by Law). In addition, if Tenant obtains a LOSP contract, Tenant will set aside specific Low Income Household units for homeless households as defined by the Department of Homelessness and Supporting Housing or other referring agency providing funding for such units. Residential Units must be occupied and rented in accordance with all applicable restrictions imposed by this Lease.</p> <p>(B) Ground Floor Unit #1: approximately 5,000 square feet of space on the ground floor for planned initial use as a restaurant or café open to the public or other trust-consistent uses subject to Port's approval in its sole and absolute discretion, after consultation with State Lands as to consistency with the Public Trust, if such consultation is determined to be necessary by Port; and</p> <p>(C) Ground Floor Unit #2: approximately 4,300 square feet of</p>

	<p>space on the ground floor to be used for: (i) affordable housing as defined in Assembly Bill 2649 (Chapter 757) (2012), as may be amended; or (ii) trust-consistent maritime, public space, retail, commercial or other trust-consistent uses subject to Port's approval in its sole and absolute discretion, after consultation with State Lands as to consistency with the Public Trust, if such consultation is determined to be necessary by Port.</p> <p>(collectively, and for convenience of reference in this Lease only, the uses under (B) and (C) are referred to herein as "Ground Floor Units").</p>
<i>No Market Rate Housing:</i>	<p>The Residential Portion shall be used by Tenant and any Transferee, Lender, Subsequent Owner, or any other party solely for the Permitted Uses for the Residential Portion as set forth above. Any other use of the Residential Portion is prohibited.</p> <p>The income limits for households set forth in this Lease apply at initial occupancy by a Residential Occupant. Tenant shall not be obligated to terminate the tenancy of any Residential Occupant due to an increase in the household's income, even if such Residential Occupant no longer qualifies as an Extremely Low Income, Low Income, Moderate Income or Middle Income Household and the Residential Occupant's continued occupancy will not be a default of this Lease.</p>
<i>Transfers:</i>	<p>This Lease is personal to Tenant and all Transfers are prohibited except in accordance with Section 26 (Transfers). Port and MOHCD hereby acknowledge the Leasehold Mortgages evidencing initial Project financing as set forth in the Development Budget previously approved by the City under the Option Agreement.</p>
<i>Subdivision:</i>	<p>With ninety (90) days' prior written notice to Port, Tenant may elect to subdivide the Real Property into two or more (air space) parcels for purposes of legally dividing the real property (a "Subdivision"). Tenant shall be solely responsible for all required approvals and costs of such Subdivision. Except as otherwise provided by this Lease or with Port's written approval in its sole discretion, a subdivided parcel may be not Transferred. Subleasing of a subdivided parcel is permitted as specified in Sections 26 (Transfers). In connection with a Subdivision, Port agrees that it will consent to reasonable and customary covenants, conditions and restrictions governing the Building, provided that they are materially consistent with this Lease, Port's authority as trustee under the Burton Act and the favorable Consistency Determination made by the Port Commission and State Lands in the Resolutions referenced in Recitals O and Q or required to be made hereafter, and do not increase Port's liability as reasonably determined by Port.</p>

<i>Leasehold Financing and Other Restrictions:</i>	Under no circumstances will Tenant place or suffer to be placed any lien or encumbrance on Port's fee interest in the Premises. Port will not subordinate its interest in the Premises nor its right to receive rent to any Lender. As provided in this Lease, including without limitation Section 34 (Leasehold Mortgage), project financing from institutional lenders, governmental entities, nonprofits and other lenders may be secured by Tenant's Leasehold Estate or a Subleasehold Estate and Port will consent to reasonable provisions in lease riders and/or affordability covenants/restrictions required to receive public financing if such riders and covenants (including tax credits, and state grants or loans) are approved by MOHCD, provided that such riders and covenants are materially consistent with this Lease, Port's authority as trustee under the Burton Act and the favorable Consistency Determination made by the Port Commission and State Lands in the Resolutions referenced in Recitals O and Q or required to be made hereafter, and do not increase Port's liability as reasonably determined by Port.
<i>Rent:</i>	Rent shall consist of the following: (i) rent in an amount of twenty thousand dollars (\$20,000) per year commencing on the date of the Certificate of Final Completion and Occupancy for the Residential Portion of the Building and subject to escalation as provided in Section 7.1 ("Base Rent"); plus, (ii) for any Retail Sublease, Retail Rent as described in Section 7.2 (Retail Rent); plus, (iii) for any other sublease, Excess Rent as described in Section 7.3 (Excess Rent); plus (v) Participation Rent as described in Section 26.11 (Participation in Sale).
<i>Security Deposit:</i>	Ten Thousand Dollars (\$10,000)
<i>Management Plan:</i>	<p>All Permitted Uses must be performed in compliance with the City-approved Management Plan, which will include rules, policies and procedures for the day-to-day operation of Premises, including the childcare center (if any), building management, leasing procedures, marketing, and reporting requirements attached hereto as Exhibit G and hereby incorporated.</p> <p>City may, from time to time, review Tenant's Management Plan and make recommendations for revisions. All revisions to the Management Plan, whether initiated by City or Tenant, are subject to Tenant's, Port's and MOHCD's approval.</p>
<i>Property Management:</i>	The Parties agree that Tenant contract with a manager to manage and operate the Project (each, a "Property Manager"). City understands and agrees that The John Stewart Company, a California corporation will act as the initial Property Manager for the Building. Subsequent Property Managers are subject to City's consent in its reasonable discretion. Tenant's contract with a Property Manager shall not be deemed a Transfer or Sublease hereunder; each Property Manager will be Tenant's

	<p>Agent. The Property Manager shall be subject to all terms and conditions of this Lease, including without limitation, the requirement to provide insurance coverage. A breach by a Property Manager constitutes a breach by Tenant. Tenant is solely responsible for ensuring that the Property Manager is aware of and comply with all of the applicable provisions of this Lease and Tenant acknowledges that Tenant shall be subject to default and termination provisions under this Lease if a Property Manager fails to comply with applicable terms and conditions of this Lease.</p>
<i>Surrender:</i>	<p>At the end of the Lease Term, Tenant shall surrender the Premises as a single parcel and all structures, buildings, and appurtenances on the Premises must be repurposed, modified or removed including any necessary restoration or remediation to facilitate Public Trust uses, if so specified by Port in its sole discretion in its Notice of Removal under Section 16.2 in a manner that otherwise allows compliance with state law, including Section 9 of AB 2797 (as may be amended).</p>
<i>Development Projects:</i>	<p>SFPUC North Shore Force Main Rehabilitation Project; SWL 323 - 324 Teatro Hotel project; Water Emergency Transportation Agency Downtown Ferry Terminal Project at The Ferry Building; and the Seawall Earthquake Safety Project</p>
<i>Mitigation Measures and Improvement Measures Monitoring and Reporting Program ("MMRP"):</i>	<p>In order to mitigate any potential significant environmental impacts of the project, Tenant agrees that its development and operation will be in accordance with the MMRP attached as Exhibit H and fully incorporated herein. Tenant is responsible for implementation and compliance with all required measures relating to Tenant's activities. As appropriate, in addition, Tenant will incorporate the MMRP into any contract for the development and/or operation of the Premises. Failure to comply with the requirements of this Section shall be a default of this Lease.</p>
<i>Good Neighbor Policies:</i>	<p>Tenant, any Property Manager and all Subtenants will be required to abide by Port's and City's Good Neighbor Policies as such policies may be adopted and amended from time to time. Good Neighbor Policies in effect as of the Commencement Date are attached hereto as Exhibit I. City will provide written notice of any new or revised Good Neighbor Policies. Any such policies shall be uniformly applied to similar or related types of Port tenants/Permitted Uses.</p>
<i>Prior License:</i>	<p>The Parties agree that as of the Commencement Date, License No. 16358, dated February 6, 2018 for reference purposes (the "Prior License"), between Tenant and Port is hereby terminated; provided, however, that the Parties shall continue to be liable for any obligations under the Prior License which have accrued prior to the date of termination and any obligations which by their terms survive the termination or expiration of the Prior License.</p>

<i>Tenant's Agents:</i>	Unless otherwise specified in this Lease, the Parties acknowledge and agree that, Tenant may, in the ordinary course of business, perform its obligations under this Lease through contractors, Subtenants and others in each case acting as an Agent of Tenant. Each of Tenant's Agents performing Tenant's obligations under this Lease shall be subject to all terms and conditions of this Lease and a breach caused by Tenant's Agent constitutes a breach by Tenant subject to default and termination provisions under this Lease.
<i>Utility Corridor Serving Davis Street Project:</i>	The Permitted Use may include construction and operation of a subsurface utility corridor located directly underneath the North/South mid-block passage open space that services the Building and the adjacent Davis Street Project. Any utility corridor and appurtenances thereto shall be an Improvement under this Lease and subject to all the terms and conditions of this Lease. Notwithstanding any other provision of this Lease, Port agrees that it will not require the removal or relocation of the utilities in the utility corridor during any time that the Building (including the North/South mid-block passage open space) remains on the Premises and the utilities continue to serve the Building.
	[Placeholder to add new Laws and City Requirements effective prior to the Commencement Date of this Lease].
<i>Lease Prepared By:</i>	Ricky Tijani, Planning and Development

4. MOHCD ROLE AND OBLIGATIONS

4.1. MOHCD's Consent. This Lease and all amendments hereto are subject to MOHCD's consent in its sole discretion. MOHCD will assist Port with the following duties and responsibilities under this Lease.

4.2. Coordination of Management Roles.

(a) As between Port and MOHCD, MOHCD shall have primary monitoring, managerial and administrative authority with respect to the provisions of **Section 11** (Housing Requirements) of this Lease. MOHCD shall have primary approval rights over any changes Tenant wishes to make to the number of units designated for Low Income and Moderate Income households or any modification to the levels of affordability of Residential Portion. Port shall have primary monitoring managerial and administrative authority with respect to all other provisions. Port and MOHCD will work in good faith to consult with the other on all managerial, administrative and enforcement issues.

(b) MOHCD shall recommend approval of a Property Manager selected by Tenant and shall be primarily responsible for monitoring and reviewing the Property Manager's performance with respect to the provisions of **Section 11** (Housing Requirements) of this Lease.

(c) As Port's agent, MOHCD shall have the same rights of entry and inspection as Port under this Lease.

4.3. MOHCD's Right to Pay Taxes and Impositions. Unless Tenant is exercising its right to contest the Imposition of a tax under **Section 8.2** (Contests), if Tenant fails to pay and

discharge any imposition (including fines, penalties and interest) prior to delinquency, MOHCD at its sole option, may (but is not obligated to) pay or discharge the same; provided that prior to paying any such delinquent Imposition, MOHCD shall give Tenant written notice specifying a date that is at least ten (10) days following the date such notice is given after which MOHCD intends to pay such Impositions. If Tenant fails, on or before the date specified in such notice, either to pay the delinquent Imposition or to notify MOHCD that it is contesting such Imposition, then MOHCD may thereafter pay such Imposition, and the amount so paid by MOHCD (including any interest and penalties thereon paid by MOHCD), together with interest computed from the date MOHCD makes such payment, shall be payable by Tenant to Port as Additional Rent.

4.4. MOHCD's Right to Cure Tenant's Default. MOHCD, at any time after Tenant commits a default, may, at MOHCD's sole option, cure the default at Tenant's cost and Port agrees to accept such cure as if performed by Tenant. If MOHCD at any time, by reason of Tenant's default, undertakes any act to cure or attempt to cure such default that requires the payment of any sums, or otherwise incurs any costs, damages, or liabilities (including without limitation, attorneys' fees), all such sums, costs, damages or liabilities paid by MOHCD shall be due immediately from Tenant to MOHCD at the time the sum is paid, and if paid by Tenant at a later date shall bear interest at the Interest Rate. Tenant shall Indemnify the Indemnified Parties against any Claims in connection with MOHCD's cure or attempts to cure under this Section.

4.5. MOHCD Consent to Transfers of the Residential Portion and Leasehold Mortgages. Prior to seeking Port's consent and as a condition of Port's consent, Tenant shall obtain MOHCD's written consent to any Transfer of the Residential Portion under **Section 26.1** (Transfers) or any Leasehold Mortgage under **Section 34** (Leasehold Mortgage).

4.6. Port is Landlord. Nothing in this Lease is intended to grant MOHCD the rights or responsibilities of a lessor under this Lease, Laws or in equity. No action by MOHCD shall be binding upon Port with respect to Tenant or any provision of this Lease. Notwithstanding anything to the contrary, Port shall be ultimately responsible for all administration and enforcement of this Lease including without limitation, granting the Extension Term (if any), declaring an Event of Default, determining the adequacy of and accepting a cure of an Event of Default, exercising remedies, providing consent and exercising all other rights, duties and responsibilities of the lessor under this Lease.

5. PREMISES; CONDITION.

5.1. Consistency With State Legislation/Mandatory Uses . Tenant acknowledges that the Premises is subject to the Public Trust and State Legislation and that, as a pre-condition of Port's execution of this Lease, the Port Commission and State Lands made a favorable Consistency Determination. The Parties further agree that Port may withhold its consent with respect to any change in any Permitted Uses if such changes would result in a violation of Port's authority as trustee under the Burton Act, or run contrary to the State Legislation or the favorable Consistency Determination made by the Port Commission or State Lands in the Resolutions referenced in **Recitals O** and **Q** or required to be made hereafter, as determined by Port in its sole discretion.

5.2. Restrictions on Encumbering Port's Reversionary Interest. Tenant may not enter into agreements granting licenses, easements or access rights over the Premises if the same would be binding on Port's reversionary interest in the Premises, or obtain changes in applicable land use laws or conditional use authorizations or other permits for any uses not provided for hereunder, in each instance without Port's prior written consent, which consent may be withheld in Port's sole discretion. The Parties recognize that for Tenant to carry out the Permitted Uses, it may be necessary or desirable to obtain additional use, zoning, regulatory or land use approvals or conditional use authorization relating to the Premises. Port agrees, from time to time, to reasonably cooperate with Tenant, at no out of pocket cost to Port, in pursuing such regulatory

approvals or authorizations, including, but not limited to, executing documents, applications or petitions relating thereto, subject to the limitations of **Section 13.2** (Regulatory Approvals).

5.3. Title Exceptions and Defects. The interests granted by Port to Tenant pursuant to this Lease are subject to (i) the matters reflected in **Exhibit J** (the “Permitted Title Exceptions”), (ii) the rights of Port reserved under this Lease, and (iii) other matters as Tenant will cause or suffer to arise subject to the terms and conditions of this Lease. Port will have no liability to Tenant in the event any defect exists in Port's title to the Premises as of the Commencement Date and no such defect will be grounds for a termination of this Lease by Tenant. Tenant's sole remedy with respect to any such existing title defect will be to obtain compensation by pursuing its rights against any title insurance company or companies issuing title insurance policies to Tenant.

5.4. Subsurface Mineral Rights. Under the terms and conditions of Article 2 of the Burton Act, the State has reserved all subsurface mineral deposits, including oil and gas deposits, on or underlying the Premises. In accordance with the provisions of Sections 2 and 3.5(c) of the Burton Act, Tenant and Port hereby acknowledge that the State has reserved the right to explore, drill for and extract such subsurface minerals, including oil and gas deposits, solely from a single point of entry outside of the Premises, provided that such right will not be exercised so as to disturb or otherwise interfere with the Leasehold Estate or the use of the Premises, including the ability of the Premises to support the Improvements, but provided further that, without limiting any remedies the Parties may have against the State or other parties, any such disturbance or interference that causes damage or destruction to the Premises will be governed by **Section 23** (Damage or Destruction). Port will have no liability under this Lease arising out of any exercise by the State of such mineral rights (unless the State has succeeded to Port's interest under this Lease, in which case such successor owner may have such liability).

5.5. Proximity of Development Projects. Tenant acknowledges that during the Term, a Port program or project and/or the Development Project(s) listed in in **Section 2** (Key Lease Terms) are scheduled to be, or may be, constructed on property in the vicinity of the Premises. Tenant is aware that construction of the Development Projects and other construction projects of Port tenants, licensees or occupants within or in the vicinity of the Premises and the activities associated with such construction may generate adverse impacts on construction of the Improvements, use and/or operation of the Premises after construction, or may result in inconvenience to or disturbance of Tenant and its Agents and Invitees. Impacts may include increased vehicle and truck traffic, traffic delays and re-routing, loss of street and public parking, dust, dirt, construction noise, and visual obstructions. Tenant hereby waives any and all Claims against the Indemnified Parties arising out of any inconvenience or disturbance to Tenant, its Agents or Invitees arising out of such inconvenience or disturbance.

5.6. No Light, Air or View Easement. This Lease does not include any air, light, or view easement. Any diminution or shutting off of light, air or view by any structure which may be erected on lands near or adjacent to the Premises shall in no way affect this Lease or impose any liability on City, entitle Tenant to any reduction of Rent, or affect this Lease or Tenant's obligations hereunder in any way.

5.7. Unique Nature of Premises.

Tenant acknowledges that: (a) the Premises is located in the immediate vicinity of the waterfront and the Seawall, which Seawall is in need of repair and presents increased risk of damage to property and injury or death to persons from seismic events; (b) Port's regular maintenance may involve activities, such as pile driving, that create noise and other effects not normally encountered in locations elsewhere in San Francisco due to the unique nature of the Premises; and (c) the Premises is located over fill and subject to liquefaction during a seismic event and presents an increased risk of damage to property and injury or death to persons from seismic events.

5.8. Seawall. The City is engaged in an effort to prepare for a major earthquake and to create more resilient City infrastructure. As part of this effort, Port is developing a plan to strengthen the Northern Waterfront Seawall which stretches from Fisherman's Wharf to Mission Creek ("Seawall") to maintain viability of Port's operations, increase protection of Port and City assets, and enhance life safety in the face of degradation, flooding, earthquakes, climate change, and security hazards. The Seawall was constructed over 100 years ago within the Bay and supports reclaimed land, or fill, and as a result is more vulnerable to seismic risk. Earthquake performance of reclaimed land is an issue for coastal communities worldwide. *The Seawall Earthquake Vulnerability Study of the Northern Waterfront Seawall, San Francisco, California July 2016*. Tenant agrees that its waiver of Claims set forth in **Section 25** (Indemnity and Exculpation) is given with full knowledge of the direct or indirect, known or unknown, and foreseeable or unforeseeable losses and claims (including the potential additional risks of injury or death to persons or damage to property) due to the Seawall's condition or the proximity of the Premises to the Bay and the Seawall. Tenant represents and warrants to Port that Tenant has received and reviewed the disclosures regarding the Seawall in **Section 5.8** (Seawall) including *The Seawall Earthquake Vulnerability Study of the Northern Waterfront Seawall, San Francisco, California July 2016* and information on the Port's website and the FEMA disclosure notice attached as **Schedule 2**.

5.9. As-Is Condition. Tenant acknowledges and agrees that Tenant is familiar with the Premises, the Premises is being leased and accepted in its "as-is" condition, without any preparation, improvements or alterations by Port without representation or warranty of any kind, and subject to all applicable Laws governing their use, occupancy and possession. Tenant acknowledges that it has been afforded a full opportunity to inspect Port's records relating to conditions of the Premises. Port makes no representation or warranty as to the accuracy or completeness of any matters contained in such records and Tenant is not relying on any such information. All information contained in such records is subject to the limitations set forth in this Section. Tenant further represents and warrants to Port that Tenant has investigated and inspected, either independently or through agents of Tenant's own choosing, the condition of the Premises and its suitability for Tenant's business and intended use including (i) its quality, nature, adequacy and physical condition and functional aspects; (ii) its quality, nature, adequacy, and physical, geotechnical and environmental conditions (including Hazardous Materials conditions, including the presence of asbestos or lead, with regard to soils and any groundwater); (iii) its suitability for the Improvements; (iv) its zoning, land use regulations and other Laws governing use of or construction; and (v) all other matters of material significance affecting the Premises and its use and development under this Lease. Tenant specifically acknowledges and agrees that neither City, Port nor any of their agents have made, and Port hereby disclaims, any representations or warranties, express or implied of any kind, concerning the rentable area of the Premises, the physical or environmental condition of the Premises, the present or future suitability of the Premises for Tenant's business, any compliance with laws or applicable land use or zoning regulations, any matter affecting the use, value, occupancy or enjoyment of the site, or any other matter whatsoever relating to the Premises, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

5.10. Release and Waiver. As part of its agreement to accept the Premises in their "As Is With All Faults" condition, Tenant, on behalf of itself and its successors and assigns, will be deemed to waive any right to recover from, and forever release, acquit and discharge, Port and the other Indemnified Parties of and from any and all Claims, whether direct or indirect, known or unknown, foreseen or unforeseen, that Tenant may now have or that may arise on account of or in any way be connected with (i) the physical, geotechnical or environmental condition in, on, under, above, or about the Premises, including any Hazardous Materials in, on, under, above or about the Premises (including soil and groundwater conditions), (ii) the suitability of the Premises for the development of the Improvements, the Permitted Uses, (iii) any Laws applicable thereto, including Environmental Laws, (iv) damages by death of or injury to any Person, or to property of any kind whatsoever and to whomever belonging, and (v) goodwill, or

business opportunities arising at any time and from any cause in, on, around, under, and pertaining to the Premises, including all claims arising from the joint, concurrent, active or passive negligence of any of Indemnified Parties, but excluding any sole gross negligence of or intentionally harmful acts committed solely by Port or City.

5.11. Accessibility Inspection Disclosure. California law requires commercial landlords to disclose to tenants whether the property being leased has undergone inspection by a Certified Access Specialist (“CASp”) to determine whether the property meets all applicable construction-related accessibility requirements. The law does not require landlords to have the inspections performed. Tenant is hereby advised that the Premises has not been inspected by a CASp and Port has no obligation, liability, or responsibility to make any repairs or modifications to the Premises in order to comply with accessibility standards. The following disclosure is required by law:

“A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties will mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.”

5.12. Port’s Rights Regarding Premises. Port shall have the full right and authority to make, revoke, impose, and amend any Good Neighbor Policies and/or any Rules and Regulations pertaining to and reasonably necessary for the proper use, operation and maintenance of retail and public-serving operations and activities at the Premises. Tenant acknowledges receipt of a copy of the Port’s current Restaurant Rules and Regulations attached hereto as **Exhibit K** and agrees to abide by them, as applicable. Port will provide Tenant with written notice of any new or revised Rules and Regulations applicable to the Project and any such Rules and Regulations shall be uniformly applied to similar or related types of Port tenants/Permitted Uses. Tenant acknowledges that Port’s exercise of any of its rights regarding the Premises and other Port property in the vicinity of the Premises will not entitle Tenant to any abatement or diminution of Rent.

5.13. Flood Risk and Sea Level Rise. Tenant shall incorporate Flood Protection Measures into its site and building designs, particularly civil engineering designs to protect the Premises and Improvements from flooding or water inundation from sea level rise and take all other measures appropriate to proactively address risks related to flood and water inundation from sea level rise.

(a) **Flood Protection Measures.** In addition to Tenant’s obligations to comply with Laws and to repair and maintain the Premises including the Improvements if, at any time during the Term of this Lease, and subject to compliance with CEQA, the Chief Harbor Engineer acting in his/her regulatory capacity as the Port’s chief building official in accordance with applicable Laws determines that there is a need for **Flood Protection Measures** (as defined below) at the Premises or proximate to the Premises to protect the Premises from a significant risk of flooding or other damage resulting from climate change or sea level rise, in order to protect public health and safety (“**CHE Determination**”), Tenant shall be responsible at no cost to Port for permitting, constructing and implementing any such Flood Protection Measures in the manner described in this Section. Tenant understands and agrees that it will not receive or seek rent credits or other compensation or consideration for any Flood Protection Measures. Port and Tenant agree that neither a CHE Determination nor a Threat Determination (as defined below) under this **Section 5.13** (Flood Risk and Sea Level Rise) that identifies a bona fide code violation or condition requiring Flood Protection Measures shall be a Taking for purposes of this Lease.

"Flood Protection Measures" may include without limitation (1) temporary public access closures, sandbagging or similar temporary measures to minimize the risks associated with flooding; (2) waterproofing or relocation of utility infrastructure from subsurface areas to minimize the risk of water or wastewater infiltration; and/or (3) short perimeter flood walls or similar measures to address more frequent and serious flooding. For purposes of this section, and without affecting Tenant's other obligations under this Lease, Flood Protection Measures do not include raising first floor elevations or regional improvements such as breakwater or levee improvements which the Parties acknowledge may be necessary to protect the City from sea level rise, but are beyond the scope of this Lease.

(b) CHE Determination Notice. Promptly following a CHE Determination, Port will deliver to Tenant notice of the CHE Determination ("**CHE Determination Notice**"). The CHE Determination Notice will include a description of the need for required Flood Protection Measures and a timeline for Tenant to submit for the CHE's approval, in his or her sole discretion, a conceptual level scheme of the planned measures along with a schedule for completing design, securing all Regulatory Approvals and completing construction ("**Flood Protection Plan**"). The CHE has the sole discretion to approve or disapprove the final designs and implementation of any Flood Protection Measures to be constructed within Port's jurisdiction (including the Premises). Within sixty (60) days of receiving such plan, the CHE will review and either approve the plan or request revisions to the plan. If revisions are required, Tenant will promptly revise the Flood Protection Plan and re-submit to the CHE for his or her review and approval. Tenant will continue to revise and re-submit until the CHE approves the Flood Protection Plan, as revised; provided, however, Tenant must have obtained the CHE's approval of a Flood Protection Plan (the "**Approved Flood Protection Plan**") within the time period set forth in the CHE Determination Notice.

(c) If Tenant fails to implement any required Flood Protection Measures or the Approved Flood Protection Plan within the time required in the CHE Determination, Port shall provide Tenant with thirty (30) days written notice and the right to cure such failure. If Tenant fails to cure within the 30-day period, Port shall have the right but not the obligation to implement the measure(s) on Tenant's behalf following an additional thirty (30) days' written notice of Port's intent to do so (unless such failure to cure gives rise to an emergency which creates an imminent danger to public health or safety as determined by the CHE) and Tenant shall reimburse Port for its actual costs.

(d) Limitations; Waiver. Tenant's obligation hereunder in connection with the Flood Protection Measures shall include, without limitation, the obligation to make substantial or structural repairs and alterations to the Premises regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Lease, the length of the then remaining Term hereof, the relative benefit of the repairs to Tenant or Port, the degree to which curative action may interfere with Tenant's use or enjoyment of the Premises, or the likelihood that the Parties contemplated the particular Flood Protection Measures involved. Further, no occurrence or situation arising during the Term, nor any present or future Law or circumstance, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant of its obligations hereunder, nor give Tenant any right to terminate this Lease in whole or in part or to otherwise seek redress against Port except with respect to Tenant's right to terminate under the terms and conditions specified in **Section 23** (Damage and Destruction) and **Section 24** (Condemnation). Without waiving the right to terminate as provided in **Section 23** (Damage and Destruction) and **Section 24** (Condemnation), Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease, to receive any abatement, diminution, reduction or suspension of payment of Rent, or to compel Port to make any repairs to comply with any such Laws or on account of any such occurrence or situation.

If the CHE determines that there is a need for Flood Protection Measures or makes a Threat Determination as described in this Section, the rights and obligations of the Parties shall be as set forth in this Section. Accordingly, Port and Tenant each hereby waive the provisions of

Sections 1932(2) and 1933(4) of the California Civil Code and Sections 1265.110, 1265.120, 1265.130, and 1265.140 of the California Code of Civil Procedure as such sections may from time to time be amended, replaced, or restated. Notwithstanding the prior sentence, Port and Tenant do not intend to waive their rights under **Section 23** (Damage and Destruction) and **Section 24** (Condemnation) in the event of damage, destruction or a Taking.

6. TERM.

6.1. Initial Term. The effectiveness of this Lease will commence on the Commencement Date and will expire on the Expiration Date (unless earlier terminated in accordance with the terms of this Lease ("**Initial Term**").

If Port is unable to deliver possession of the Premises to Tenant on or before the Commencement Date, then the validity of this Lease shall not be affected thereby and Port shall not be liable to Tenant for any Claims resulting therefrom, and Tenant waives all provisions of any Laws to the contrary.

(a) Option to Extend Term. Subject to Tenant's compliance with **Section 6.1(b)** (Conditions to Extend), Tenant may extend the Term of this Lease for the Extended Term on and subject to all of the terms and conditions of this Lease, except that Tenant will have no further right to extend the Term beyond the Extended Term. Notwithstanding any other provision of this Lease, the Extended Term shall expire on the earlier of: (i) the date that is eighteen (18) years after the Expiration Date of the Initial Term; or (ii) December 31, 2105. In the event that Tenant properly and timely extends the Term of this Lease as set forth in this **Section 6.1(a)**, the word "**Term**" as used in this Lease will be deemed to mean the Term as extended by the Extended Term. All other terms will remain unchanged.

(b) Conditions to Extend. In order for Tenant to extend the Term for the Extended Term, all of the following conditions must be satisfied

(i) Tenant must provide written notice to Port of its intention to extend the Term no later than two (2) years but no earlier than three (3) years prior to the expiration of the Initial Term along with the most recent Capital Needs Assessment report, which notice will be irrevocable by Tenant ("**Extension Notice**");

(ii) the Chief Harbor Engineer has reviewed the condition of the Premises (including the Improvements thereon) including the effects of sea level rise, the condition of the Seawall, and any anticipated improvements to mitigate the impact of sea level rise or the potential failure of, or damage to, the Seawall in the event of a major seismic event, and is reasonably satisfied that, in his or her best professional judgement such conditions on the Premises and the City's waterfront will not materially and adversely affect public health and safety or increase the potential for Claims against Port or the City during the Extended Term.

(iii) There is no uncured Tenant Event of Default or Unmatured Tenant Event of Default at the time of the giving of the Extension Notice; and

(iv) There is no uncured Tenant Event of Default or Unmatured Tenant Event of Default at the commencement of the Extended Term.

(c) Failure to Meet Conditions.

(i) If, under (a)(ii) above, the Chief Harbor Engineer identifies conditions that could materially and adversely affect public health and safety during the Extended Term or increase the potential for Claims against Port or the City during the Extended Term, he or she will do so in writing and Tenant will have a reasonable amount of time to present to Port a written plan to address such conditions through Improvements to the Premises or other verifiable measures. Port, in its sole discretion, may extend the deadlines for the Extension Notice in **Section 6.1(b)** (Conditions to Extend) in order for the Parties to agree on proposed measures to address health and safety issues during the Extended Term. If, despite

Tenant's proposal, the Chief Harbor Engineer determines that conditions would still exist that could materially and adversely affect public health and safety or increase the potential for Claims against Port or the City during the Extended Term, the Extension Option will be null and void and this Lease will terminate on the Expiration Date.

(ii) If Tenant fails to provide a timely Extension Notice or if there is uncured Tenant Event of Default or Unmatured Tenant Event of Default at the time of the giving of the Extension Notice or an uncured Tenant Event of Default or Unmatured Tenant Event of Default at the commencement of the Extended Term, Port may, in its sole discretion, elect in writing to (A) provide Tenant with an opportunity to cure such defect; (B) waive such defect; or (C) reject Tenant's exercise of the Extension Option, whereupon the Extension Option shall be null and void and the Term shall expire on the original Expiration Date as if Tenant had never exercised the Extension Option.

6.2. Port's Termination Right. Port has the right to terminate this Lease if the Chief Harbor Engineer, acting in his/her regulatory capacity as the Port's chief building official in accordance with applicable provisions of the Port Building Code relating to unsafe buildings and structures determines, in his or her sole and absolute discretion, that the use or condition of the structures, substructure or utilities of the Improvements are unsafe and would create a serious and imminent hazard to human life, safety of health of the occupants or other persons under the provisions of Section 102A of the 2010 Port Building Code or successor provisions of similar import relating to unsafe buildings (subject to Tenant's right to correct any notices of violation under the applicable provisions of the Port Building Code and subject to any due process rights afforded under Section 102A of the 2010 Port Building Code or successor provisions of similar import). Port may exercise this right without liability or expense, provided that Port provides Tenant with no less than one hundred eighty (180) days' prior written notice of termination (or any shorter notice period that the CHE in his or her sole and absolute discretion determines is justified under Section 102A of the 2010 Port Building Code or successor provisions of similar import given the risk of hazard) and Port determines in good faith that, due to the unsafe conditions, the Improvements cannot be used for the Permitted Uses under this Lease. Tenant shall be required to surrender possession of the Premises by the end of the notice period.

For a period ending fifteen (15) calendar days after receipt of Port's notice of termination under this Section, Tenant may request Port's consent, in Port's sole and absolute discretion, to allow Tenant to make the repairs required by Port in accordance with this Lease and any additional conditions reasonably imposed by Port. If Port consents in writing, Port's notice of termination will be deemed rescinded and of no further effect.

No occurrence or situation arising during the Term, nor any present or future Law or circumstance, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant of its obligations under this Lease, nor give Tenant any right to terminate this Lease in whole or in part or to otherwise seek redress against Port except with respect to Tenant's right to terminate under the terms and conditions specified in **Section 23** (Damage and Destruction) and **Section 24** (Condemnation). Without waiving the right to terminate as provided in **Section 23** (Damage and Destruction) and **Section 24** (Condemnation), Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease, to receive any abatement, diminution, reduction or suspension of payment of Rent, or to compel Port to make any repairs to comply with any such Laws or on account of any such occurrence or situation.

6.3. Waiver of Relocation Benefits. To the extent allowed by applicable Law, Tenant hereby waives any and all rights, benefits or privileges of the California Relocation Assistance Law, California Government Code §§ 7260 et seq., or under any similar law, statute or ordinance now or hereafter in effect, except as specifically provided in this Lease.

7. RENT.

7.1. Base Rent. Commencing on the date of the Certificate of Final Completion and Occupancy for the Residential Portion of the Building and continuing throughout the Term, Tenant shall pay to Port the Base Rent set forth in the Basic Lease Information. Tenant shall make the first payment of Base Rent on the date of the Certificate of Final Completion and Occupancy for the Residential Portion of the Building and thereafter shall pay the Base Rent, in advance, on or before the first day of each Lease Year throughout the Term including any Extension Term without proration for any period of less than a full Lease Year. The Base Rent shall be adjusted on each fifth (5th) Anniversary Date ("**Rent Adjustment Date**") to equal the greater of the (i) Base Rent in effect prior to the Rent Adjustment Date; or (ii) the Base Rent in effect prior to the Rent Adjustment Date multiplied by the percentage change in the AMI as between: (1) the AMI on the Commencement Date and (2) the AMI on the Rent Adjustment Date for the first rent adjustment and (1) the AMI on the prior Rent Adjustment Date and (2) the AMI on the current Rent Adjustment Date for all subsequent rent adjustments.

7.2. Retail Rent. The Parties acknowledge that Tenant plans to sublease one or both Ground Floor Units to a single commercial management entity that will in turn sublease the units to one or more retail operators. The intent of the Parties is for Port to receive thirty percent (30%) of net revenues from the income Tenant or the subtenant commercial management entity receives from each retail operation. In order to retain flexibility for Tenant to manage the Lease and to avoid doubt about payments to Port, in this **Section 7.2**, the single commercial management entity shall be referred to as "**Commercial Subtenant**" and each retail operator subtenant shall be referred to as a "**Retail Subtenant**." Each of these entities are "Subtenants" as otherwise defined in this Lease. As used in this **Section 7.2**, Ground Floor Units mean Ground Floor Units being used for Retail operations.

(a) Tenant shall pay or shall cause a Commercial Subtenant or a Retail Subtenant to pay annual rent to Port in an amount equal to thirty percent (30%) of Net Revenues from any Retail Subtenant ("**Retail Rent**").

(b) For purposes of determining Retail Rent, the following definitions apply:

(i) "**Debt Service**" means annual debt service on any loans obtained by a Commercial Subtenant or a Retail Subtenant (to the extent that Commercial Subtenant or Retail Subtenant has actually paid such debt) from non-Affiliates and secured in whole or in part by the applicable relevant subleasehold (Ground Floor Unit) which Port and Tenant agree shall not exceed the prevailing market rate loan to value ratio at the time of the making of such loan unless otherwise agreed to in advance by Port in writing ("**Leasehold Loans**") and on loans for core, shell and tenant improvements to the relevant Ground Floor Unit ("**New Capital Loans**"), including in each case, without limitation, interest, amortization of principal, and all financing costs, points and fees actually paid by Tenant during such period (but excluding interest based on revenue generated by, profits from, or appreciation of the subleasehold).

(ii) "**Net Revenues**" means the gross amount paid by a Retail Tenant to Commercial Subtenant or to Tenant on an annual basis, subject to the following deductions and no other deductions: (i) Debt Service and (ii) Operating Expenses.

(iii) "**Operating Expenses**" means annual operating expenses or costs incurred by Tenant and Commercial Subtenant in connection with a Ground Floor Unit and/or allocated to a Ground Floor Unit in a given year, which expenses or costs includes:

(1) property taxes and assessments allocated or imposed on the Ground Floor Unit except as paid by the Commercial Subtenant;

(2) property management fees and reimbursements, in amounts that are commercially reasonable and consistent with similar first-class properties within the City;

(3) premiums for property damage and liability insurance;

- (4) utility services not paid for directly by Commercial Subtenant, including water, sewer, and trash collection;
- (5) maintenance and repair, including common area maintenance charges;
- (6) any annual license, permitting, or certificate of occupancy fees required for operation of the Ground Floor Unit;
- (7) security services;
- (8) advertising and marketing costs;
- (9) fees, costs, and expenses that may be due under covenants, conditions and restrictions governing operation and maintenance of the Improvements;
- (10) cash deposited into reserves for capital replacements, in commercially reasonable amounts, of the Ground Floor Unit or as required by covenants, conditions and restrictions;
- (11) cash deposited into an operating reserve, in commercially reasonable amounts for the Ground Floor Unit or as required by covenants, conditions and restrictions;
- (12) cash deposited into other reserve accounts as required by Lenders or investors;
- (13) legal fees;
- (14) other reasonable and customary operating costs reasonably necessary to operate, market, repair, and maintain a Ground Floor Unit as a first-class commercial establishment; and
- (15) extraordinary expenses approved by the Port, which approval shall not be unreasonably withheld or delayed; and
- (16) Subletting Expenses amortized on a straight-line basis over the term of the sublease with the Commercial Subtenant.

(c) The Parties acknowledge that some Retail Subleases, such as a sublease to an operator of a childcare center, may not generate Net Revenues that would be subject to revenue sharing, and in that case, such Subleases will not be subject to **Sections 7.2** or **Section 7.3** which require the payment of Rent to Port; provided however that Port retains its right to audit all such uses to confirm that any such Sublease does not generate Net Revenues.

(d) Retail Rent shall be determined and paid for each year within one hundred eighty (180) days after the end of the prior Lease Year, except that in the event this Lease expires or terminates on a day other than the last day of a Lease Year, Retail Rent for such Lease Year shall be determined and paid within one hundred eighty (180) days after such expiration or termination date. At the time of paying the Retail Rent, Tenant shall furnish a complete statement (the "**Annual Retail Rent Statement**") in a form approved by Port. Each Annual Retail Rent Statement shall set forth in reasonable detail the calculation and deductions used to calculate Net Revenues for such immediately preceding Lease Year, as applicable and a computation of the Retail Rent for the immediately preceding calendar Lease Year, as applicable.

(e) Each Annual Retail Rent Statement shall be certified as accurate, complete and current by an independent certified public accounting firm acceptable to Port in its sole discretion. Any balance owing to Port must be submitted with any Annual Retail Rent Statement showing an underpayment of Retail Rent. At Port's option, overpayments may be refunded, applied to any other amount then due under the Lease and unpaid, or applied to Rent due at the

first opportunity following delivery of any Annual Retail Rent Statement showing an overpayment.

(f) If Tenant fails to (i) pay the Retail Rent on the date due as provided above; or (ii) submit the Annual Retail Rent Statement therewith (even if the statement indicates that Retail Rent is not due, such failure in each instance shall be subject to a Late Charge. Tenant shall also pay any costs including attorneys' fees incurred by Port by reason of such failure. Additionally, if Tenant fails to deliver any Annual Retail Rent Statement within the time period set forth in this **Section 7.2** (irrespective of whether any Retail Rent is actually paid or due to Port) and such failure continues for three (3) days after the date Tenant receives (or refuses receipt of) written notice of such failure from Port, Port shall have the right, among its other remedies under this Lease, to employ a certified public accountant to make such examination of Tenant's Books and Records (and the Books and Records of any other occupant of the Ground Floor Units) as may be necessary to certify the amount of Tenant's Net Revenues for the period in question and the certification so made shall be binding upon Tenant and Tenant shall promptly pay to Port the total reasonable cost of the examination, together with the full amount of Retail Rent due and payable for the period in question, including any Late Charge. Tenant acknowledges that late submittal of the Annual Retail Rent Statement and late payment of Retail Rent will cause Port increased costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. The Parties agree that the charges set forth in this Section represent a fair and reasonable estimate of the cost that Port will incur by reason of Tenant's lateness.

(g) Acceptance by Port of any monies paid to Port by Tenant or a Subtenant as Retail Rent as shown by any Annual Retail Rent Statement, shall not be an admission of the accuracy of said Annual Retail Rent Statement or the amount of such Retail Rent payment.

7.3. Excess Rent. In addition to Retail Rent for Retail Subleases, Tenant shall pay to Port as Excess Rent immediately upon receipt an amount equal to fifty percent (50%) of sublease rent and any other sums paid or payable to Tenant under a Sublease other than a Retail Sublease described under **Section 7.2**, including subleases for wireless communications sites, licensing, indoor and internet-based advertisements and any other sublease, but excluding subleases serving the Residential Occupants such as laundry leases that do not require Port's consent under **Section 26(ii)**. In determining Excess Rent, Tenant may deduct Operating Expenses related to the specific space being subleased from the gross sublease revenue received by Tenant. Tenant shall report Excess Rent in a form approved by Port subject to the provisions of **Sections 7.2(f)** and **7.2(g)** for failure to submit such reports and amounts.

7.4. Payment by Subtenant. Port agrees to accept Retail or Excess Rent payments directly from a Subtenant on behalf of Tenant and Tenant agrees that a breach by a Subtenant constitutes a breach by Tenant (subject to the cure provisions under this Lease).

7.5. Books and Records. Tenant shall keep (and shall cause its Subtenants to keep) at the Premises at all times during the Term complete and accurate Books and Records that contain all information required to permit Port to verify Rent due to Port under this Lease in accordance with generally accepted accounting practices consistently applied with respect to all operations on the Premises and shall retain such Books and Records until the later of (i) four (4) years after the end of each Lease Year to which such Books and Records apply or, (ii) if an audit is commenced or if a controversy should arise between the Parties hereto regarding the Rent payable hereunder, until such audit or controversy is concluded even if such audit period extends beyond the expiration or earlier termination of the Lease (the "Audit Period").

7.6. No Joint Venture. Port's receipt of Retail Rent or Excess Rent shall be deemed strictly as rental and nothing herein shall be construed to create the legal relation of a partnership or joint venture between Port and Tenant.

7.7. Audit.

(a) Tenant agrees to make its Books and Records and to cause its Subtenants to make its Books and Records available to Port, or to any City auditor, or to any auditor or representative designated by Port or City (hereinafter collectively referred to as "**Port Representative**"), upon no less than fifteen (15) business days prior written notice to Tenant, for the purpose of examining said Books and Records to determine the accuracy of Tenant's reporting and payment of Rent for a period not to exceed the Audit Period. Tenant shall cooperate with the Port Representative during the course of any audit, provided however, such audit shall occur at Tenant's business office, or at such other location in San Francisco where the Books and Records are kept, and no books or records shall be removed by Port Representative without the prior express written consent of Tenant (provided, however, copies may be made by the Port Representative on site), and once commenced, with Tenant's cooperation, such audit shall be diligently pursued to completion by Port within a reasonable time of its commencement, provided that Tenant makes available to the Port Representative all the relevant Books and Records in a timely manner. If an audit is made of Tenant's Books and Records and Port claims that errors or omissions have occurred, the Books and Records shall be retained by Tenant and made available to the Port Representative until those matters are expeditiously resolved with Tenant's cooperation. Upon completion of the audit, Port shall promptly deliver a copy of the audit report to Tenant.

(b) If an audit reveals that Tenant or its Subtenant has understated Rent due for said Audit Period, Tenant shall pay Port, promptly upon demand, the difference between the amount Tenant has paid and the amount it should have paid to Port, plus interest at the Interest Rate from the date of the error in the payment. If an audit reveals that Tenant or its Subtenant has overstated its Rent for said Audit Period, Tenant or its Subtenant shall be entitled to a credit against rent next owed equal to the difference between the amount paid and the amount it should have paid to Port. If Tenant or its Subtenant understates its Rent for any Audit Period by three percent (3%) or more, Tenant or its Subtenant shall pay the cost of the audit. A second understatement within any three (3) Lease Year period of the first such understatement shall be considered an Event of Default.

7.8. Default Interest. Any Rent, if not paid within five (5) days following the due date and any other payment due under this Lease not paid by the applicable due date, shall bear interest from the due date until paid at the Interest Rate. However, interest shall not be payable on Late Charges incurred by Tenant nor on other amounts to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by Tenant. Tenant shall also pay any costs, including attorneys' fees incurred by Port by reason of Tenant's failure to pay Rent or other amounts when due under this Lease.

7.9. Late Charges/Habitual Late Payer. Tenant acknowledges that late payment by Tenant to Port of Rent or other sums due under this Lease will cause Port increased costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Accordingly, if Tenant fails to pay Rent on the date due, such failure shall be subject to a Late Charge at Port's discretion. Tenant shall also pay any costs including attorneys' fees incurred by Port by reason of Tenant's failure to timely pay Rent. Additionally, in the event Tenant is notified by Port that Tenant is considered to be a Habitual Late Payer, Tenant shall pay, as Additional Rent, an amount equal to Fifty Dollars (\$50.00) (as such amount may be adjusted from time to time by the Port Commission) upon written notification from Port of Tenant's Habitual Late Payer status. The Parties agree that the charges set forth in this Section represent a fair and reasonable estimate of the cost that Port will incur by reason of any late payment. Such charges may be assessed without notice and cure periods and regardless of whether such late payment results in an Event of Default. Payment of the amounts under this Section shall not excuse or cure any default by Tenant.

7.10. Returned Checks. If any check for a payment for any Lease obligation is returned without payment for any reason, Tenant shall pay, as Additional Rent, an amount equal

to Fifty Dollars (\$50.00) (as such amount may be adjusted from time to time by the Port Commission) and the outstanding payment shall be subject to a Late Charge as well as interest at the Interest Rate.

7.11. Net Lease. It is the purpose of this Lease and intent of Port and Tenant that all Rent is absolutely net to Port, so that this Lease yields to Port the full amount of Rent at all times during the Term, without deduction, abatement or offset. Under no circumstances, whether now existing or hereafter arising, and whether or not beyond the present contemplation of the Parties is Port expected or required to incur any expense or make any payment of any kind with respect to this Lease or Tenant's use or occupancy of the Premises. Without limiting the foregoing, Tenant is solely responsible for paying each item of cost or expense of every kind and nature whatsoever, the payment of which Port would otherwise be or become liable by reason of Port's interest in the Premises, any rights or interests of Port in or under this Lease, or the ownership, leasing, operation, management, maintenance, repair, rebuilding, remodeling, use or occupancy of the Premises, or any portion thereof. No occurrence or situation arising during the Term, or any Law, whether foreseen or unforeseen, and however extraordinary, relieves Tenant from its liability to pay all of the sums required by any of the provisions of this Lease, or otherwise relieves Tenant from any of its obligations under this Lease, or gives Tenant any right to terminate this Lease in whole or in part. Tenant waives any rights now or hereafter conferred upon it by any Law to terminate this Lease or to receive any abatement, diminution, reduction or suspension of payment of such sums, on account of any such occurrence or situation, provided that such waiver will not affect or impair any right or remedy expressly provided Tenant under this Lease.

7.12. Additional Charges. Without limiting Port's other rights and remedies set forth in this Lease, at law or in equity, in the event Tenant fails to submit to the appropriate party, on a timely basis, the items identified in *Sections: 18.1* (Utilities), *21.3* (Tenant's Environmental Condition Notification Requirements), *21.6* (Storm Water Pollution Prevention), *36.1(d)* (CMD Form), and *42.1* (Estoppel Certificate by Tenant) or to provide evidence of the required insurance coverage described in *Section 22* below, then upon written notice from Port of such failure, Tenant shall pay, as Additional Rent, an amount equaling One Hundred Dollars (\$100.00). In the event Tenant fails to provide the necessary document within the time period set forth in the initial notice and Port delivers to Tenant additional written notice requesting such document, then Tenant shall pay to Port, as Additional Rent, an amount equaling One Hundred Fifty Dollars (\$150.00) for each additional written notice Port delivers to Tenant requesting such document. The parties agree that the charges set forth in this *Section 7.12* (Additional Charges) represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Tenant's failure to provide the documents identified in this *Section 7.12* (Additional Charges) and that Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights under this Lease, at law or in equity. By signing this Lease, each party specifically confirms the accuracy of the statements made in this *Section 7.12* (Additional Charges) and the reasonableness of the amount of the charges described in this *Section 7.12* (Additional Charges).

8. TAXES AND ASSESSMENTS; CONTESTS.

8.1. Payment of Taxes and Other Impositions.

(a) **Payment of Taxes.** Unless exempt and subject to Tenant's rights under *Section 8.2* (Contests), Tenant shall pay to the proper authority prior to delinquency, all Impositions levied, assessed, confirmed or imposed on the Premises, on any of the Improvements or Personal Property located on the Premises (excluding the personal property of any Subtenant whose interest is separately assessed), on Tenant's Leasehold Estate (but excluding any such taxes separately assessed, levied, or imposed on any Subtenant), or on any use or occupancy of the Premises hereunder, to the full extent of installments or amounts payable or arising during the Term whether in effect at the Commencement Date or which become effective thereafter.

(b) Acknowledgment of Possessory Interest. Unless exempt and subject to Tenant's rights under **Section 8.2** (Contests), Tenant specifically recognizes and agrees that this Lease creates a possessory interest which is subject to taxation, and that this Lease requires Tenant to pay any and all possessory interest taxes levied upon Tenant's interest pursuant to an assessment lawfully made by the County Assessor. Tenant further acknowledges that any Transfer or Sublease permitted under this Lease and any exercise of any option to renew or extend this Lease may constitute a change in ownership, within the meaning of the California Revenue and Taxation Code, and therefore may result in a reassessment of any possessory interest created hereunder in accordance with applicable Law.

(c) Reporting Requirements. San Francisco Administrative Code Sections 23.38 and 23.39 (or their successors) require that Port report certain information relating to this Lease, and the creation, renewal, extension, assignment, sublease, or other transfer of any interest granted hereunder, to the County Assessor within sixty (60) days after any such transaction. Within thirty (30) days following the date of any transaction that is subject to such reporting requirements, Tenant shall provide such information as may be requested by Port to enable Port to comply with such requirements.

(d) Prorations. All Impositions imposed for the tax year in which the Commencement Date occurs or during the tax year in which this Lease terminates shall be apportioned and prorated between Tenant and Port on a daily basis.

(e) Proof of Compliance. Within thirty (30) days following Port's written request, Tenant shall deliver to Port copies of official receipts of the appropriate taxing authorities, or other proof reasonably satisfactory to Port, evidencing the timely payment of such Impositions.

8.2. Contests. Tenant shall have the right to contest the amount, validity or applicability, in whole or in part, of any Imposition, mechanics' lien, or encumbrance (including any arising from work performed or materials provided to Tenant or any Subtenant to improve all or a portion of the Premises) by appropriate proceedings conducted in good faith and with due diligence, at no cost to City, provided that, prior to commencement of such contest, Tenant notifies City of such contest. Tenant shall notify City of the final determination of such contest within fifteen (15) days after such determination. Nothing in this Lease shall require Tenant to pay any Imposition, mechanics' lien, or encumbrance so long as Tenant contests the validity, applicability or amount of such Imposition, mechanics' lien, or encumbrance in good faith, and so long as it does not allow the portion of the Premises affected by such Imposition, mechanics' lien, or encumbrance to be forfeited to the entity levying such Imposition, mechanics' lien, or encumbrance as a result of its nonpayment. If any Law requires, as a condition to such contest, that the disputed amount be paid under protest, or that a bond or similar security be provided, Tenant shall comply with such condition as a condition to its right to contest. Tenant shall be responsible for the payment of any interest, penalties or other charges that may accrue as a result of any contest, and Tenant shall provide a statutory lien release bond or other security reasonably satisfactory to City in any instance where Port's interest in the Premises may be subjected to such lien or claim. Tenant shall not be required to pay any Imposition, mechanics' lien, or encumbrance being so contested during the pendency of any such proceedings unless payment is required by the court or agency conducting such proceedings. City, at its own expense and at its sole option, may elect to join in any such proceeding whether or not any Law requires that such proceedings be brought by or in the name of an owner of the Premises. Except as provided in the preceding sentence, neither MOHCD nor Port shall be subjected to any liability for the payment of any fines, penalties, costs, expenses or fees, including attorneys' fees and costs, in connection with any such proceeding. Without limiting **Section 25** (Indemnity and Exculpation), Tenant shall Indemnify the Indemnified Parties for all Claims resulting from Tenant's contest of any Imposition.

9. REQUIRED FINANCIAL ASSURANCES

9.1. *Sufficient Capital.* Tenant shall submit to Port evidence satisfactory to Port that Tenant has sufficient equity capital and commitments for construction and permanent financing, and/or such other evidence of capacity to proceed with the construction of the Initial Improvements and any Subsequent Construction in accordance with the dates specified in the applicable Schedule of Performance. City hereby acknowledges that as of the Commencement Date, Tenant has provided City with sufficient evidence to satisfy this requirement.

9.2. *Security Deposit.*

(a) Tenant shall pay to Port upon execution of this Lease, the Security Deposit, in cash, in the sum specified in **Section 2** (Key Lease Terms), as security for the faithful performance by Tenant of all terms, covenants and conditions of this Lease. Tenant agrees that Port may (but shall not be required to) apply the Security Deposit in whole or in part to (a) pay any sum due to Port under this Lease; (b) compensate Port for any expense incurred or damage caused by Tenant, its Agents or Invitees; (c) cure any default by Tenant; or (d) cure, or attempt to cure, any failure of Tenant to perform any other covenant, term or condition contained herein. Tenant shall immediately upon demand pay Port a sum equal to the portion of the Security Deposit expended or applied by Port. Port shall not be required to keep the Security Deposit separate from its general funds, and Tenant shall not be entitled to any interest on the Security Deposit. Nothing contained in this Section shall in any way diminish or be construed as waiving any of Port's other remedies set forth in this Lease or provided by law or equity.

(b) Tenant hereby waives the provisions of California Civil Code Section 1950.7 and/or any successor statute, it being expressly agreed that Port may apply all or any portion of the Security Deposit in payment of any and all sums reasonably necessary to compensate Port for any other loss or damage, foreseeable or unforeseeable, caused by the act or omission of Tenant or any Agent or Invitee of Tenant, and that following a default by Tenant, all or any portion of the Security Deposit may be retained by Port following a termination of this Lease and applied to future damages, including damages for future Rent, pending determination of the same.

10. PERMITTED USES.

10.1. *Permitted Use and Occupancy Restrictions.* The Premises shall be used and occupied only for the Permitted Use specified in **Section 2** (Key Lease Terms) and for no other purpose. Tenant acknowledges that that a prohibition on the change in use contained in this Section is expressly authorized by California Civil Code section 1997.230 and is fully enforceable.

10.2. *Prohibited Use.* Tenant agrees that the following activities, by way of example only and without limitation, and any other use that is not a Permitted Use (in each instance, a "Prohibited Use" and collectively, "Prohibited Uses"), are inconsistent with this Lease, are strictly prohibited and are considered Prohibited Uses:

(a) any activity, or the maintaining of any object, which is not within the Permitted Use or is inconsistent with the favorable Consistency Determination;

(b) any activity, or the maintaining of any object, which will prevent Tenant from maintaining the insurance coverages required by **Section 22** (Insurance) of this Lease;

(c) any activity which constitutes waste or nuisance, including, but not limited to, the preparation, manufacture or mixing of anything that might emit any objectionable odors, noises or lights onto adjacent properties, or the use of loudspeakers or sound or light apparatus which can be heard or seen outside the Premises;

(d) any activity which will in any way injure, obstruct or interfere with the rights of owners or occupants of adjacent properties, including, but not limited to, rights of ingress and egress;

(e) any auction, distress, fire, bankruptcy or going out of business sale on the Premises without the prior written consent of Port, which consent may be granted, conditioned, or withheld in the sole and absolute discretion of Port;

(f) any vehicle and equipment maintenance, including but not limited to, fueling, changing oil, transmission or other automotive fluids;

(g) except in connection with Construction of the Initial Improvements or any Subsequent Construction or repair and maintenance activities and in strict compliance with any building permit, the storage of any and all excavated materials, including but not limited to, dirt, concrete, sand, asphalt, and pipes;

(h) except in connection with Construction of the Initial Improvements or any Subsequent Construction or repair and maintenance activities and in strict compliance with any building permit, the storage of any and all aggregate material, or bulk storage, such as wood or of other loose materials;

(i) the washing of any vehicles or equipment; or

(j) other Prohibited Uses identified in *Section 2* (Key Lease Terms), if any.

10.3. Notice of Prohibited Use Charge. In the event Port determines after inspection of the Premises that Prohibited Uses are occurring on the Premises, then Tenant shall immediately cease the Prohibited Use and shall pay to Port, as Additional Rent, an amount equaling Two Hundred Dollars (\$200.00) upon delivery of written notice to Tenant to cease the Prohibited Use ("Notice to Cease Prohibited Use"). In the event Port determines in subsequent inspection(s) of the Premises that Tenant has not ceased the Prohibited Use, then Tenant shall pay to Port, as Additional Rent, an amount equaling Three Hundred Dollars (\$300.00) for each additional Notice to Cease Prohibited Use delivered to Tenant. The parties agree that the charges associated with each inspection of the Premises and delivery of the Notice to Cease Prohibited Use, if applicable, represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port's inspection of the Premises and Tenant's failure to comply with the applicable Notice to Cease Prohibited Use and that Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights under this Lease, at law or in equity. By signing this Lease, each party specifically confirms the accuracy of the statements made in this Section and the reasonableness of the amount of the charges described in this Section.

10.4. Operating Standards. Following completion of the Initial Improvements, Tenant shall maintain and operate the Premises, or cause the Premises to be maintained and operated, in a manner consistent with this Lease and otherwise consistent with the maintenance and operation of a first-class mixed use residential/retail project located in San Francisco. Tenant shall be exclusively responsible, at no cost to Port, for the management and operation of the Premises. In connection with managing and operating the Premises, Tenant shall provide (or require others to provide), services as necessary and appropriate to the uses to which the Project are put, including as applicable (a) repair and maintenance of the Premises and Improvements; (b) utility and telecommunications (including internet/Wi-Fi) services to the extent, if any, customarily provided by equivalent projects located in San Francisco; (c) cleaning, janitorial, pest extermination, recycling, composting, and trash and garbage removal; (d) landscaping and grounds keeping; (e) security services with on-site personnel for the Premises; and (f) sufficient lighting at night for pedestrians along pathways.

10.5. Continuous Operations. Tenant will make commercially reasonable efforts to (a) fully lease the Ground Floor Units within twelve (12) months after completion of the Initial

Improvements and (b) to continue to lease the Ground Floor Units throughout the Term. Notwithstanding the forgoing, Port acknowledges and agrees that Tenant shall not have any obligation to enter into a sublease for the Ground Floor Units if any subtenant, use, or terms of a sublease are not commercially reasonable. In addition, without limiting the forgoing, Tenant may cease operations of a Ground Floor Unit for any reasonably necessary time period due to the following causes or in the following circumstances: (a) if a Ground Floor Unit becomes untenable due to Casualty, or (b) as may be necessary in connection with performing repairs or upgrades to the Ground Floor Unit.

10.6. Restaurant/Retail Businesses Open to the General Public. Throughout the Term, any visitor-serving business, restaurant and/or retail operation on the Premises must be open to the general public and operated in a manner consistent with such establishments on Port lands in the Northern Waterfront.

10.7. Flags. Throughout the Term, if any flagpole is erected on any portion of the Premises, a Port flag shall fly on each such flagpole ("**Flagpoles**"). Port shall provide the Port flag to Tenant. Tenant shall promptly, at no charge, install, raise, lower and remove Port flags at Port's request. The dimensions of Port flags shall be similar to the dimensions of Port flags flown on the roofs of Port buildings in the Northern Waterfront. Tenant also may use the Flagpoles to fly a flag on each Flagpole, provided that such flag must be placed beneath the Port flag and Port must first approve the dimensions, color, text, design, and materials for such flag. If Port determines that Tenant's response to Port's request to raise or lower Port flags is inadequate, then at Port's election, Port shall exercise its access rights to the Flagpoles to adjust the Port flags accordingly.

11. HOUSING REQUIREMENTS. Tenant covenants and agrees for itself, and its successors and assigns to or of this Lease, that with respect to the Residential Portion:

11.1. Occupancy. Tenant will make good faith efforts to fully lease the Residential Units within nine (9) months after completion of the Initial Improvements.

11.2. Non-Discrimination. Tenant shall not discriminate against or segregate any person or group of persons on account of race, color, creed, religion, ancestry, national origin, sex, gender identity, marital or domestic partner status, sexual orientation or disability (including HIV or AIDS status) in the sale, lease, rental, sublease, transfer, use, occupancy, tenure or enjoyment of the Premises, or any part thereof, nor shall Tenant itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy, of Residential Occupants, subtenants or vendees on the Premises, or any part thereof, except to the extent permitted by law or required by funding source. Tenant shall not discriminate against Residential Occupants or potential Residential Occupants with certificates or vouchers under the Section 8 program or any successor rent subsidy program.

11.3. Non-Discriminatory Advertising. All advertising for housing (including signs) for sublease of the whole or any part of the Premises shall include the legend "Equal Housing Opportunity" in type or lettering of easily legible size and design, or as required by Law.

11.4. Local Hiring. In the selection of all contractors and professional consultants for the Initial Improvements and any Subsequent Construction as required by Laws, Tenant must comply with the City's procurement requirements and procedures as described in the MOH Contracting Manual and with the requirements of Chapter 14B of the San Francisco Administrative Code ("**LBE Ordinance**") according to the procedures established by the City's Human Rights Commission. The Project is subject to the requirements of Section 3 of the Housing and Community Development Act of 1968 and of the San Francisco Section 3 program. Federal Section 3 requirements state that contracts and opportunities for job training and employment be given, to the greatest extent feasible, to local low-income residents. Local residents for this project are San Francisco residents. In addition, this project will be required to

comply with hiring requirements as incorporated into the local Section 3 program and in conjunction with the City's low-income hiring requirements pursuant to San Francisco's First Source Hiring Ordinance (San Francisco Administrative Code Chapter 83). The goals for hiring of Section 3-eligible workers on the project will be 30% of new hires, moving towards a goal of 30% of total work hours.

The provisions set forth above apply to the Project if federal funds are being used. If no federal funds are being used, then the Local Hiring provisions set forth in **Section 36.19** will apply.

11.5. City Preference Programs. To the extent permitted by Law, Tenant agrees to comply with the requirements of the City's current housing preference programs, as amended from time to time; provided, however, that such requirements will apply only to the extent permitted by the requirements of non-City funding approved by the City for the Project.

11.6. Equal Opportunity Marketing Plan. With respect to the Residential Portion, Tenant shall submit a Fair Housing Marketing Plan or shall cause a Fair Housing Marketing Plan to be submitted to be approved by the MOHCD which approval shall not be unreasonably withheld, conditioned or delayed. Any Fair Housing Marketing Plan must follow the City's marketing requirements for such plans.

11.7. Lead Based Paint. Tenant agrees to comply with the regulations set forth in 24 CFR Part 35 and all applicable rules and orders issued thereunder which prohibit the use of lead-based paint in certain residential structures undergoing federally assisted construction and require the elimination of lead-based paint hazards.

11.8. City Deemed Beneficiary of Covenants. In amplification, and not in restriction, of the provisions of the preceding subsections, it is intended and agreed that the City shall be deemed beneficiary of the agreements and covenants provided in this **Section 11** (Housing Requirements) for and in its own right and also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such agreements and covenants have been provided. Such agreements and covenants shall run in favor of the City for the entire period during which such agreements and covenants shall be in force and effect, without regard to whether the City has at any time been, remains, or is an owner of any land or interest therein to, or in favor of, which such agreements and covenants relate. The City shall have the right, in the event of any breach of any such agreements or covenants, in each case, after notice and the expiration of cure periods, to exercise all the rights and remedies and to maintain any actions at law or suits in equity or other proper proceedings to enforce the curing of such breach of covenants, to which it or any other beneficiaries of such agreements or covenants may be entitled.

11.9. Annual Income Computation And Certification. Ninety (90) days after recordation of a Certificate of Final Completion and Occupancy by the Tenant for the Initial Improvements, and not later than December 31st of each year thereafter, Tenant will furnish to MOHCD a list of the persons who are Residential Occupants of the Building, the specific unit which each person occupies, the household income of the Residential Occupants of each unit, the household size and the rent being charged to the Residential Occupants of each unit along with an income certification, in the form set forth in **Exhibit L**, for each Residential Occupant. In addition, each Residential Occupant must be required to provide any other information, documents or certifications deemed necessary by MOHCD to substantiate the Occupant's income. If any state or federal agency requires an income certification for Residential Occupants containing the above-referenced information, MOHCD agrees to accept such certification in lieu of **Exhibit L** as meeting the requirements of this Lease. In addition to such initial and annual list and certification, Tenant agrees to provide the same information and certification to MOHCD regarding each Residential Occupant not later than twenty (20) business days after such Residential Occupant commences occupancy.

12. COMPLIANCE WITH LAWS AND REGULATIONS.

Tenant, at Tenant's sole cost and expense, promptly shall comply with all applicable Laws relating to or affecting the condition, use or occupancy of the Premises and shall comply with all Laws relating to Tenant's specific use of the Premises in effect either at the time of execution of this Lease or which may hereafter be in effect at any time during the Term, whether or not the same are now contemplated by the parties.

The parties acknowledge and agree that Tenant's obligation to comply with all Laws as provided herein is a material part of the bargained for consideration under this Lease. Tenant's obligation under this **Section 12** shall include, without limitation, the responsibility of Tenant to make substantial or structural repairs and Alterations to the Premises, regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Lease, the length of the then remaining Term hereof, the relative benefit of the repairs to Tenant or Port, the degree to which the curative action may interfere with Tenant's use or enjoyment of the Premises, the likelihood that the parties contemplated the particular Laws involved, and whether the Laws involved are related to Tenant's particular use of the Premises. No occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant of its obligations hereunder, nor give Tenant any right to terminate this Lease in whole or in part or to seek redress against Port, except to the extent Tenant may have remedies against Port pursuant to this Lease or applicable Law. Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease, to receive any abatement, diminution, reduction or suspension of payment of Rent, or to compel Port to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

13. PORT ACTING AS OWNER OF PROPERTY; REGULATORY APPROVALS.

13.1. Port Acting as Owner of Property. Tenant understands and agrees that Port 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 with certain police powers. By entering into this Lease, Port is in no way modifying or limiting the obligation of Tenant to obtain any required Regulatory Approvals from Regulatory Agencies (including the Port), and to cause the Premises to be used and occupied in accordance with all Laws and required Regulatory Approvals. Examples of Port actions as a Regulatory Agency include Port issuance of building and other construction-related permits and the Chief Harbor Engineer's actions to protect public health and safety.

13.2. Regulatory Approvals.

The parties recognize that for Tenant to carry out the Permitted Uses, it may be necessary or desirable to obtain additional use, zoning, regulatory or land use approvals or conditional use authorization relating to the Premises that may require Regulatory Approvals, including Regulatory Approvals issued by Port in its capacity as a Regulatory Agency. Port agrees, from time to time, to reasonably cooperate with Tenant, at no out of pocket cost to Port, in pursuing such additional approvals, including, but not limited to, executing documents, applications or petitions relating thereto. All costs associated with applying for and obtaining any necessary Regulatory Approval shall be borne solely and exclusively by Tenant. Tenant shall be solely responsible for complying with any and all conditions imposed by Regulatory Agencies as part of a Regulatory Approval; provided, however, Tenant shall not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a permit or other entitlement from any Regulatory Agency (other than Port), if the Port is required to be a co-permittee under such permit or other entitlement, or if the conditions or restrictions it would impose could affect use or occupancy of the Building or Port's interest in the Premises or would create obligations on the part of Port (whether on or off of the Premises) to perform or observe, unless in each instance Port has previously approved such conditions in writing, in Port's sole and absolute discretion.

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 promptly paid and discharged by Tenant, and City shall have no liability, monetary or otherwise, for any fines and penalties. To the fullest extent permitted by Law, Tenant agrees to Indemnify City, Port and their Agents from and against any Claim which City may incur as a result of Tenant's failure to obtain or comply with the terms and conditions of any Regulatory Approval.

Without limiting the terms and conditions of Sections 13.1 (Port Acting as Owner) and 13.2 (Regulatory Approvals), by signing this Lease, Tenant agrees and acknowledges that (i) City has made no representation or warranty that Regulatory Approvals can be obtained, (ii) although Port and MOHCD are agencies of the City, neither Port nor MOHCD has any authority or influence over any Regulatory Agency responsible for the issuance of such required Regulatory Approvals, (iii) Port 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 with certain police powers, and (iv) Tenant is solely responsible for obtaining any and all required Regulatory Approvals whether needed as of the Commencement Date or at any time during the Term. Accordingly, Tenant understands that there is no guarantee, nor a presumption, that any required Regulatory Approvals will be issued by the appropriate Regulatory Agency and Port's and MOHCD's status as agencies of the City shall in anyway limit the obligation of Tenant to obtain approvals from any Regulatory Agencies (including Port) that have jurisdiction over the Premises or Tenant's activities thereon. Tenant hereby releases and discharges City from any liability relating to the failure of any Regulatory Agency (including Port) from issuing any required Regulatory Approval.

14. INITIAL IMPROVEMENTS.

14.1. *Tenant's Construction Obligations; Construction Documents* .

(a) Construction Documents. Tenant must Construct or cause to be Constructed all of the Initial Improvements in compliance with the Construction Documents developed and approved under the Option Agreement within the times and in the manner set forth in this **Section 14** (Initial Improvements).

(b) Permits. Tenant will apply for all necessary permits for Construction directly with the applicable Regulatory Agency. Tenant will bear all risk of delay due to its submission of an incomplete or insufficient permit application.

(c) Standards. All Construction must be performed by duly licensed and bonded contractors or mechanics and shall be diligently, commenced and Completed within the time frames in the Schedule of Performance or otherwise agreed by the parties, and in accordance with good construction and engineering practices and applicable Laws. Tenant shall undertake commercially reasonable measures in accordance with good construction practices to minimize damage or disruption caused by such work (including to areas surrounding the Premises), minimize risk of injury to members of the general public, and to make adequate provision for the safety of persons affected by any Construction. Dust, noise and other effects of the Construction shall be controlled in accordance with any applicable dust control ordinance and by commercially reasonable methods customarily used to control deleterious effects associated with construction projects in populated or developed urban areas. Tenant shall make adequate provision for the safety of all persons affected by the Construction, and Tenant shall undertake commercially reasonable measures in accordance with good construction practices to: (i) minimize damage, disruption, or inconvenience caused by the Construction, (ii) minimize the risk of injury or damage to the Premises and the surrounding property, or the risk of injury or death to members of the public and (iii) make adequate provision for the safety of all Persons affected by the Construction. Tenant shall Complete all Construction free of claims, demands, actions and liens for labor, materials or equipment furnished for the construction, and shall be performed in accordance with the Project Requirements. In addition, Tenant shall comply with the applicable provisions of the MMRP.

(d) Costs; Private Development. Tenant shall bear all of the costs of Construction. Without limiting the foregoing, Tenant shall be responsible for performing all Premises preparation work necessary for construction of the Initial Improvements. Such preparation of the Premises shall include, among other things, asbestos and lead abatement investigation required for development or operation of the Initial Improvements, all structure and substructure work, disabled access improvements and public access improvements and tenant improvements.

(e) Utilities. Tenant, at its sole expense, shall arrange for the provision and construction of all on-Premises utilities necessary to use the Premises for the Permitted Use. Tenant and Port shall coordinate, if necessary, with respect to installation of any off-Premises utility infrastructure and design of the Initial Improvements, including providing advance notice of trenching requirements, and coordinate any modification of utilities to any adjacent Port tenants or uses.

(f) Risk Management. At no cost to City, Tenant will comply with all provisions of any risk management plan, including requirements to notify all site users, compliance with risk management measures during construction, and to inspect, document and report site conditions to Port annually.

(g) Extensions by Port. Upon the request of Tenant, Port's Executive Director may, by written instrument, extend the time within which Tenant must perform under the Schedule of Performance under conditions as she or he determines appropriate, provided, however, that any such extension or permissive curing of any particular default will not operate to relieve Tenant of its obligations to pay Rent or release any of Tenant's obligations nor constitute a waiver of Port's rights with respect to any other term, covenant or condition of this Lease or otherwise effect the time with respect to the extended date or other dates for performance hereunder.

(h) Construction Security. Prior to commencing Construction, Tenant shall provide to Port, at Tenant's sole cost and expense either: (1) one or more payment and performance bonds issued by a responsible surety company licensed to do business in the State and in form acceptable to Port from Tenant's contractors naming Port as co-obligee in a principal amount no less than one hundred ten percent (110%) of the estimated cost of the Initial Improvements; or (2) an alternative security mechanism in form, substance and amount satisfactory to Port and approved by the City's Risk Manager in writing in his or her sole discretion to ensure completion of such Improvements and to protect Port against any liability for mechanics' and materialmen's liens, and stop notices (such as a personal completion guaranty, a letter of credit in a form and issued by an acceptable institution or placement of funds in an escrow account with joint escrow instructions acceptable to both Parties). Notwithstanding the foregoing, the Parties agree that the following will constitute an acceptable alternative security mechanism with respect to the Initial Improvements: (a) each of Bridge Housing Corporation and the John Stewart Company provide to Port a binding completion guaranty for the Construction in a form acceptable to Port and City's Risk Manager; (b) Tenant's general contractor demonstrates to the reasonable satisfaction of Port and the City's Risk Manager that it has the financial capacity to complete the Construction project pursuant to the terms and conditions of the construction contract; and (c) Tenant's general contractor obtains commercially reasonable insurance, in coverages and amounts acceptable to Port and the City's Risk Manager such as subguard insurance to insure performance of its subcontractors.

(i) Return of Premises. If this Lease terminates as a result of an Event of Default by Tenant before Completion of the Initial Improvements, Tenant shall, at its sole expense and as promptly as practicable, return the Premises to Port in a safe condition, and unless otherwise requested by Port, shall promptly remove all Improvements, loose building materials and debris present at the Premises resulting from Tenant's construction activities. In the event that Tenant is required to return the Premises as aforesaid, Tenant shall obtain those

permits customary and necessary to enter upon the Premises in order to complete such work and shall otherwise comply with applicable Law. In such event, Port shall cooperate with Tenant in Tenant's efforts to obtain such permits, provided that Port will not be required to expend any money or undertake any obligations in connection therewith. The provisions of this Section shall survive any termination of the Lease.

14.2. *Changes; Submission of Documents; Port Review.*

(a) ***Changes in Final Construction Documents.*** Tenant will not make or cause to be made any material or substantial changes to any Port-approved (including under the Option Agreement) aspect of the Construction Documents or a Required Element without Port's express written approval. Port will determine if any change is material or substantial which determination shall be conclusive at or before the bi-weekly meetings held under the Option Agreement immediately following Tenant's proper submission of the change or, if such meetings are no longer being conducted, as promptly as reasonably possible, but in no event later than thirty (30) days of proper submission by Tenant. If Tenant has properly submitted each set of the applicable Construction Documents and Port fails to meet such time frame, then Tenant may submit a written notice to Port requesting Port's approval or disapproval. The notice must display prominently in at least 16 point font on the envelope enclosing such request and on the first page of such request, substantially the following: **"APPROVAL REQUEST FOR CONSTRUCTION DOCUMENTS OF 88 BROADWAY PROJECT. IMMEDIATE ATTENTION REQUIRED; FAILURE TO RESPOND WITHIN TEN (10) BUSINESS DAYS WILL RESULT IN THE REQUEST BEING DEEMED APPROVED."** If Port fails to respond within such ten (10) day period, such changes will be deemed approved. All changes to the Construction Documents must be consistent with the Secretary's Standards, and with all other Laws as determined by Port in the exercise of its reasonable discretion. Any changes that Port determines are not material or substantial will be deemed approved. Except by mutual agreement with Tenant, Port will not disapprove or require changes subsequently in, or in a manner that is inconsistent with, matters that it has approved previously. If there is a disagreement between Port and Tenant as to whether or not a matter contained in a particular submittal has been approved previously or whether Port is acting in a manner that is inconsistent with matters that it approved previously, Port's reasonable judgment will apply in resolving the disagreement.

Notwithstanding any other provision of this Lease to the contrary, Port's approval of changes to the Schematic Design and the site plan in the respective forms attached hereto is in no manner intended to, and will not, evidence or be deemed to evidence Port's approval of changes to the Construction Documents in its regulatory capacity.

(b) ***Timing of Port Disapproval/Conditional Approval and Tenant Resubmission.*** If Port disapproves changes to the Construction Documents in whole or in part, Port in the written disapproval will state the reason or reasons for such disapproval and may recommend changes and make other recommendations. If Port conditionally approves the changes in the Construction Documents in whole or in part, the conditions will be stated in writing and a time will be stated for satisfying the conditions. Tenant will resubmit as expeditiously as possible. Tenant may continue making resubmissions until the earlier of (i) approval of the submissions, or (ii) the later of (x) the time specified in any conditional approval, or (y) the date specified in the Schedule of Performance, as either may be extended.

14.3. *Progress Meetings/Consultation.* During the Construction of the Initial Improvements, City staff and Tenant agree to hold periodic progress meetings, as needed considering Tenant's progress, to coordinate the preparation of, submission to, and review by Port of Construction Documents, changes thereto and the Construction process, including occasional attendance by City at on-site construction meetings. Additionally, Tenant shall provide Port with at least two (2) business days advance notice of any on-site mock-ups, on-site trial installations, and in-plant visual mock-ups (if any). Port staff and Tenant (and its applicable

consultants) agree to communicate and consult informally as frequently as is reasonably necessary to assure that the formal submittal of any Construction Documents to Port can receive prompt and speedy consideration. Tenant will keep Port reasonably informed of all meetings taking place in connection with Construction and will give Port the opportunity to attend and participate in such meetings. Port may, but is not obligated to, have one or more individuals present on the Premises at any time and from time to time during Construction, to observe the progress of Construction and to monitor Tenant's compliance with this Lease.

14.4. Submittals after Completion.

(a) Record Drawings. Tenant shall furnish Port Record Drawings of the Improvements Constructed on, in, under and around the Premises within the timeframe set forth in the Schedule of Performance in electronic format as (1) full-size scanned TIF files, and (2) AutoCAD files of the completed and updated Construction Documents, as further described below. As used in this Section, "**Record Drawings**" means drawings, plans and surveys showing Improvements as built on the Premises and prepared during the course of Construction. If Tenant fails to provide Record Drawings to Port within such period of time, Port shall give written notice to Tenant requesting such Record Drawings, and if Tenant has not provided the Record Drawings within One Hundred Eighty (180) days after Tenant's receipt of such notice from Port, Port shall have the right, but not the obligation, to cause the preparation of the Record Drawings by an architect of Port's choice, at Tenant's cost.

(b) Record Drawing Requirements. Record Drawings must be based on no less than 24" x 36", with mark-ups neatly drafted to indicate modifications from the original design drawings, scanned at 400 dpi. Each drawing must have a Port-assigned number placed onto the title block prior to scanning.

(c) AutoCAD Requirements. The AutoCAD files must be contained in Release 2006 or a later version, and drawings must be transcribed onto a compact disc(s) or DVD(s), as requested by Port. All X-REF, block and other referenced files shall be coherently addressed within the environment of the compact disc. Discs containing files that do not open automatically without searching or reassigning X-REF addresses will be returned for reformatting.

(d) Port reserves the right to revise the format of the required submittals set forth in this section as technology changes and new engineering/architectural software is developed.

14.5. Insurance Requirements.

After five (5) days' written notice to Tenant, City has the right, but not the obligation, to obtain, and thereafter continuously to maintain, any insurance required by this Lease that Tenant fails to obtain or maintain, and to charge the cost of obtaining and maintaining that insurance to Tenant; provided, however, if Tenant reimburses City for any premiums and subsequently provides such insurance satisfactory to City, then City agrees to cancel the insurance it obtained and to credit Tenant with any premium refund less any other costs incurred by City resulting from Tenant's failure to obtain or maintain the required insurance.

14.6. Construction Barriers; Signs.

(a) Construction Fencing and Barriers. Tenant will provide appropriate construction fencing and barriers on-site during the period of Construction, to the extent required by applicable building and/or health and safety codes. Tenant will obtain a building permit from Port prior to the placement of any such construction fencing and/or barrier on Port property.

(b) Construction Signs. Tenant will provide appropriate construction Signs and post the Signs on-site during the period of Construction. The size, design, color, dimensions, text, materials, location, and method of installation of such Signs on Port property must be submitted to Port for approval prior to installation.

14.7. Construction Staging. During Construction of the Initial Improvements, Tenant will use the portions of the Premises as staging areas for construction laydown and parking, construction equipment, and related materials, as reasonably determined by Tenant. Port will have no responsibility for providing additional areas for construction staging.

14.8 Exterior Improvements. Tenant acknowledges that any changes to the Exterior Improvements not otherwise approved in Construction Documents will need Port's prior approval before installation, which may require, in Port's sole discretion, review by the WDAC. Tenant will provide to Port the size, design, color, dimensions, text, materials, location, and method of installation of the Exterior Improvements to enable Port to evaluate the proposed request for approval; provided, however, any Signs requiring Port's prior approval under **Section 16.4** (Signs) will be approved as set forth in **Section 16.4** (Signs).

14.9. Certificate of Final Completion and Occupancy .

(a) Certificate of Final Completion and Occupancy; Issuance Process.

(i) Other than in connection with the Construction of the Initial Improvements, Tenant may not occupy or use the Premises or any portion thereof where a temporary or final certificate of occupancy has not been issued. Port will issue a Certificate of Final Completion and Occupancy for the Residential Portion of the Building and may issue a separate documentation of Completion, such as a sign off on a job card; certificate(s) of completion or occupancy for the other portions of the Improvements (collectively, "**other evidence of Completion**")

(ii) Issuance of the Certificate of Final Completion and Occupancy or other evidence of Completion does not relieve Tenant or any other Person from any and all requirements or conditions of any Regulatory Approval of any Regulatory Agency to occupancy of the Building or other Improvement. Tenant will comply with all such requirements or conditions separately.

(b) Condition to Issuance. If there remain (i) uncompleted customary punch list items; (ii) landscaping (to the extent (i) and (ii) are subject to Port's approval); (iii) exterior finishes (to the extent Tenant can demonstrate to Port's reasonable satisfaction that such finishes would be damaged during the course of later construction of interior improvements) or (collectively, "**Deferred Items**"), Port may reasonably condition issuance of a Certificate of Final Completion and Occupancy or other evidence of Completion upon provision of construction security consistent with **Section 14.1(h)** (Construction Security). The obligations set forth in this **Section 14.9(b)** (Condition to Issuance) survive the expiration or earlier termination of this Lease.

(c) Definition of Completed and Completion. For purposes of issuance of the Certificate of Final Completion and Occupancy for the Residential Portion or other evidence of Completion for other parts of the Building in accordance with the provisions of **Section 14.9(a)** above, "**Completed**" and "**Completion**" mean (i) completion by Tenant of all aspects of the Initial Improvements on the Premises, free of any mechanics' and materialmen's liens and all in accordance with the approved Construction Documents, the Scope of Development, and Laws, (ii) issuance of applicable certificates of completion, together with completion of all improvements which are required under conditions of any Regulatory Approvals needed for Construction of the Initial Improvements, (iii) no uncured Tenant Event of Default or Unmatured Tenant Event of Default exists, and (iv) Tenant has paid all development exaction fees required to be paid that are due and payable. With respect to the Initial Improvements, the Parties agree that Completion or Completed will not include build out of the Ground Floor Units beyond the "cold shell" of such units.

(d) Form and Effect of Certificate.

(i) Form of Certificate. The Certificate of Final Completion and Occupancy for the Residential Portion will be in a form that permits it to be recorded in the Official Records. For purposes of this Lease, the Certificate of Final Completion and Occupancy will be a conclusive determination of Completion of the Residential Portion of Initial Improvements (except for completion of Deferred Items).

(ii) Effect. Except as set forth in the Certificate of Final Completion and Occupancy for the Residential Portion, any other Certificate of Occupancy and any other evidence of Completion, Port's issuance of a Certificate of Completion will constitute conclusive evidence (except for the Deferred Items) that Tenant has satisfied all its construction obligations under this Lease with respect to the Initial Improvements; provided however, that such certificates shall not constitute evidence of compliance with or satisfaction of any obligation of Tenant to any Lender, or any insurer of a mortgage, securing money loaned to finance the construction or any part thereof.

(iii) If Port refuses or fails to issue the Certificate of Final Completion and Occupancy for the Residential Portion, any other Certificate of Occupancy and or other evidence of Completion, Port shall within ten (10) business days of Tenant's written request provide Tenant with a written statement specifying the reasons for Port's refusal or failure to do so identifying the items Tenant shall complete or requirements it shall satisfy in order to obtain the Certificates.

(iv) Promptly upon the issuance of the Certificate of Final Completion and Occupancy for the Residential Portion, Tenant shall record such approved certificate in the Official Records and provide Port and MOHCD with a copy of the recorded Certificate of Final Completion and Occupancy.

14.10. Project Materials. If this Lease terminates for any reason (other than a Port Event of Default) before Completion of the Initial Improvements, Tenant will within thirty (30) days after written demand from Port and without cost to Port, (i) deliver to Port any and all copies of studies, applications, reports, permits, plans, architectural drawings, test results, and similar work product regarding the physical condition of the Real Property, and any existing Construction Documents in the possession of Tenant, or its Agents, architects, engineers, or consultants (or if not in the foregoing parties' possession, reasonably obtainable by Tenant), or prepared for Tenant, including electronic or AutoCAD files (collectively, the "**Project Materials**"), and (ii) provided Tenant is authorized to do so and subject to the rights of Lenders, assign to Port (x) all of Tenant's existing rights and interest in the Project Materials, and (y) all of Tenant's rights under any Regulatory Approval; provided, however, in each case without any representation or warranty, express or implied, by Tenant, as to the sufficiency, accuracy, completeness or compliance with Laws or any other matter whatsoever. Port may use the Project Materials for any purpose whatsoever relating to the Premises, without cost or liability therefor to Port or any other Person; provided, however, that, Port will release Tenant and Tenant's Agents, assignees, subtenants, affiliates, contractors, architects, engineers and other consultants from any Claims arising out of Port's use of such Project Materials and Construction Documents except to the extent such person is retained by Port to complete construction and they agree to such continued liability. Tenant will use commercially reasonable efforts to include in all contracts and authorizations for services pertaining to the planning and design of the Initial Improvements, an express agreement by the person performing such services that Port may use such Project Materials as provided in this Section without compensation or payment from Port in the event such Project Materials are delivered to Port under the provisions of this Section, provided that Port agrees (i) not to remove the name of the preparer of such Project Materials without the preparer's written permission, or (ii) to remove the name of the preparer of such Project Materials at the preparer's written request. If a third-party (i.e. non-Port or non-City party or a party that is not the Project Material author) seeks to obtain and use the Project Materials assigned to Port, then such third-party will be required to negotiate appropriate and reasonable compensation to the Project Material author for the incremental value of the Project

Material. The provisions of this *Section 14.10* (Project Materials) will survive the expiration or earlier termination of this Lease.

15. SUBSEQUENT CONSTRUCTION.

15.1. *Port's Right to Approve Subsequent Construction.*

(a) Construction Requiring Port's Approval in Port's Sole Discretion. Tenant shall have the right at its sole cost and expense, during the Term to perform Subsequent Construction in accordance with the provisions of this Section, provided that Tenant shall not do any of the following without Port's prior approval, which approval may be withheld by Port in its sole discretion:

- (i) Change in the density of development from that which existed upon the completion of construction of the Initial Improvements
- (ii) Construct additional buildings or other additional structures;
- (iii) Increase the bulk or height of any Improvements beyond the bulk or height approved for the Initial Improvements;
- (iv) Rehabilitate or Restore any of the Improvements (except as otherwise required under *Section 23.3* (Tenant's Obligation to Restore) or as otherwise allowed pursuant to *Section 15.2*);
- (v) Change the Project's open space in a manner that would adversely affect access to, or materially change the use or appearance of such open space;
- (vi) Materially alter the Building Systems, structural integrity or exterior architectural design of any Improvements (other than changes reasonably required to conform to changes in applicable Law);
- (vii) Change the colors or materials of the exterior façades of the buildings and the Exterior Improvements approved by Port, unless materials originally installed are not reasonably available or do not meet current code requirements, and Tenant uses materials of equal quality, durability, design standards, and appearance to the materials originally installed, as determined by Port.

(b) Construction Requiring Port's Reasonable Approval. For any Subsequent Construction (other than a Minor Alteration) that is not described in *Section 15.1(a)* (Construction Requiring Port's Approval in Port's Sole Discretion), Port's prior approval shall be required, which approval shall not be unreasonably withheld.

(c) Subsequent Construction will be subject to the terms and conditions set forth in *Sections 14.1(c) - 14.1(h)*; and *14.2 - 14.8*.

(d) Notice by Tenant and Schematic Drawings. Before commencing any Subsequent Construction that requires Port's approval, Tenant shall notify Port of such planned Subsequent Construction. Schematic drawings shall accompany such notice. Port may waive the submittal requirement of schematic drawings if it determines in its sole discretion that the scope of the Subsequent Construction does not warrant such initial review. Within twenty (20) days after receipt of such notice from Tenant, Port shall approve or disapprove any such Subsequent Construction and inform Tenant whether in Port's sole discretion, design review of the proposed Subsequent Construction by WDAC is necessary. If Port determines that design review by WDAC is necessary, then the period to approve or disapprove the proposed Subsequent Construction shall be extended by a reasonable time necessary to obtain WDAC's review and recommendation of the proposed Subsequent Construction.

(e) Regulatory Approvals. Tenant acknowledges that Port's approval of Subsequent Construction (or the fact that Tenant is not required to obtain Port's approval) does not alter Tenant's obligation to obtain all required Regulatory Approvals from Regulatory

Agencies, including, where applicable, from Port itself in its regulatory capacity.

15.2. Minor Alterations. Provided the following are not otherwise subject to Port's approval under *Section 15.1(a)*, Port's approval shall not be required for: (a) the installation, repair or replacement of furnishings, fixtures, equipment or decorative improvements within the interior of the Building in the normal course of operation of a housing development, (b) recarpeting, repainting the interior of the Building or similar alterations, or (c) any other Subsequent Construction costing less than Fifty Thousand Dollars (\$50,000) individually or Two Hundred Thousand Dollars in the aggregate (\$200,000) (collectively, "**Minor Alterations**").

15.3. Port Approval of Construction Documents. Port shall approve or disapprove subsequent Construction Documents submitted to it for approval within sixty (60) days after submission. Any disapproval shall state in writing the reasons for disapproval. If Port notifies Tenant that the subsequent Construction Documents are incomplete, such notification shall constitute a disapproval of such Construction Documents. If Port disapproves the Construction Documents and Tenant revises or supplements, as the case may be, and resubmits such Construction Documents for Port's approval, Port shall review the revised or supplemented Construction Documents to determine whether the revisions or supplements satisfy the objections or deficiencies cited in Port's previous notice of rejection, and Port shall approve or disapprove the revisions or supplements to the Construction Documents within thirty (30) days after resubmission. If Port fails to meet such time frame, then Tenant may submit a written notice to Port requesting Port's approval or disapproval. The notice must display prominently in at least 16 point font on the envelope enclosing such request and on the first page of such request, substantially the following: "**APPROVAL REQUEST FOR CONSTRUCTION DOCUMENTS OF 88 BROADWAY PROJECT. IMMEDIATE ATTENTION REQUIRED; FAILURE TO RESPOND WITHIN TEN (10) BUSINESS DAYS WILL RESULT IN THE REQUEST BEING DEEMED APPROVED.**" If Port fails to respond within such ten (10) day period, such changes will be deemed approved. If Tenant desires to make any change to the final subsequent Construction Documents after Port's approval, then Tenant shall submit the proposed change to Port for its reasonable approval. Port shall notify Tenant of its approval or disapproval of the requested change within thirty (30) days after submission to Port and Port's failure to respond in such time frame is subject to Tenant's repeat request as above. Any disapproval shall state, in writing, the reasons therefor. Notwithstanding any of the foregoing to the contrary, if Port determines that the proposed subsequent Construction must be approved by the City's Environmental Review Officer, any approval provided by Port will be subject to obtaining approval from the City's Environmental Review Officer, and the time periods set forth above for Port to reject, approve or conditionally approve the submissions will be extended as necessary to obtain said approval or disapproval.

15.4. Subsequent Construction.

(a) Commencement of Subsequent Construction. Tenant shall not commence any Subsequent Construction until the following conditions have been satisfied or waived by Port:

(i) Port shall have approved the final subsequent Construction Documents (other than for Minor Alterations); and

(ii) Tenant shall have obtained and paid for all Regulatory Approvals necessary to commence such construction in accordance with *Section 13* (Port Acting as Owner);

(b) Rights of Access. During any period of Subsequent Construction, Port (in its proprietary capacity) and its Agents shall have the right to enter areas in which Subsequent Construction is being performed, upon reasonable prior written notice during customary construction hours, subject to the rights of Residential Occupants and other Subtenants, to inspect the progress of Subsequent Construction; provided, however, that Port and its Agents

shall conduct their activities in such a way as to minimize interference with Tenant and its operations to the extent feasible. Nothing in this Lease, however, shall be interpreted to impose an obligation upon Port to conduct such inspections or impose any liability in connection therewith.

16. IMPROVEMENTS AND ALTERATIONS.

16.1. Title to Improvements. During the Term, Tenant shall own title to all of the Improvements, including the Initial Improvements, all Subsequent Construction (if any) and all appurtenant fixtures, machinery and equipment installed on the Premises by or on behalf of Tenant. It is the intent of the Parties that this Lease and the Lease Memorandum will create a constructive notice of severance of the Improvements from the land. As further consideration of Port entering into this Lease and subject to the rights of any Lenders, at the expiration or earlier termination of this Lease, unless Port, in its sole discretion, has notified Tenant that Tenant must remove such Improvement(s) under **Section 16.2** (Removal of Improvements), title to the Improvements, including appurtenant fixtures (but excluding trade fixtures and Personal Property of Tenant or its Subtenants including without limitation the Personal Property of Residential Occupants), will vest in Port without further action of any party, and without compensation or payment to Tenant. Tenant and its Subtenants shall have the right at any time during the Term, to remove Personal Property from the Premises; provided, however, that if the removal of Personal Property causes damage to the Premises, Tenant shall promptly cause the repair of such damage at no cost to Port. Notwithstanding the foregoing, if requested by Port, upon expiration or earlier termination of this Lease, Tenant will execute and deliver to Port an acknowledged and good and sufficient grant deed conveying to Port Tenant's fee interest in the Improvements.

Except as provided herein with respect to the payment of Rent, City acknowledges and agrees that Tenant shall have the exclusive right to deduct, claim, retain and enjoy any and all rental income appreciation, gain, depreciation, amortization and tax credits for federal and state tax purposes relating to all Improvements and any and all additions thereto, substitutions therefor, fixtures therein and other property relating thereto.

16.2. Removal of Improvements. At least One Hundred Eighty (180) days prior to the Expiration Date or earlier termination of this Lease, Port, in its sole discretion, may provide a Notice of Removal specifying the Alterations and Improvements and Personal Property as defined in this Lease or as may be specifically provided in the relevant permits or plans approved by Port, which Tenant shall be required to repurpose, modify, remove and relocate and/or demolish and remove from the Premises in accordance with **Section 33** (Surrender and Quitclaim). Any such modification or removal is subject to the requirements of this Section, including the requirement to obtain a Port building or similar permit. If termination of this Lease is the result of loss or destruction of the Premises or any Improvements thereon, Port shall deliver the Notice of Removal to Tenant within a reasonable time after the loss or destruction. Tenant shall be obligated at its own expense to remove all Alterations or Improvements and Personal Property specified in the Notice of Removal. Tenant shall establish and fund a reserve account to finance its obligations to carry out the requirements set forth in Port's Notice of Removal ("**Reserve Account**"). By the Anniversary Date, the amount in the Reserve Account shall be no less than [Two Million Three Hundred Thousand dollars (\$2,300,000)] escalated annually by three percent (3%). Tenant shall deposit all Net Sale Proceeds attributable to the Residential Portion into the Reserve Account until the Reserve Account is fully funded. Tenant shall promptly repair, at its own expense, in good and workmanlike fashion any damage occasioned thereby. If Tenant fails to complete any required modification, demolition and/or removal on or before the termination of this Lease, Port may perform such modification, removal and/or demolition at Tenant's expense, and Tenant shall reimburse Port within three (3) business days after demand therefor.

Notwithstanding Tenant's obligation to comply with the Notice of Removal, if there is a more cost effective alternative to the actions required by the Notice of Removal, Tenant's obligation for payment (as distinct from Tenant's obligation to comply with the Notice of Removal) shall be to fund the most cost effective alternative. In the event Port and Tenant cannot mutually agree upon the most cost effective alternative, after good faith efforts to resolve any disputed estimates or amounts, such dispute shall be determined in the manner provided in *Section 23.7* (Arbitration of Disputes).

16.3. *Removal of Non-Permitted Improvements.* If Tenant constructs any Alterations or Improvements without Port's prior written consent or without complying with this Section, then, in addition to any other remedy available to Port, Port may require Tenant to remove, at Tenant's expense, any or all such Alterations or Improvements and to promptly repair, at Tenant's expense and in good workmanlike fashion, any damage occasioned thereby. Tenant shall pay to Port all special inspection fees as set forth in any applicable building code, standard or regulation, including, without limitation, the Port Building Code, for inspection of work performed without required permits. The foregoing obligation of Tenant to reimburse Port for all cost and expenses incurred by Port in connection with Tenant's failure to comply with the provisions of this Section shall survive the expiration or earlier termination of this Lease.

16.4. *Signs.* Tenant shall not install business signage, awnings or other exterior decoration or notices on the Premises without Port's prior written consent. Any sign that Tenant is permitted to place, construct or maintain on the Premises shall comply with all Laws relating thereto, including but not limited to, Port's Sign Guidelines, as revised by Port from time to time, and building permit requirements, and Tenant shall obtain all Regulatory Approvals required by such Laws. Port makes no representation with respect to Tenant's ability to obtain such Regulatory Approval. Tenant, at its sole cost and expense, shall remove all signs placed by it on the Premises at the expiration or earlier termination of this Lease.

16.5. *Port's Alterations.* Port reserves the right at any time to make alterations, additions, repairs, deletions or improvements to any Port property adjacent to the Premises ("**Port Work**"). Port shall use commercially reasonable efforts to conduct any of the foregoing activities in a manner that, to the extent reasonably practicable, will minimize inconvenience or disturbance to Tenant; Port will have no obligation to minimize inconvenience or disturbance to Tenant for Port Work when the Port Work is necessary, in Port's sole and absolute discretion, to maintain Port property in safe, hazard-free condition. In no event will inconvenience or disturbance caused by Port Work constitute an actual or constructive eviction of Tenant, entitle Tenant to any abatement or diminution of Rent, or otherwise relieve Tenant from any of its obligations under this Lease. Tenant hereby waives any and all Claims against Port, City and their Agents arising out of any inconvenience or disturbance occasioned by Port Work.

17. MAINTENANCE AND REPAIRS.

17.1. *Tenant Maintenance and Repair Obligations.* Throughout the Term, Tenant will maintain and repair, at no cost to Port, the Premises and all Improvements thereon in condition and repair as is appropriate to maintain a first-class mixed use residential/retail project located in San Francisco and in compliance with all applicable Laws and the requirements of this Lease. Tenant will with reasonable promptness make (or cause others to make) all necessary or appropriate repairs, renewals and replacements, whether structural or non-structural, interior or exterior, ordinary or extraordinary, foreseen or unforeseen. Tenant will make such repairs with materials, and quality of workmanship, comparable to that as originally installed as part of the Initial Improvements, or, if not commercially available, with materials at least equal in quality, appearance and durability to the materials repaired, replaced or maintained. All such repairs and replacements made by Tenant will be at least equivalent in quality, appearance, public safety, and durability to and in all respects consistent with the Improvements installed at the time of issuance of the relevant Certificate of Final Completion and Occupancy.

Tenant shall not make, nor cause or suffer to be made, any repairs or other work for which a permit is required by any applicable building code, standard or regulation, including, without limitation, the Port Building Code or of any rule or regulation of Port without first obtaining Port's prior written consent and a permit therefor.

In the event that damage or deterioration to the Premises or any portion thereof or any other area which is Tenant's obligation to maintain results in the same not meeting the standard of maintenance required by Port for such uses as Tenant is making of the Premises or such other applicable standard, then Tenant shall have the independent responsibility for, and shall promptly undertake, maintenance or repair and complete the same with due diligence.

17.2. Capital Needs Assessment Report. Every five (5) years beginning on the fifth anniversary date of the issuance of the Certificate of Completion for the Residential Portion, Tenant shall deliver to Port a Capital Needs Assessment report ("CNA") for the Improvements. The CNA must conform to MOHCD's guidance for CNAs, be in a form acceptable to Port, and must, at a minimum, contain the following information and comply with the following standards

- (a) basic property information, including at a minimum parcel size, number of buildings and units, unit mix, unit square footages and building area;
- (b) a narrative description of the Premises and its Improvements, including the building type, construction materials, major systems and interior/exterior finishes;
- (c) a description of the current conditions, expected useful lives of all building elements/systems/finishes including of the foundation, structures and substructure, and all utilities systems serving the Improvements, an estimate of the remaining useful life of existing systems and recommendations for further investigation by engineers or construction specialists, if necessary;
- (d) relevant photographs of various areas of the Improvements that show building elements and systems and current conditions that require repair, replacement, upgrade or improved maintenance;
- (e) a list of the immediate physical needs and estimated cost to address them, as well as a 20-year replacement reserve analysis, each provided in unprotected, Microsoft Excel financial spreadsheet documents; and
- (f) an explanation of cost estimating methodologies and assumptions of construction cost inflation.

If Port reasonably believes the CNA does not adequately describe the condition and integrity of the listed items or the timing of required repairs, then Port shall notify Tenant of such deficiency and Tenant shall revise the CNA to address Port's concerns within the timeframe specified by Port. If Tenant fails to provide the required CNA or a revised CNA to Port within the timeframe specified by Port, Port after giving thirty (30) days' notice to Tenant shall have the right, but not the obligation, to cause the preparation of a CNA by a team of construction professionals of Port's choice, at Tenant's sole cost. Tenant shall perform the repairs or improvements recommended in the CNA within the timeframe set forth in the CNA or as agreed by Port in its sole discretion.

In addition to the preparation and delivery of CNA to Port in accordance with this Section, if any CNA or similar facilities condition report is prepared by or on behalf of Tenant in connection with any Refinancing, Transfer, or for any other reason or purpose, Tenant will promptly provide Port with a copy of such report.

17.3. City's Right to Inspect. Without limiting *Section 32 below* (Entry On Premises), Port and MOHCD may make periodic inspections of the Premises and other areas for which Tenant has obligations and may advise Tenant when maintenance or repair is required, but such right of inspection shall not relieve Tenant of its independent responsibility to maintain such

Premises, Improvements and other areas as required by this Lease in a condition as good as, or better than, their condition at the Commencement Date, excepting ordinary wear and tear.

17.4. Port's Right to Repair. In the event Tenant fails to maintain or to promptly repair any damage as required by this Lease, Port may repair the same at Tenant's sole cost and expense and Tenant shall immediately reimburse Port therefore. In the event Tenant fails to maintain and repair the Premises, the foundation, the structural integrity of the Improvements, the roofs, and Building Systems, Port may repair the same at Tenant's cost and expense and Tenant will reimburse Port therefor as provided in this **Section 17.4** (Port's Right to Repair). Except in the event of an emergency, Port will first provide no less than fifteen (15) days prior notice to Tenant before commencing any maintenance to or repair on the Premises ("**Port's Repair Notice**"). If Tenant does not commence maintenance or repair or provide assurances reasonably satisfactory to Port that Tenant will commence maintenance or repair within such fifteen (15) day period, then Port may proceed to take the required action. If Port elects to proceed with such repair or maintenance, then promptly following completion of any work taken by Port pursuant to this **Section 17.4**, Port will deliver a detailed invoice of the work completed, the materials used and the costs relating thereto. Tenant also will pay to Port an administrative fee equal to ten percent (10%) of the total "**hard**" costs of the work. "**Hard**" costs include the cost of materials and installation, but exclude any costs associated with design, such as architectural fees. Tenant will pay to Port the amount set forth in the invoice within thirty (30) days after delivery of Port's invoice.

Tenant will pay to Port, as Additional Rent, an amount equaling Two Hundred Dollars (\$200), which amount will be increased by One Hundred Dollars (\$100.00) on each ten (10) year Anniversary Date, upon delivery of Port's Repair Notice. In the event Port determines during subsequent inspection(s) that Tenant has failed to so maintain the Premises in accordance with this **Section 17**, then Tenant will pay to Port, as Additional Rent, an amount equaling Three Hundred Dollars (\$300), which amount will be increased by One Hundred Dollars (\$100.00) on each ten (10) year Anniversary Date, for each additional Maintenance Notice, if applicable, delivered by Port to Tenant following each inspection. The Parties agree that the charges associated with each inspection of the Premises and delivery of each Maintenance Notice represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port's inspection of the Premises and issuance of each Maintenance Notice. Tenant's failure to comply with the applicable Maintenance Notice and Port's right to impose the foregoing charges is in addition to and not in lieu of any and all other rights and remedies of Port under this Lease, at law or in equity. The amounts set forth in this **Section 17.4** (Port's Right to Repair) are due within five (5) days following delivery of the applicable Maintenance Notice.

18. UTILITIES AND SERVICES.

18.1. Utilities. Tenant agrees and acknowledges that Port, in its proprietary capacity as owner of the Premises and landlord under this Lease, will not provide any utility services to the Premises or any portion of the Premises. Tenant, at its sole expense, must (i) arrange for the provision and construction of all on-site and off-site utilities necessary to construct, operate and use the Improvements and any other portion of the Premises for their intended use, (ii) be responsible for contracting with, and obtaining, all necessary utility and other services, as may be necessary and appropriate to the uses to which all of the Improvements and the Premises are put (it being acknowledged that City (including its SFPUC) is the sole and exclusive provider to the Premises of certain public utility services), and (iii) maintain and repair all utilities serving the Premises to the point provided by the respective utility service provider (whether on or off the Premises). Tenant will purchase all electrical service (to the extent not provided by a Renewable Energy System, if any) for the Improvements and the Premises from SFPUC unless SFPUC determines that such service is not feasible for the Premises. Tenant also must coordinate with the respective utility service provider with respect to the installation of utilities, including providing advance notice to appropriate parties of trenching requirements.

Tenant will pay or cause to be paid as the same become due, all deposits, charges, meter installation fees, connection fees and other costs for all public or private utility services at any time rendered to the Premises or any part of the Premises, and will do all other things required for the maintenance, repair, replacement, and continuance of all such services. Tenant agrees, with respect to any public utility services provided to the Premises by City, that no act or omission of City in its capacity as a provider of public utility services, will abrogate, diminish, or otherwise affect the respective rights, obligations and liabilities of Tenant and Port under this Lease, or entitle Tenant to terminate this Lease or to claim any abatement or diminution of Rent. Further, Tenant covenants not to raise as a defense to its obligations under this Lease, or assert as a counterclaim or cross-claim in any litigation or arbitration between Tenant and Port relating to this Lease, any Claims arising from or in connection with City's provision (or failure to provide) public utility services, except to the extent to preserve its rights hereunder that failure to raise such claim in connection with such litigation would result in a waiver of such claim. The foregoing will not constitute a waiver by Tenant of any claim it may now or in the future have (or claim to have) against any such public utility provider relating to the provision of (or failure to provide) utilities to the Premises.

18.2. Services. Tenant shall make arrangements and shall pay all charges for all services to be furnished on, in or to the Premises or to be used by Tenant, including, without limitation, garbage and trash collection, janitorial service and extermination service.

18.3. Energy Consumption. Not later than two (2) years from the date of issuance of the Certificate of Final Completion and Occupancy for the Residential Portion, Tenant shall obtain energy efficiency audits and annually measure and disclose energy performance, in accordance with the standards of the San Francisco Environment Code Chapter 20: Existing Commercial Buildings Energy Performance. These requirements are necessary to comply with the Energy Performance, Data Checklist, and Facility Summary requirements set forth in the California Code of Regulations, Title 20, Division 2, Chapter 4, Article 9, Section 1680.

19. ROOFTOP EQUIPMENT.

19.1. Renewable Energy System. Tenant may install or cause to be installed on the roof(s) of the Improvements, a renewable energy system, using sources such as solar (photovoltaic or solar thermal power), wind, or biofuel power for the generation and delivery of electrical energy to the Premises (a "Renewable Energy System") upon the prior consent of Port, which consent will not be unreasonably withheld. If excess energy is available from the Renewable Energy System, then such excess energy may be used by Port or City without cost to Tenant. Prior to commencing installation of any Renewable Energy System, Tenant must obtain all required permits and Regulatory Approvals. Unless approved as part of the Initial Improvements, the design, construction and installation of any Renewable Energy System will be done in accordance with *Section 15* (Subsequent Construction).

19.2. Other Rooftop Equipment. Tenant shall not install any equipment (including any satellite dish or wireless communication site or equipment) on the roof of the Building without first obtaining Port's review and approval and all required Regulatory Approvals. Tenant shall provide to Port the size, location, dimensions, design, color, text (if any), screening, materials, reflectivity, and method of installation of the rooftop equipment to enable Port to evaluate the proposed rooftop equipment.

19.3. Wireless Communications Equipment. Any Sublease by Tenant of any portion of the Premises to a personal wireless services provider will be subject to (i) Port's prior written approval in its sole discretion; (ii) all Regulatory Approvals; (iii) the provisions, terms and conditions of *Section 26* (Transfers); and the provisions of *Section 7.3* (Excess Rent) regarding payment of Rent.

19.4. City Rooftop Equipment. Tenant agrees, at the request of City, to permit City to install, at City's sole cost, equipment reasonably required for Port's or City's operations including

City's emergency communications systems on the roof. City shall be permitted access to the areas on the roof where any such installation is made, as necessary for the installation, repair, maintenance, and replacement thereof. Any access, interruptions or disturbance for the foregoing purposes shall be temporary only. The Parties will cooperate in connection with the location and operation of any City equipment and the location and operation of Tenant's equipment so as to minimize interference.

20. LIENS.

Tenant shall keep the Premises free from any liens arising out of any work performed, materials furnished or obligations incurred by Tenant or its Agents. Tenant shall notify Port promptly of any lien or encumbrance, of which Tenant has knowledge and which has been recorded against or attached to the Improvements or Tenant's Leasehold Estate hereunder whether by act of Tenant or otherwise. In the event that Tenant shall not, within twenty (20) days following the imposition of any such lien, cause the same to be released of record, Port shall have, in addition to all other remedies provided by this Lease or by Law, the right but not the obligation to cause the same to be released by such means as it shall deem proper, including without limitation, payment of the claim giving rise to such lien. All sums paid by Port for such purpose, plus interest at the Interest Rate, and all reasonable expenses incurred by Port in connection therewith (including, without limitation, reasonable attorneys' fees) shall be payable to Port by Tenant upon demand. Port shall have the right to post on the Premises any notices that Port may deem proper for the protection of Port and the Premises, from mechanics' and materialmen's liens. Tenant shall give to Port at least fifteen (15) days' prior written notice of commencement of any Alteration, repair or construction on the Premises. Tenant agrees to Indemnify Port, City and their respective Agents from and against any Claims for mechanic's, materialmen's or other liens in connection with any Alterations, repairs or construction on the Premises, or materials furnished or obligations incurred by or for Tenant.

21. HAZARDOUS MATERIALS.

21.1. Requirements for Handling. Neither Tenant nor its Agents or Invitees may Handle or permit any other person to Handle any Hazardous Material in, on, under or about the Premises or other Port property, subject only to the following exceptions, provided that Handling is at all times in full compliance with all Environmental Laws: (a) Handling of Hazardous Materials as permitted by Regulatory Approval; (b) during construction activities, Handling of Hazardous Materials in limited amounts customarily used in connection with construction; and (c) janitorial and office supplies in limited amounts customarily used for general office, housing and/or retail purposes.

21.2. Tenant Responsibility. Tenant agrees to protect its Agents and Invitees in its operations on the Premises from hazards associated with Hazardous Materials in accordance with all Environmental Laws and also agrees, for itself and on behalf of its Agents and Invitees, that during its use and occupancy of the Premises, each of them:

(a) will not permit any Hazardous Materials to be present in, on, under or about the Premises or other Port property except as to Handling as permitted under **Section 21.1** (Requirements for Handling);

(b) will not cause or permit any Hazardous Material Condition, except as to Handling as permitted under **Section 21.1** (Requirements for Handling); and

(c) will comply with all Environmental Laws relating to the Premises and any Hazardous Material Condition, and will not engage in or permit any activity at the Premises or other Port property, or in the operation of any vehicles or vessels used in connection with the Premises in violation of any Environmental Laws.

21.3. Tenant's Environmental Condition Notification Requirements.

(a) Tenant must notify Port immediately, orally or by other means that will transmit the earliest possible notice to Port staff, followed within twenty-four (24) hours by written notice, of and when Tenant learns or has reason to believe Hazardous Materials were Released or, except as allowed under *Section 21.1* (Requirements for Handling), Handled, in, on, or about the Premises, other Port property, or the environment, or from any vehicles or vessels that Tenant or its Agents or Invitees use during Tenant's occupancy of the Premises, whether or not the Release or Handling is in quantities that would be required under Environmental Laws to be reported to an Environmental Regulatory Agency.

(b) Tenant must notify Port immediately, orally or by other means that will transmit the earliest possible notice to Port staff, followed within twenty-four (24) hours by written notice, and contemporaneously provide Port with an electronic copy, of:

(i) Any notice of the Release or Handling of Hazardous Materials, in, on, or about the Premises, other Port property, or the environment, or from any vehicles or vessels Tenant, or its Agents and Invitees uses during Tenant's occupancy of the Premises that Tenant or its Agents or Invitees provides to an Environmental Regulatory Agency;

(ii) Any notice of a violation, or a potential or alleged violation, of any Environmental Law that Tenant or its Agents or Invitees receives from any Environmental Regulatory Agency;

(iii) Any other Environmental Regulatory Action that is instituted or threatened by any Environmental Regulatory Agency against Tenant or its Agents or Invitees and that relates to the Release or Handling of Hazardous Materials, in, on, or about the Premises, other Port property, or the environment, or from any vehicles or vessels Tenant, or its Agents and Invitees uses during Tenant's occupancy of the Premises;

(iv) Any Hazardous Material Claim that is instituted or threatened by any third party against Tenant or its Agents or Invitees and that relates to the Release or Handling of Hazardous Materials, in, on, or about the Premises, other Port property, or the environment, or from any vehicles or vessels Tenant, or its Agents and Invitees uses during Tenant's occupancy of the Premises; and

(v) Any notice of the termination, expiration, or substantial amendment of any Environmental Regulatory Approval needed by Tenant or its Agents or Invitees for their operations at the Premises.

(c) Tenant must notify Port of any meeting, whether conducted face-to-face or telephonically, between Tenant and any Environmental Regulatory Agency regarding an Environmental Regulatory Action. Port will be entitled to participate in any such meetings at its sole election in a manner consistent with Tenant's and the Environmental Regulatory Agency's needs.

(d) Tenant must notify Port of any Environmental Regulatory Agency's issuance of an Environmental Regulatory Approval. Tenant's notice to Port must state the issuing entity, the Environmental Regulatory Approval identification number, and the date of issuance and expiration of the Environmental Regulatory Approval. In addition, Tenant must provide Port with a list of any plan or procedure required to be prepared and/or filed with any Environmental Regulatory Agency for operations on the Premises, including a "Spill Pollution Control and Countermeasure Plan." Tenant must provide Port with copies of any of the documents within the scope of this section upon Port's request.

(e) Tenant must provide Port with copies of all communications with Environmental Regulatory Agencies and all non-privileged communications with other persons regarding potential or actual Hazardous Material Claims arising from Tenant's or its Agents' or Invitees' operations at the Premises. Upon Port's request, Tenant must provide Port with a log of

all communications withheld under a claim of privilege that specifies the parties to and subject of each withheld communication.

(f) Port may from time to time request, and Tenant will be obligated to provide, information reasonably adequate for Port to determine that any and all Hazardous Materials are being Handled in a manner that complies with all Environmental Laws.

21.4. Requirement to Remediate.

(a) Tenant's Remediation obligations under this subsection are subject to subsection (b).

(i) After notifying Port in accordance with **Section 21.3(a)** (Tenant's Environmental Condition Notification Requirements), Tenant must Remediate at its sole cost in compliance with all Environmental Laws and this Lease, any Hazardous Material Condition occurring during the Term or while Tenant or its Agents or Invitees otherwise occupy any part of the Premises. Tenant must obtain Port's approval of a Remediation work plan, whether or not required under Environmental Laws, then begin Remediation actions immediately following Port's approval of the work plan and continue diligently until Remediation is complete, as determined by Port, in its sole discretion.

(ii) In addition to its obligations under clause (i), before this Lease terminates for any reason, Tenant must Remediate at its sole cost in compliance with all Environmental Laws and this Lease: (A) any Hazardous Material Condition caused by Tenant's or its Agents' or Invitees' Handling Hazardous Materials during the Term; and (B) any Hazardous Material Condition discovered during Tenant's occupancy that any Regulatory Agency requires to be Remediated if Remediation would not have been required but for Tenant's use of the Premises.

(iii) If Environmental Laws governing Remediation require a remedial action plan, Tenant must provide a draft of its plan to Port in a timely manner for Port's comment and approval before submittal to the appropriate Environmental Regulatory Agency, and Port will respond in a manner that meets the needs of Tenant and the Environmental Regulatory Agencies. Tenant shall submit to Port any final remedial action plan.

(iv) In all situations relating to Handling or Remediating Hazardous Materials, Tenant must take all actions that are reasonably necessary in Port's sole judgment to protect the value of the Premises, such as obtaining Environmental Regulatory Approvals related to Hazardous Materials and taking measures to remedy any deterioration in the condition or diminution of the value of any portion of the Premises in any manner related directly or indirectly to Hazardous Materials.

(b) Unless Tenant or its Agents or Invitees Exacerbate the Hazardous Material Condition, Tenant will not be obligated to Remediate any Hazardous Material Condition: (i) caused or Exacerbated solely by Port or its Agents during Tenant's occupancy of the Premises; or (ii) arising before the Commencement Date or the date of Tenant's first use of the Premises, whichever is earlier (each an "Excluded Condition").

21.5. Port's Right to Audit. Port will have the right, but not the obligation, to inspect and audit the Premises for any Hazardous Materials, including the right to Investigate, at reasonable times under **Section 32** (City's Entry on Premises). Port's failure to inspect or obtain samples or to detect conditions attributable to Tenant's operations if an inspection is conducted may not be deemed to be a release of any liability for any Hazardous Materials subsequently determined to be Tenant's responsibility under this Lease.

21.6. Storm Water Pollution Prevention.

(a) Tenant must comply with the applicable provisions of the Statewide General Permit for Discharge of Industrial Storm Water issued by the State Water Resources

Control Board, including filing a Notice of Intent to be covered, developing and implementing a site-specific Storm Water Pollution Prevention Plan ("SWPPP"), and conducting storm water monitoring and reporting. Tenant's SWPPP and a copy of a Notice of Intent for Tenant's Premises must be submitted to Port's Real Estate Division before beginning operations on the Premises.

(b) In addition to requiring compliance with the permit requirements under Subsection (a), Tenant shall comply with the post-construction stormwater control provisions of the Statewide General Permit for Discharge of Stormwater from Small Municipalities and the San Francisco Stormwater Design Guidelines, subject to review and permitting by the Port's Engineering Division.

21.7. Presence of Hazardous Materials. California Law requires landlords to disclose to tenants the presence or potential presence of certain Hazardous Materials. Accordingly, Tenant is hereby advised that Hazardous Materials (as herein defined) may be present on or near the Premises, including, but not limited to, vehicle fluids, janitorial products, tobacco smoke, and building materials containing chemicals, such as lead and formaldehyde. Further, the Hazardous Materials described in the reports listed in *Schedule 3* copies of which have been delivered to or made available to Tenant are known to be present on the property. By execution of this Lease, Tenant acknowledges that the notice set forth in this section satisfies the requirements of California Health and Safety Code Section 25359.7 and related Laws. Tenant must disclose the information contained in this *Section 21.7* (Presence of Hazardous Materials) to any subtenant, licensee, transferee, or assignee of Tenant's interest in this Lease. Tenant also acknowledges its own obligations pursuant to California Health and Safety Code Section 25359.7 as well as the penalties that apply for failure to meet such obligations.

21.8. Survival. Tenant's obligations under *Section 21* (Hazardous Materials) shall survive the expiration or earlier termination of this Lease.

22. INSURANCE.

22.1. Required Insurance Coverage. Tenant, at its sole cost and expense, shall maintain, or cause to be maintained, throughout the Term, the following insurance:

(a) General Liability Insurance. Comprehensive or commercial general liability insurance, with limits not less than Two Million dollars (\$2,000,000) each occurrence combined single limit and Four Million dollars (\$4,000,000) aggregate. Such insurance shall include coverage for bodily injury and property damage, Abuse and Molestation coverage, contractual liability, independent contractors, broad form property damage, personal injury, liquor liability, products and completed operations, fire damage and legal liability with limits not less than One Hundred Thousand Dollars (\$100,000), and explosion, collapse and underground (XCU) coverage during any period in which Tenant is conducting any activity on or Alteration or Improvement to the Premises with risk of explosion, collapse, or underground hazards. This policy must also cover non-owned and for-hire vehicles and all mobile equipment or unlicensed vehicles, such as forklifts. The use of excess or umbrella coverage shall be acceptable to meet the requirements of this *Section 22.1(a)*.

(b) Automobile Liability Insurance. Comprehensive or business automobile liability insurance with limits not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage, including coverages for owned and hired vehicles and for employer's non-ownership liability, which insurance shall be required if any automobiles or any other motor vehicles are operated in connection with Tenant's activity on the Premises or the Permitted Use.

(c) Workers' Compensation; Employer's Liability. Worker's Compensation Insurance in statutory amounts, with Employer's Liability limit not less than One Million Dollars (\$1,000,000.00) for each accident, injury or illness, on employees eligible for each. In the event Tenant is self-insured for the insurance required pursuant to this *Section 22.1(c)* (Workers'

Compensation; Employer's Liability), it shall furnish to Port a current Certificate of Permission to Self-Insure signed by the Department of Industrial Relations, Administration of Self-Insurance, Sacramento, California.

(d) Construction Activities. At all times during any period of Tenant's construction of Improvements or Alterations subject to **Section 16** (Improvements and Alterations),

(i) Tenant shall require Tenant's contractor to maintain (a) commercial general liability insurance with limits of not less than Five Million Dollars (\$5,000,000) combined single limit for bodily injury and property damage (including personal injury and death), and contractor's protective liability; and products and completed operations coverage in an amount not less than Five Hundred Thousand Dollars (\$500,000) per incident, Ten Million Dollars (\$10,000,000) in the aggregate; (b) comprehensive automobile liability insurance with a policy limit of not less than Two Million Dollars (\$2,000,000) each accident for bodily injury and property damage, providing coverage at least as broad as the Insurance Services Office (ISO) Business Auto Coverage form covering Automobile Liability, "any auto", and insuring against all loss in connection with the ownership, maintenance and operation of automotive equipment that is owned, hired or non-owned; (c) Worker's Compensation in statutory amounts, including Employers' Liability coverage with limits not less than One Million Dollars (\$1,000,000) each accident, injury, or illness.

(ii) In addition, Tenant shall carry "Builder's All Risk" insurance on a form reasonably approved by City, in the amount of one hundred percent (100%) of the completed value of all new construction, insuring all new construction, including all materials and equipment incorporated in, on or about the Premises, and in transit or storage off-site, that are or will be part of the permanent Improvements, against "all risk" and "special form" hazards.

(e) Property Insurance; Earthquake and Flood Insurance. Tenant shall maintain broad form property insurance policies, including vandalism and malicious mischief, and earthquake, subject to provisions of **Section 22.6(c)** (As to Earthquake insurance) and flood, subject to the provisions of **Section 22.6(d)** (As to Flood insurance only), in an amount not less than one hundred percent (100%) of the then-current full replacement cost of the Improvements and other property being insured pursuant thereto (including building code upgrade coverage) and including coverage for loss of rental income due to an uninsured peril for 12 months.

(f) Builders Risk Insurance. At all times during construction prior to completion of the Initial Improvements, and during any period of Subsequent Construction costing more than Five Hundred Thousand Dollars (\$500,000), which amount will be increased by Five Hundred Thousand dollars (\$500,000) on each Periodic 10-Year Adjustment Date, Tenant will maintain, or require to be maintained, on a form reasonably approved by Port, builders risk insurance (or its equivalent for any Subsequent Construction). Tenant is solely responsible for payment of any deductibles required under this policy. Such builders risk insurance also will extend to cover soft costs and loss of business income for any delayed completion period as caused by any of the perils or hazards set forth in and required to be insured pursuant to **Section x**, for a delay period of not less than two (2) years with a limit of not less than One Million Dollars (\$1,000,000). If available at commercially reasonable rates, such builders risk insurance also will extend to cover the peril of terrorism.

(g) Contractor's Pollution Legal Liability Insurance. Tenant will cause to be maintained during the period of construction of the Initial Improvements and during any periods of Subsequent Construction, that could reasonably be anticipated to involve a Release of Hazardous Materials on or about the Premises, Contractor's Pollution Legal Liability Insurance for any and all Claims caused by pollution conditions, that are sudden, accidental or gradual, resulting from the contractor's operations, or for which contractor is legally liable, in connection with the construction of the Initial Improvements or Subsequent Construction, whether such operations be by Tenant or Tenant's contractors, subcontractors, consultants or suppliers of the

contractor. The foregoing policy will contain minimum liability limits of Five Million Dollars (\$5,000,000) per occurrence and Five Million Dollars (\$5,000,000) in the aggregate with a deductible not to exceed Two Hundred Fifty Thousand Dollars (\$250,000). The foregoing policy will at a minimum contain coverage for or be specifically endorsed to include coverage for pollution conditions resulting in, arising from or in connection with: (i) bodily injury (including death), property damage and environmental cleanup costs (on-site and off-site) resulting from construction of the Initial Improvements or any Subsequent Construction; (ii) the use or operation of motor vehicles (whether owned, non-owned or leased) in connection with construction of the Initial Improvements or any Subsequent Construction, including transportation of any Hazardous Materials to or from the Premises, including any interim or temporary storage or transfer sites (such transportation coverage will also include loading/unloading of materials); (iii) claims by third parties (other than a disposal site owner) for bodily injury or property damage arising from any disposal location or facility, both final and temporary, to which any waste that is generated in connection with the construction of the Initial Improvements or any Subsequent Construction under this Lease or in connection with any Remediation obligation of Tenant pursuant to **Section 21** (Hazardous Materials) is delivered; all such disposal locations/facilities, both final and temporary, will be scheduled to the foregoing policy as Non-Owned Disposal Sites for coverage under such policy. The foregoing policy will be written on an occurrence form and be in effect during the construction periods described above, or, if not available on an occurrence form, then on a claims-made form. If the foregoing policy is written on a claims made form, then the foregoing policy will be maintained for, or contain an extended reporting period of, at least five (5) years. The foregoing policy definition of "**Covered Operations**" or any other such designation of services or operations performed by Tenant's contractors must include all work or services performed by Tenant's contractors and their respective subcontractors, consultants, or suppliers

(h) Boiler and Machinery Insurance. Unless same is not included within Tenant's property insurance, Tenant shall maintain boiler and machinery insurance covering damage to or loss or destruction of machinery and equipment located on the Premises or in the Improvements that is used by Tenant for heating, ventilating, air-conditioning, power generation and similar purposes, in an amount not less than one hundred percent (100%) of the actual replacement value of such machinery and equipment.

(i) Professional Liability. Tenant shall require all providers of professional services, including architectural, design, engineering, geotechnical, and environmental professionals under contract with Tenant for the Initial Improvements or any Subsequent Construction to maintain professional liability (errors or omissions) insurance, with limits not less than \$2,000,000 for architects and \$1,000,000 for any other professionals for each claim and \$4,000,000 annual aggregate limit for architects and \$2,000,000 annual aggregate for any other professionals with respect to all professional services provided to Tenant therefor.

(j) Crime policy. Crime policy or fidelity bond covering Tenant's officers and employees against dishonesty with respect to funds provided by Port, in the amount of Seventy Five Thousand Dollars (\$75,000) each loss, with any deductible not to exceed Fifty Thousand Dollars (\$50,000) each loss.

(k) Other Coverage. Not more often than every year and upon not less than ninety (90) days prior written notice, Port may require Tenant to increase the insurance limits set forth above or to provide other coverage and/or different coverage amounts as may be required by Law, the City's Risk Manager or as is generally required by owners of buildings similar in size, character, age and location as the Building with respect to risks comparable to those associated with the use of the Premises.

22.2. Claims-Made Policies. If any of the insurance required in **Section 22.1** above 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 three (3) 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.

22.3. Annual Aggregate Limits. If any of the insurance required in *Section 22.1* above is provided under a form of coverage which includes an annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be double the occurrence limits specified herein.

22.4. Payment of Premiums. Tenant shall pay the premiums for maintaining all required insurance.

22.5. Waiver of Subrogation Rights. Notwithstanding anything to the contrary contained herein, Port and Tenant (each a "**Waiving Party**") each hereby waives any right of recovery against the other party for any loss or damage sustained by such other party with respect to the Premises or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other party, to the extent such loss or damage is covered by insurance which is required to be purchased by the Waiving Party under this Lease or is actually covered by insurance obtained by the Waiving Party. Each Waiving Party agrees to cause its insurers to issue appropriate waiver of subrogation rights endorsements to all policies relating to the Premises; provided, the failure to obtain any such endorsement shall not affect the above waiver.

22.6. General Insurance Matters.

(a) All liability insurance policies required to be maintained by Tenant hereunder shall contain a cross-liability clause, shall name as additional insureds by written endorsement the "**City And County Of San Francisco, MOHCD; and the San Francisco Port Commission and their respective officers, directors, employees and agents,**" shall be primary and non-contributory to any other insurance available to the additional insureds with respect to claims arising under this Lease, and shall provide that such insurance applies separately to each insured against whom complaint is made or suit is brought except with respect to the limits of the company's liability.

(b) Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions in excess of \$50,000 must be declared to and approved by City's Risk Manager. In the event deductibles or self-insured retentions are in excess of \$50,000, at the option of City's Risk Manager, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City and its commissioners, members, officers, agents, and employees; or the Tenant shall procure a financial guarantee satisfactory to the City's Risk Manager guaranteeing payment of losses and related investigations, claim administration and defense expenses.

(c) As to earthquake insurance:

(i) during construction of the Initial Improvements, such insurance shall be in an amount at least equal to the maximum amount as is available at rates that are commercially reasonable for owners or operators of comparable projects located in the City and County of San Francisco, from recognized carriers (with a deductible of up to but not to exceed five percent (5%) of the then-current, full replacement cost of the Improvements or other property being insured pursuant thereto (including building code upgrade coverage and without any deduction being made for depreciation).

(ii) from and after Completion of the Initial Improvements, such insurance shall be in an amount at least equal to One Hundred percent (100%) of the maximum probable loss that would be sustained by the Premises as a result of an earthquake measuring 8.0 on the Richter Scale, as determined not less frequently than every 5 years by the City's Risk Manager, but only at rates that are commercially reasonable for owners or operators of comparable projects located in the City and County of San Francisco.

(d) As to flood insurance only:

(i) During construction of the Initial Improvements, such insurance shall be in an amount at least equal to the maximum amount as is available at rates that are commercially reasonable for owners or operators of comparable projects located in the City and County of San Francisco, from recognized insurance carriers (with a deductible up to, but not to exceed fifteen percent (15%) of the then-current, full replacement cost of the Improvements or other property being insured pursuant thereto (including building code upgrade coverage and without any deduction being made for depreciation);

(ii) from and after Completion of the Initial Improvements, such insurance shall be in an amount at least equal to the amount available at rates that are commercially reasonable for owners or operators of comparable projects located in the City and County of San Francisco, from recognized insurance carriers, but only at rates that are commercially reasonable for owners or operators of comparable projects located in the City and County of San Francisco.

(e) All insurance policies required to be maintained by Tenant hereunder shall be issued by an insurance company or companies reasonably acceptable to City with an AM Best rating of not less than A-VIII and authorized to do business in the State of California. Tenant's compliance with this Section shall in no way relieve or decrease Tenant's liability under this Lease.

(f) All insurance policies required to be maintained by Tenant hereunder shall be endorsed to provide for thirty (30) days prior written notice of cancellation for any reason, intended non-renewal, or reduction in coverage to Tenant and City.

(g) Tenant shall deliver to Port certificates of insurance, additional insured policy endorsements and waiver of subrogation endorsements in a form satisfactory to and at the direction of Port, such as hard copy documentation or use of an internet-based insurance compliance tracking systems such as EXIGIS, evidencing the coverages required herein, together with evidence of payment of premiums, on or before the Commencement Date, and upon renewal of each policy not less than thirty (30) days before expiration of the term of the policy. If Port is using an internet-based insurance compliance tracking system, Tenant's broker shall complete the insurance questionnaire and submit all required documentation. Tenant shall, upon Port's request, promptly furnish Port with a complete copy of any insurance policy required hereunder.

(h) Right of City to Maintain Insurance. If Tenant has determined that obtaining earthquake or flood insurance prior to commencement of construction of the Initial Improvements pursuant to **Section 22.6(c)** (As to earthquake insurance) or **(d)** (As to flood insurance only) is not commercially reasonable, then Tenant will provide Port with such documents evidencing such determination. If at any time Tenant fails to maintain the insurance required pursuant to this **Section 22** (Insurance), or fails to deliver certificates and/or endorsements as required pursuant to this **Section 22** (Insurance) then, upon ten (10) days' written notice to Tenant, City may obtain and cause to be maintained in effect such insurance by taking out policies with companies satisfactory to Port. Within ten (10) days following demand, Tenant will reimburse City for all amounts so paid by City, together with all costs and expenses in connection therewith and interest thereon at the Default Rate.

(i) Insurance of Others. To the extent Tenant requires liability insurance policies to be maintained by Subtenants, contractors, subcontractors or others in connection with their use or occupancy of, or their activities in, on, under, around, or about the Premises, Tenant will require that such policies be endorsed to include the **CITY AND COUNTY OF SAN FRANCISCO, MOHCD, AND THE SAN FRANCISCO PORT COMMISSION AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS** as additional insureds. Notwithstanding the foregoing, Tenant will require all contractors and sub-

contractors performing work in, on, under, around, or about the Premises and all operators and Subtenants of any portion of the Premises to carry the following coverages: (i) commercial general liability with limits of no less than Two Million Dollars (\$2,000,000) per occurrence and Four Million Dollars (\$4,000,000) annual general aggregate, (ii) workers' compensation in amounts required by law, (iii) employer's liability coverage in an amount not less than One Million Dollars (\$1,000,000) per accident, per employee and policy limit for injury by disease, covering all employees employed at the Premises, (iv) automobile insurance in an amount not less than \$1,000,000 combined single limit covering use of owned, non-owned or hired vehicles utilized in the performance of work in, on, under, around, or about the Premises.

(j) Port Entitled to Participate. Except to the extent inconsistent with the terms of **Section 34** (Leasehold Mortgage), with respect to Real Property Insurance proceeds, Port is entitled to participate in and consent to any settlement, compromise or agreement with respect to any Claim in excess of Two Million Dollars (\$2,000,000), which amount will be increased by Five Hundred Thousand Dollars (\$500,000.00) on each ten (10) year Anniversary Date, covered by the insurance required to be carried hereunder; provided, however, that (i) Port's consent will not be unreasonably withheld, and (ii) no consent of Port will be required in connection with any such settlement, compromise or agreement concerning damage to all or any portion of the Improvements if Tenant will have agreed in writing to commence and complete Restoration.

(k) Release and Waiver. Each Party hereby waives all rights of recovery and causes of action, and releases the other Party from any liability, losses occasioned to the property of each such Party, which losses are of the type covered under the property policies required by this **Section 22**, or to the extent that such loss is reimbursed by an insurer.

(l) No Limitation. The Indemnification requirements under this Lease or any other Transaction Documents will not be limited by any insurance requirements set forth in any such documents.

23. DAMAGE OR DESTRUCTION.

23.1. General; Notice; Waiver.

(a) General. If at any time during the Term any damage or destruction occurs to all or any portion of the Premises including to the Improvements from fire or other casualty (each a "Casualty"), the rights and obligations of the Parties shall be as set forth in this Section.

(b) The provisions of this **Section 23** are subject to the rights of Lenders as provided in this Lease.

(c) Notice. If there is any Casualty (i) which could materially impair use or operation of any material portion of the Improvements for their intended purpose for a period of thirty (30) days or longer, or (ii) exceeds in an individual instance the amount of One Hundred Thousand Dollars (\$100,000), or an aggregate amount of Two Hundred Fifty Thousand Dollars (\$250,000), Tenant shall promptly, but not more than ten (10) days after the occurrence of any such Casualty, give written notice thereof to Port describing with as much specificity as is reasonable, the nature and extent of the damage from such Casualty ("Casualty Notice") then within ninety (90) days following Tenant's delivery to Port of the Casualty Notice or other such date as specified in **Section 23.4** (Tenant's Right to Terminate Due to Casualty), Tenant shall notify Port of Tenant's election to: (1) commence and complete Restoration of the Improvements, or (2) terminate this Lease subject to the conditions in **Section 23.4** (Tenant's Right to Terminate Due to Casualty).

(d) Waiver. The Parties intend that this Lease fully govern all of their rights and obligations in the event of any Casualty. Accordingly, Port and Tenant each hereby waive the provisions of Sections 1932(2), 1933(4), 1941 and 1942 of the California Civil Code, as such sections may from time to time be amended, replaced, or restated.

23.2. No Release of Tenant's Obligations. Except as set forth in **Section 23.4** (Tenant's Right to Terminate Due to Casualty), no Casualty shall permit Tenant to surrender this Lease or relieve Tenant from any Lease obligations. In the event of any damage or destruction to the Improvements that does not result in a termination of this Lease, and at all times before completion of Restoration, Tenant shall pay to Port all Rent at the times and in the manner described in this Lease. If this Lease does not terminate, proceeds of rental interruption or business interruption insurance shall be applied first to unpaid Rent due or coming due before completion of the Restoration and then to costs of Restoring the Premises with any remaining balance to be retained by Tenant.

23.3. Tenant's Obligation to Restore. Except in the event of an Uninsured Casualty or Insured Casualty for which Tenant elects to terminate this Lease under **Section 23.4** (Tenant's Right to Terminate Due to Casualty), if all or any portion of the Improvements are damaged or destroyed by Casualty, Tenant shall promptly (allowing for securing necessary Regulatory Approvals), commence and diligently Restore the Improvements to the condition they were in immediately before such Casualty in accordance with then applicable Laws (including any required code upgrades), subject to the availability of insurance proceeds and Force Majeure. All Restoration shall be performed in accordance with the requirements set forth in **Section 15** (Subsequent Construction) relating to Subsequent Construction and shall be at Tenant's sole expense. In connection with any Restoration, the Improvements may be redesigned, made larger or smaller, reconfigured, or otherwise modified, provided that the Improvements as so redesigned are at least equivalent in quality, appearance, public safety, and durability to and in all respects consistent with the Initial Improvements and affording similar public benefit as the original Project, subject to the Permitted Uses. If the Initial Improvements have not been completed at the time of the Casualty, Tenant shall mitigate any immediate or imminent threat to the public safety and welfare or damage to the environment, as determined by Port in its sole discretion.

If insurance proceeds are available for such Restoration and Tenant is obligated to Restore or elects to Restore, then subject to the rights of any Lender, Tenant shall have the right to negotiate an insurance settlement for claims in connection with such Restoration; provided the settlement of any insurance claims in excess of Two Million Dollars (\$2,000,000) shall be subject to the reasonable approval of Port.

23.4. Tenant's Right to Terminate Due to Casualty.

(a) **"Insured Casualty."** If, at any time during the Term, more than fifty percent (50%) of the Initial Improvements are destroyed by Casualty and if the insurance proceeds do not provide at least ninety percent (90%) of the funds necessary to accomplish Restoration of the Initial Improvements, then Tenant, with the written consent of Lenders, may terminate this Lease upon written notice to Port within six (6) months after the later of: (i) the date of such Casualty, or (ii) the date on which Tenant is notified of the amount of insurance proceeds available for Restoration. In the event Tenant is required or elects to restore the Initial Improvements, all proceeds of any policy of insurance required to be maintained by Tenant under this Lease shall, subject to any applicable rights of Lenders, be used by Tenant for that purpose and Tenant shall make up from its own funds or obtain additional financing as reasonably approved by Port any deficiency between the amount of insurance proceeds available for the work of restoration and the actual cost thereof.

(b) **"Uninsured Casualty."** If, at any time during the Term, (i) more than fifty percent (50%) of the Initial Improvements are damaged or destroyed by Casualty; and (ii) the insurance proceeds do not provide at least ten percent (10%) of the funds necessary to accomplish the restoration, and (iii) in the reasonable opinion of Tenant, the undamaged portion of the Initial Improvements cannot be completed or operated on an economically feasible basis; and (iv) there is not available to Tenant any feasible source of third party financing for Restoration reasonably acceptable to Tenant; then Tenant may, with the written consent of each

Lender, terminate this Lease upon thirty (30) days written notice to Port. Any Casualty event not insured due to Tenant's failure to maintain the requisite insurance policies under **Section 22** (Insurance) shall not be considered an Uninsured Casualty. As to any Casualty caused by earthquake or flood, the amount of such policy deductible shall be deemed to be the lesser of the amount of the policy deductible for non-earthquake or flood damage under Tenant's property insurance policy maintained under **Section 22** (Insurance) as of the date of Casualty, or the actual amount of such policy deductible.

(c) In the event that Tenant terminates this Lease pursuant to this **Section 23.4** (Tenant's Right to Terminate Due to Casualty), all insurance proceeds and damages payable by reason of the Casualty shall be divided among Port, Tenant and Lenders subject to Lender's requirements or if no Lenders' requirements apply, in accordance with the provisions of **Section 23.4(d)** and Tenant shall notify Port promptly and not consent to any settlement or adjustment of an insurance award without Port's written approval, which approval shall not be unreasonably withheld or delayed.

(d) Conditions to Termination. As a condition precedent to Tenant's right to terminate this Lease, there shall be no uncured Tenant Event of Default and Tenant shall do all of the following:

(i) Pay to Port any Rent due and payable as of the proposed termination date;

(ii) Provide to Port the estimated cost of Restoration and the amount by which the estimated cost of Restoration exceeds insurance proceeds payable (or those insurance proceeds which would have been payable but for Tenant's failure to maintain insurance required to be maintained hereunder) plus the amount of any deductible; and

(iii) Upon receipt by Tenant of any insurance proceeds paid on account of such Casualty, pay or cause to be paid the following amounts in the following order of priority:

(1) First, to each Lender, in order of priority, a portion of the remaining casualty insurance proceeds arising out of or in connection with the Casualty in an amount not to exceed the aggregate amounts then owed to each such Lender;

(2) Second, to Port (or Tenant, if such work is performed by, or on account of, Tenant at its cost) for the actual costs incurred for any work required to alleviate any conditions caused by such Casualty that could cause an immediate or imminent threat to the public safety and welfare or damage to the environment, including any demolition or hauling of rubble or debris;

(3) Third, to Port for the value of Port's reversionary interest in the Premises and the Improvements (in their condition immediately prior to the Casualty event), as of the date the Term would have expired but for the Casualty; and

(4) Fourth, the remainder to Tenant.

(e) Upon termination in accordance with this Section, Tenant shall deliver possession of the Premises to Port and quitclaim to Port all right, title and interest in the Premises and in any remaining Improvements.

(f) In the event the Tenant terminates this Lease pursuant to this Section, then Tenant shall clean up and remove all debris from the Premises and adjacent and underlying property and leave the Premises in a clean and safe condition and in compliance with all Laws upon surrender, as described in **Section 23.4(d)(iii)(1)** (Conditions to Termination). If the proceeds of any insurance policy are insufficient to pay the clean-up and other costs described in **Section 23.4(d)(iii)(1)** (Conditions to Termination), Tenant shall have the obligation to pay the portion of such costs not covered by the insurance proceeds.

(g) If Tenant elects to terminate this Lease solely due to an Uninsured Casualty, then within sixty (60) days after Port's receipt of the Casualty Notice, Port may elect by giving written notice to Tenant, to continue this Lease and pay the amount to Tenant by which the cost of Restoration will exceed the net proceeds of any insurance proceeds (or which would have been payable but for Tenant's failure to maintain such insurance). If Port elects to continue this Lease as set forth in this Section, then notwithstanding Tenant's election to terminate this Lease, this Lease will not terminate and Tenant will be obligated to Restore the Premises in accordance with **Section 23.3** (Tenant's Obligation to Restore).

(h) Upon termination under this **Section 23.4** (Tenant's Right to Terminate Due to Casualty), the Parties shall be released thereby without further obligations to the other Party as of the effective date of such termination; provided, however, that the Indemnification provisions and any other provisions that explicitly survive expiration or earlier termination of this Lease shall survive any such termination. The rights of any Lender to a New Lease and any rights of Tenant or Port to receive insurance proceeds in accordance with the provisions of this Lease will survive the termination of this Lease.

23.5. Distribution Upon Lease Termination due to Default. If Tenant is obligated to and fails to Restore the Improvements as provided herein and commits a Tenant Event of Default in failing to Restore the Improvements and this Lease is thereafter terminated due to such Tenant Event of Default, all insurance proceeds held by Port, Tenant and any Lender, or not yet collected, shall be paid to and retained by Port, subject to the rights of Lenders, if any, under **Section 34** (Leasehold Mortgage).

23.6. Use of Insurance Proceeds.

(a) Restoration. Except in the event of termination of this Lease in accordance with **Section 23.4** (Tenant's Right to Terminate Due to Casualty), all all-risk coverage insurance proceeds, earthquake and flood proceeds, boiler and machinery insurance proceeds, and any other insurance proceeds paid to Tenant by reason of Casualty (other than business or rental interruption insurance), must be used by Tenant for Restoration of the Premises except as specifically provided in this **Section 23**.

(b) Payment to Trustee. Except as otherwise expressly provided to the contrary in this **Section 23**, if Tenant Restores the Improvements and there is a Mortgage encumbering this Lease, then any insurer paying compensation in excess of One Million Dollars (\$1,000,000) under any all-risk or earthquake insurance policy required to be carried hereunder shall pay such proceeds to the Lender or an insurance trustee reasonably acceptable to Port designated by such Lender, in accordance with the Mortgage. If there is no Mortgage encumbering this Lease, then the insurance proceeds shall be paid to a trustee (which shall be a commercial bank or trust company, designated by Port within twenty (20) days after written request by Tenant, having an office in San Francisco). Unless agreed otherwise by the Parties, and subject to the requirements of Lender, the insurer shall pay insurance proceeds of One Million Dollars (\$1,000,000) or less directly to Tenant for purposes of Restoration in accordance with this Lease. If there is no Mortgage encumbering the Lease and a trustee is holding the proceeds, Port shall instruct the trustee to pay Tenant the cost of any emergency repairs necessitated by the Casualty event in advance of the actual Restoration within thirty (30) days after such request. If the funds are paid to a trustee in accordance herewith, the trustee shall hold all insurance proceeds in an interest-bearing federally insured account (with interest added to the proceeds). The trustee or Lender shall pay to Tenant, from time to time as the work of Restoration progresses, in amounts designated by certification by architects licensed to do business in the State, showing the application of such amounts as payment for such Restoration. Payment to Tenant shall not be construed as relieving Tenant from the necessity of promptly Restoring the Improvements in accordance with the terms of this Lease. Tenant shall pay all reasonable fees of the trustee, bank or trust company for its services. Provided that all Rent due and payable to Port has been paid and no uncured Tenant Event of Default (or unmatured Tenant

Event of Default) exists upon completion of the Restoration in accordance with the provisions of this **Section 23**, any excess insurance proceeds remaining with the trustee or Lender after completion of the Restoration of the Premises shall be paid to Tenant.

23.7. Arbitration of Disputes.

(a) Estimators. In the event Port and Tenant cannot mutually agree upon the cost of Restoration (the "**Disputed Amount**") after good faith efforts to resolve the Disputed Amount, such dispute shall be determined in the manner provided in this **Section 23.7**. Either Party may invoke the provisions of this **Section 23.7** at any time there is a Disputed Amount by delivering written notice to the other Party ("**Arbitration Notice**"). Within twenty (20) business days after receipt of the Arbitration Notice, each Party shall designate, by written notice to the other Party, a professional cost estimator having at least ten (10) years' experience in estimating construction costs of major construction projects in Port lands, and who is competent, licensed, disinterested and independent (each an "**Estimator**"). Each Estimator shall make an independent determination of the Disputed Amount, in accordance with the provisions hereof. The Estimators may share and have access to objective information in preparing their estimates, but they will otherwise act independently. Each Estimator shall complete, sign and submit its written estimate of the cost of Restoration ("**Restoration Cost**") within fifteen (15) days after the appointment of the last Estimator unless the Parties agree to permit a longer period of time. If the higher estimate of the Restoration Cost is not more than ten percent (10%) of the lower estimate, the Restoration Cost shall equal the average of the two (2) determinations. If a Party fails to designate an Estimator within the twenty (20) day period, then the determination made by the sole Estimator shall control.

(b) Arbitration. If the higher estimate of the Restoration Cost is more than ten percent (10%) of the lower estimate, the Parties shall agree upon and appoint a third Estimator (the "**Arbitrator**") from the City's list of approved vendors (San Francisco Department of Real Estate) within thirty (30) days after the first two (2) determinations have been submitted to the Parties. The Arbitrator shall have the minimum qualifications set forth in **Section 23.7(a)** (Estimators), and also shall have experience acting as an arbitrator of disputes involving construction costs or construction disputes. The Parties agree to select the Arbitrator from the list of approved City vendors. Port shall provide a list of three (3) possible individuals from the approved City vendors and Tenant shall select one (1) to act as the Arbitrator. If the Parties do not appoint the Arbitrator within such thirty (30) day period, then either Party may apply to the American Arbitration Association, or any similar provider of professional commercial arbitration services, for appointment in accordance with the rules and procedures of such organization of an independent arbitrator meeting the foregoing qualifications. The Arbitrator shall consider the estimates submitted by the Estimators as well as any other relevant written evidence that the Parties may choose to submit. If a Party chooses to submit any such evidence, it shall deliver a complete and accurate copy to the other Party at the same time it submits the same to the Arbitrator. Neither Party shall conduct ex parte communications with the Arbitrator regarding the subject matter of the arbitration. Within fifteen (15) business days after his or her appointment, the Arbitrator shall make an independent determination of the Disputed Amount in the same manner as the Estimators as described above and shall determine the final Restoration Cost as follows:

(i) If the difference between the Disputed Amount determined by the Arbitrator and the amount determined by the Estimator appointed by Port is ten percent (10%) or less than the higher of the amount determined by the Arbitrator and the Estimator appointed by Port, then the Restoration Cost will be the average of those two values.

(ii) If the difference between the Disputed Amount determined by the Arbitrator and the amount determined by the Estimator appointed by Tenant is ten percent (10%) or less than the higher of the amount determined by the Arbitrator and the Estimator appointed by Tenant, then the Restoration Cost will be the average of those two values.

(iii) If neither of the conditions in subsections (i) or (ii) is met or if both of the conditions in subsections (i) and (ii) are met, then the Arbitrator's value will be deemed to be the final Restoration Cost.

(c) Conclusive Determination. Except as provided in California Code of Civil Procedure Section 1286.2 (as the same may be amended from time to time), the determination by the Estimators, or if applicable, the Arbitrator, shall be conclusive, final and binding on the Parties. Neither the Estimators, or if applicable, the Arbitrator shall have any power to modify any of the provisions of this Lease. Subject to the provisions of this **Section 23.7** (Arbitration of Disputes), the Parties will cooperate to provide all appropriate information to the Estimators and if applicable, the Arbitrator. The Estimators, and if applicable, the Arbitrator will each report their respective determinations in writing, supported by the reasons for the determination.

(d) Conduct of Arbitration Proceeding. Any arbitration proceeding conducted pursuant to this **Section 23.7** (Arbitration of Disputes) shall be subject to California Code of Civil Procedure Sections 1280 to 1294.2 (but excluding Section 1283.05 with respect to discovery), or successor Laws then in effect relating to arbitration generally. Any such proceeding shall be conducted in San Francisco.

(e) Fees and Costs; Waiver. Each Party shall bear the fees, costs and expenses of the Estimator it selects. The Parties shall share the fees, costs and expenses of the Arbitrator and the costs and expenses of the arbitration proceeding equally. The Parties waive any claims against the Estimator appointed by the other Party, and against the Arbitrator, for negligence, malpractice, or similar claims in the performance of the estimates or arbitration contemplated by this **Section 23.7** (Arbitration of Disputes).

(f) Arbitration of Disputes. With respect to the arbitration provided for in this **Section 23.7** (Arbitration of Disputes), the Parties agree as follows:

NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISIONS IN THIS LEASE DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR BY JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT TO NEUTRAL ARBITRATION DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION.

Port's Initials _____ Tenant's Initials _____

Any judgment upon the award rendered by the arbitration may be entered in any court having jurisdiction of such arbitration in accordance with the terms of this Lease. This arbitration provision does not affect the rights of either Party to seek confirmation, correction or vacation of the arbitration award pursuant to California Code of Civil Procedure Sections 1285 et seq.

24. CONDEMNATION

24.1. General. If during the Term, there is any Condemnation of all or any part of the Leasehold Estate is taken by Condemnation, the rights and obligations of the Parties shall be determined pursuant to this **Section 24** (Condemnation), subject to the rights of any Lender.

Accordingly, Tenant waives any right to terminate this Lease upon the occurrence of a partial condemnation under Sections 1265.120 and 1265.130 of the California Code of Civil Procedure, as those sections may from time to time be amended, replaced, or restated.

(a) Lender's Rights. The provisions of this **Section 24** are subject to the rights of Lenders as provided in this Lease.

(b) Notice. In case of the commencement of any proceedings or negotiations which might result in a Condemnation of all or any portion of the Leasehold Estate during the Term, the Party learning of such proceedings shall promptly give written notice of such proceedings or negotiations to the other Party. Such notice shall describe with as much specificity as is reasonable, the nature and extent of such Condemnation or the nature of such proceedings or negotiations and of the Condemnation that might result therefrom, as the case may be.

(c) Waiver. Except as otherwise provided in this Section, the Parties intend that the provisions of this Lease shall govern their respective rights and obligations in the event of a Condemnation. Accordingly, but without limiting any right to terminate this Lease in accordance with this Section, Tenant waives any right to terminate this Lease upon the occurrence of a Partial Condemnation under Sections 1265.120 and 1265.130 of the California Code of Civil Procedure, as such sections may from time to time be amended, replaced or restated.

24.2. Total Condemnation. If there is a Condemnation of the entire Leasehold Estate (a "Total Condemnation"), this Lease shall terminate as of the Condemnation Date. Upon such termination, except as otherwise set forth in this Lease, the Parties shall be released without further obligations to the other Party as of the Condemnation Date.

24.3. Partial Condemnation. If only a portion of the Leasehold Estate is taken by Condemnation ("Partial Condemnation"), this Lease shall remain in effect, except that Tenant may, with Lender's written consent, elect to terminate this Lease if, in Tenant's reasonable judgment, the remaining portion of the Improvements are rendered unsuitable for Tenant's continued use. If Tenant elects to terminate this Lease, Tenant must exercise its right to terminate pursuant to this paragraph by giving notice to Port within thirty (30) days after Port notifies Tenant of the nature and the extent of the taking and shall notify Port of the date of termination, which date shall not be earlier than thirty (30) days nor later than six (6) months after Tenant has notified Port of its election to terminate; except that this Lease shall terminate on the date the condemnor has the right to possession of the Premises if such date falls on a date before the date of termination as designated by Tenant. If Tenant does not terminate this Lease within such thirty (30) day notice period, this Lease shall continue in full force and effect.

In the event of a Partial Condemnation, if this Lease remains in effect, subject to the terms of a Leasehold Mortgage, Tenant may use the proceeds to pay costs of Restoration, in which case the portion of the Net Awards and Payments allocable to Restoration shall be payable to Tenant, Lenders, or trustee in accordance with the requirements governing payment of insurance proceeds set forth in **Section 23.4(d)(iii)** (Conditions to Termination).

24.4. Award and Distribution. Except as provided in **Sections 24.5** (Temporary Condemnation) and **24.6** (Relocation Benefits, Personal Property), awards and other payments to either Port or Tenant on account of a Condemnation, less costs, fees and expenses of either Port or Tenant (including reasonable attorneys' fees and costs) incurred in the collection thereof ("Net Awards and Payments") shall be allocated as follows:

(a) First, to each Lender, if any, in order of priority, for payment of all outstanding amounts of the loan secured by such Mortgage, together with its reasonable out of pocket expenses and charges in collecting the Net Awards and Payments, including without limitation, its reasonable attorneys' fees incurred in the Condemnation

(b) Second, to Port for the value of the condemned land only, subject to the particular uses of the Premises existing immediately prior to the Condemnation Date, and without reference to, or inclusion of Port's reversionary interest in the value of the Improvements (the "**Condemned Land Value**");

(c) Third, to Port for any accrued and unpaid Rent owed by Tenant to Port for periods prior to the Condemnation Date;

(d) Fourth, to Tenant in an amount equal to the value of Tenant's Leasehold Estate, not including the value of the Improvements on the Premises, for the remaining unexpired portion of the Term to the original scheduled Expiration Date; and

(e) Fifth, the balance of the Net Awards and Payment shall be divided proportionately between Port, for the value of Port's reversionary interest in the Improvements (based on the date the Term would have expired but for the event of Condemnation), and Tenant, for the value of the Improvements for the remaining unexpired portion of the Term to the original scheduled Expiration Date.

(f) Notwithstanding anything to the contrary set forth in this *Section 24* (Condemnation) any portion of the Net Awards and Payments which has been specifically designated by the condemning authority or in the judgment of any court to be payable to Port or Tenant on account of any interest in the Leasehold Estate or the Improvements separate and apart from the Condemned Land Value, the value of Port's reversionary interest in the Improvements, Tenant's Leasehold Estate, or the value of the Improvements on the Premises for the remaining unexpired portion of the Term, shall be paid to Port or Tenant, as applicable, as so designated by the condemning authority or judgment.

(g) Notwithstanding anything to the contrary set forth in this *Section 24* (Condemnation), in the event of a Condemnation resulting in the termination of this Lease, if required pursuant to the provisions of a Mortgage, all Net Awards and Payments shall be paid for the express benefit of Port to Lender holding a first lien encumbrance on Tenant's Leasehold Estate, provided that such Lender agrees to distribute the Net Awards and Payments pursuant to the allocation set forth in this *Section 24* (Condemnation).

24.5. Temporary Condemnation. If there is a Condemnation of all or any portion of the Leasehold Estate for a temporary period lasting less than the remaining Term, this Lease shall remain in full force and effect, there shall be no abatement of Rent, and the entire Award shall be payable to Tenant.

24.6. Relocation Benefits, Personal Property. Notwithstanding *Section 24.4*, Port shall not be entitled to any portion of any Net Awards and Payments payable in connection with the Condemnation of the Personal Property of Tenant or any of its Subtenants, or any moving expenses, loss of goodwill or business loss or interruption of Tenant, severance damages with respect to any portion of the Premises and Improvements remaining under this Lease, or other damages suffered by Tenant.

25. INDEMNITY AND EXCULPATION.

25.1. General Indemnity. Tenant shall Indemnify Port, MOHCD, City, including, but not limited to, all of their respective boards, commissions, departments, agencies, and other subdivisions, and their respective Agents (collectively, "**Indemnified Parties**") from, and shall defend them, without cost to the Indemnified Parties, against any and all Claims arising directly or indirectly out of: (a) any accident, injury to or death of any person, including any Agents and/or Invitees of Tenant, or loss or damage to or destruction of any property occurring in, on or about the Premises, the Improvements or any other Port property, from any cause whatsoever, or (b) any default by Tenant in the observance or performance of any of the terms, covenants or conditions of this Lease, or (c) the use, occupancy, manner of use or occupancy, or condition of the Premises or the activities therein by Tenant, its Agents, or Invitees, or (d) any construction or

other work undertaken by Tenant on the Premises whether before or during the Term, or (e) any acts, omissions or negligence of Tenant, its Agents or Invitees, in, on or about the Premises or any other Port property.

25.2. Hazardous Materials Indemnity.

(a) In addition to its obligations under *Section 25.1* (General Indemnity), Tenant, for itself and on behalf of its Agents and Invitees, agrees to Indemnify the Indemnified Parties from any and all Claims and Hazardous Material Claims that arise as a result of: (i) any Hazardous Material Condition, and (ii) Tenant's Exacerbation of any Hazardous Material Condition. Notwithstanding the forgoing, Tenant shall have no have Indemnity obligation arising from an Excluded Condition.

(b) Tenant's obligation to Indemnify the Indemnified Parties includes: (i) costs incurred in connection with any Investigation or Remediation requested by City or required by any Environmental Regulatory Agency and to restore the affected area to its condition before the Release; (ii) damages for diminution in the value of the Premises; (iii) damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises; (iv) damages arising from any adverse impact on marketing the space; (v) sums paid in settlement of Claims, Hazardous Material Claims, Environmental Regulatory Actions, including fines and penalties; (vi) natural resource damages; and (vi) attorneys' fees, consultant fees, expert fees, court costs, and all other litigation, administrative or other judicial or quasi-judicial proceeding expenses. If City pays any costs within the scope of this section, Tenant must reimburse City for its costs, plus interest at the Interest Rate from the date City incurs each cost until paid, within three (3) business days after City's payment demand. Tenant's obligations hereunder shall survive the expiration or earlier termination of this Lease.

25.3. Scope of Indemnities. The Indemnification obligations of Tenant set forth in this Lease shall be enforceable regardless of the joint or concurrent, active or passive negligence of the Indemnified Parties, and regardless of whether liability without fault is imposed or sought to be imposed on the Indemnified Parties. The Indemnification obligations of Tenant set forth in this Lease shall be enforceable except to the extent that such Indemnity is void or otherwise unenforceable under applicable Law in effect on, or validly retroactive to, the date of this Lease. Except as specifically provided otherwise, the Indemnification obligations of Tenant set forth in this Lease shall exclude Claims resulting solely from the willful misconduct or gross negligence of the Indemnified Parties.

In addition to Tenant's obligation to Indemnify the Indemnified Parties, Tenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend the Indemnified Parties from any Claim which actually or potentially falls within the Indemnification obligations of Tenant set forth in this Lease, even if the allegations are or may be groundless, false or fraudulent. This Indemnification by Tenant shall begin from the first notice that any claim or demand is or may be made and shall continue at all times thereafter.

Without limiting Tenant's Indemnity obligations with respect to the Premises, Port agrees that Tenant's Indemnity for Claims relating to "other Port property" as set forth above in *Section 25.1(a)* and *Section 25.1(e)* applies only if such Claims arise directly or indirectly out of Tenant's, its Agent's or Invitee's acts, omissions or negligence.

25.4. Exculpation and Waiver. To the extent allowable by Law, Tenant, as a material part of the consideration to be rendered to City, hereby waives any and all Claims, including without limitation all Claims arising from the joint or concurrent, active or passive, negligence of the Indemnified Parties, but excluding any Claims caused solely by the Indemnified Parties' willful misconduct or gross negligence. The Indemnified Parties shall not be responsible for or liable to Tenant, and Tenant hereby assumes the risk of, and waives and releases the Indemnified Parties from all Claims for, any injury, loss or damage to any person or property in or about the Premises by or from any cause whatsoever including, without limitation, (i) any act or omission of persons

occupying adjoining premises or any part of the Improvements adjacent to or connected with the Premises, (ii) theft, (iii) explosion, fire, steam, oil, electricity, water, gas or rain, pollution or contamination, (iv) stopped, leaking or defective Building Systems, (v) Building defects, (vi) damages to goods, wares, goodwill, merchandise, equipment or business opportunities, (vii) Claims by persons in, upon or about the Premises or any other City property for any cause arising at any time, (viii) alleged facts or circumstances of the process or negotiations leading to this Lease prior to the Commencement Date and (ix) inability to use all or any portion of the Premises due to sea level rise, and (x) any other acts, omissions or causes arising at any time and from any cause, in, on, under, or about the Premises including all claims for losses arising from the joint, concurrent, active or passive negligence of any of Indemnified Parties.

Tenant understands and expressly accepts and assumes the risk that any facts concerning the Claims released in this Lease might be found later to be other than or different from the facts now believed to be true, and agrees that the releases in this Lease shall remain effective. Therefore, with respect to the Claims released in this Lease, Tenant waives any rights or benefits provided by Section 1542 of the Civil Code, which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Tenant specifically acknowledges and confirms the validity of the release made above and the fact that Tenant was represented by counsel who explained the consequences of the release at the time this Lease was made, or that Tenant had the opportunity to consult with counsel, but declined to do so.

25.5. Insurance. The Indemnification requirements under this Lease, or any other agreement between City and Tenant, will in no way be limited by any insurance requirements under any such agreements.

25.6. Survival. The provisions of *Section 25* (Indemnity and Exculpation) shall survive the expiration or earlier termination of this Lease.

26. TRANSFERS.

Transfers in the form of Leasehold Mortgages shall be subject to the provisions of *Section 34* including Lenders and Permitted Limited Partners exercising their remedies as described in *Section 34*. Any other Transfer that does not comply with this *Section 26* (or *Section 34* with respect to Leasehold Mortgages) will constitute an incurable Event of Default and will be void as to City and this Lease. City's consent to one Transfer will have no effect with respect to any other Transfer. Notwithstanding any other provision of this Lease, Port acknowledges and agrees that leases, subleases, or occupancy agreements with (i) Residential Occupants of the Building and (ii) other Subleases customarily and exclusively serving the Residential Occupants such as laundry leases will not require Port consent, provided that, as to (ii) above, Tenant provide Port with reasonable advance written notice of each such Subleases and the material terms thereof and that Port can object if Port believes that consent to such Sublease is required under this Lease, in which case, Tenant shall seek Port's consent to such Sublease.

26.1. Transfer of the Residential Portion.

(a) Except for Transfers under *Section 26.1(b)*, and subject to the rights of Lenders as set forth in *Section 34* (Leasehold Mortgage) and Permitted Limited Partners as set forth in *Section 28.4* (Rights of Permitted Limited Partner), Tenant must obtain Port's and MOHCD's prior written consent to any Transfer of any portion of the Residential Portion, which consent will not be withheld unreasonably. Without waiving or diminishing any obligation of

Tenant to Port under this Lease, any Transfer in the form of a Sale of the Residential Portion must comply with Section 10320(b)(2) of the TCAC regulations concerning transfer events and reinvestment into the project or if such provision of the TCAC regulations does not exist or is not applicable at the time of the Sale, then such comparable policy as determined by MOHCD. The Transferee shall assume all of Tenant's obligations under this Lease to the extent transferred. Tenant shall not seek Port's consent until it has obtained MOHCD's consent in writing.

(i) Tenant agrees that any of the following will be a reasonable basis for City to withhold its consent: (1) at the time Tenant requests consent, an Event of Default, or an event that with notice or the passage of time or both would constitute an Event of Default if not cured, has occurred and remains uncured; (2) the Transferee's financial condition is or may become insufficient to support all of the financial and other obligations of this Lease; (3) the Transferee's intended use of the Premises is inconsistent with this Lease, the Public Trust Determination or otherwise will affect any City interest materially and adversely; (4) the nature of the Transferee's use of the Premises would involve an increased risk of the Handling or Release of Hazardous Materials or of fire or other casualty; (5) the business reputation or character of the Transferee is not reasonably acceptable to City; or (6) the Transferee is not likely to conduct a business in the Premises of a quality substantially equal to Tenant's or otherwise reasonably acceptable to City. The Transferee shall assume all of Tenant's obligations under this Lease to the extent transferred.

(ii) At least ninety (90) days before a Transfer subject to this Section, Tenant must give City a Transfer Notice and the following information in writing: (A) the name, address, legal composition and ownership of the proposed Transferee; (B) financial statements for the three (3) years before the Transfer Date (or each year of the proposed Transferee's existence, if shorter) for the Transferee and for any other Person who will be liable for Tenant's obligations under this Lease or other reasonably adequate evidence that the proposed Transferee's financial condition and prospects are sufficient to support all of the financial and other obligations under the Lease or Sublease; (C) the Transferee's current financial statements; (iii) a copy of the proposed Transfer Agreement including all payments to be made or other consideration to be given in connection with the Transfer; and (D) the Transferee's completed pre-screening and leasing application. In addition, Tenant must provide: (1) any other information, documentation, or evidence that City requests to enable City to evaluate the Transfer and the Transferee; and (2) if any of the Transfer Terms are modified before the Transfer Date, a new Transfer Notice and all relevant documentation for any modified Transfer Terms. Until such time as Tenant has provided to Port all required information, Tenant's Transfer Notice will not be deemed to have been served or given. Tenant will immediately notify Port of any modifications to the proposed terms of the Transfer Agreement.

(iii) If City consents to the Transfer, Tenant must close the Transfer on the Transfer Terms stated in the Transfer Notice within ninety (90) days after Port notifies Tenant of Port's consent. If the Transfer Agreement does not close within the 90-day period, then City's consent will expire, unless Tenant gives City a new Transfer Notice, in which case City again will be entitled to exercise any of the options under this Section.

(b) Notwithstanding the foregoing, subject to the requirements of this **Section 26.1(b)**, the following Transfers are not subject to City's prior written consent or the requirements of this **Section 26**: (A) a Transfer of this Lease to an Affiliate of BRIDGE Housing Corporation or The John Stewart Company; (B) a Transfer to a Lender in connection with such Lender's exercise of its remedies against Tenant pursuant to **Section 34** (Leasehold Mortgage) and subject to the requirements of **Section 34** (Leasehold Mortgage); (C) a Transfer to a limited partnership or limited liability company formed for the tax credit syndication of the Project, whose managing general partner is an Affiliate of BRIDGE Housing Corporation and whose administrative general partner is an Affiliate of The John Stewart Company, and MOHCD has approved the Transferee in writing; (D) a Transfer to a limited liability company formed to lease or manage the Residential Portion in which Affiliates of BRIDGE and JSCo are members; (F) a

Transfer of the managing general partnership or its members interest to BRIDGE or an Affiliate of BRIDGE or to another nonprofit public benefit corporation approved in advance in writing by MOHCD; (G) a Transfer of the administrative general partner or its member's interest to JSCo or an Affiliate of JSCo or to another entity approved in advance in writing by MOHCD; (H) a Transfer of any general partnership interest to an Affiliate of the tax credit investor limited partner or a removal or replacement of a general partner of Tenant in accordance with the terms of the Tenant's limited partnership agreement; (I) a Transfer of any limited partnership or membership interest in Tenant to an investor under the tax credit syndication of the Project approved in writing by MOHCD; or (J) the grant or exercise of an option agreement between Tenant and Tenant's general partner or manager or any of its Affiliates in connection with the tax credit syndication of the Project where such agreement has been previously approved in writing by MOHCD.

Tenant may make a Transfer under this *Section 26.1(b)*, provided: (1) Tenant gives City written notice at least sixty (60) days prior to the proposed Transfer Date and provides copies of all documentation evidencing compliance with the conditions in this Section, including where required, MOHCD's written approval, unless such Transfer requires approval from the Citywide Affordable Housing Loan Committee; (2) at the time Tenant provides City with notice, no Event of Default or Unmatured Event of Default has occurred and remains uncured; (3) the proposed Transferee must have a net worth which is at least equal to the greater of Tenant's net worth as of the Commencement Date or Tenant's net worth as of the day prior to the effective date of the proposed transfer as evidenced to City's reasonable satisfaction; and (4) the proposed Transferee must operate the Project for the Permitted Use and no other purpose.

26.2. *Transfer of the Non-Residential Portion.*

(a) Except for Transfers under *Section 26.2(b)*, and subject to the rights of Lenders as set forth in *Section 34* (Leasehold Mortgage) and Permitted Limited Partners as set forth in *Section 28.4* (Rights of Permitted Limited Partner), Tenant must obtain Port's prior written consent to any Transfer of the Non-Residential Portion or portion thereof, which Port will not withhold unreasonably.

(i) At least sixty (60) days before a Transfer subject to this Section, Tenant must give Port a Transfer Notice including the information required under *Section 26.1(a)(ii)*. Until such time as Tenant has provided to Port all required information, Tenant's Transfer Notice will not be deemed to have been served or given. Tenant will immediately notify Port of any modifications to the proposed terms of the Sublease.

(ii) Port's Options. Upon receiving Tenant's Notice, Port will have the right to either (A) consent to the proposed Transfer, which consent shall not be unreasonably withheld, subject to any reasonable conditions upon such Transfer or (B) deny its consent to the proposed Transfer on the following reasonable grounds: (1) at the time Tenant requests Port's consent, an Event of Default or an Unmatured Event of Default has occurred and remains uncured; (2) that the proposed Transferee's financial condition and prospects are or could become insufficient to support all of the financial and other obligations of the proposed Sublease; (3) that the use to which the sublease premises will be put by the proposed Transferee is inconsistent with the terms of this Lease or the Public Trust Determination, or will otherwise affect any Port interest materially and adversely; (4) the business reputation or character of the proposed Transferee is not reasonably acceptable to Port or the proposed Transferee is not likely to conduct a business in the Premises of a quality substantially equal to Tenant's or otherwise reasonably acceptable to Port; (5) that the nature of the proposed Transferee's intended or likely use of the Premises would involve an unmitigated risk of the Handling, Release or mishandling of Hazardous Materials and Port reasonably believes that the measures proposed by Transferee are insufficient to mitigate the risk of Handling or Release of Hazardous Materials by Transferee, or otherwise materially increase the risk of fire or other casualty; or (6) in the case of a Sublease.

that (i) the rental rate does not reflect an arm's length transaction or is below the fair market rent for similar use and type of premises.

(b) Authorized Restaurant Sublease. Notwithstanding the foregoing, subject to the requirements of this *Section 26.2(b)*, the following Transfers are not subject to Port's prior written consent or the requirements of *Section 26.2*, and Tenant may enter into a Restaurant Sublease for a Ground Floor Unit without obtaining Port's consent, provided that all of the following requirements are met as of the commencement of the Sublease and throughout the Sublease term (each, an "Authorized Restaurant Sublease" and an "Authorized Restaurant Subtenant"):

(i) at least sixty (60) days prior to the effective date of the proposed Sublease, Tenant provides to Port a copy of the proposed Sublease and documentation requested by Port to evidence compliance with this Section;

(ii) the use under the sublease is visitor-serving food service;

(iii) the sublease is for a term of up to fifteen (15) years (including any renewal or extension options contained in the sublease);

(iv) rent under the sublease is no less than \$[4.40] per square foot per month (such amount to be adjusted on every 10th Anniversary Date by an increase of twenty percent (20%); provided that, if Port believes that the rental rate does not reflect an arm's length transaction or is below the fair market rent for similar use and type of premises, Port may object in which case, Tenant shall seek Port's consent to such Sublease;

(v) the sublease is a net lease under the same terms and conditions as described in *Section 7.11* as between Tenant as landlord and Subtenant as tenant;

(vi) at the time Tenant executes the Sublease, there must be no uncured Tenant Event of Default or an Unmatured Event of Default;

(vii) the proposed Subtenant's financial condition and prospects must be sufficient to support all of the financial and other obligations of the proposed Sublease;

(viii) the proposed Subtenant must conduct a business of a quality substantially equal to comparable restaurants located within the vicinity of the Premises;

(ix) any modification or amendment of the Sublease will continue to comply with the terms set forth in this *Section 26.2(b)* or will be subject to Port's consent under *Section 26.1(a)*;

(x) there shall be no further subleasing of the subleasehold; and

(xi) Provided that the following conditions are met and documentation requested by Port is provided to evidence compliance, if requested, Port will provide a non-disturbance agreement to the Authorized Restaurant Subtenant as described in *Section 26.5*:

(1) the proposed Subtenant requests a non-disturbance agreement with the notice provided under *Section 26.2(b)(i)*;

(2) concurrently with its request for a non-disturbance agreement from Port, Tenant submits an executed Tenant estoppel certificate substantially in the form attached hereto as *Exhibit M*, and Tenant certifies of the effective date of the non-disturbance agreement that the certifications made by Tenant in the estoppel certificate remain unchanged;

(3) the performance by an Authorized Restaurant Subtenant of its obligations under the Authorized Restaurant Sublease will not cause a Tenant Event of Default to occur under this Lease;

(4) the term of the Authorized Restaurant Sublease, including options, does not extend beyond the scheduled Term of this Lease; and

(5) the Authorized Restaurant Sublease includes a covenant that the Authorized Restaurant Subtenant has not and will not enter into any further subleases of the subleased space and Port shall not be bound to any such further subleasing agreement.

26.3. Transfer Agreement Requirements. Every Transfer Agreement (whether or not City's consent is required) must include the provisions set forth below.

(a) The Transferee's express assumption of, and acknowledgement and agreement that he or she will be jointly and severally liable for all of Tenant's obligations under this Lease to the extent such obligations are transferred;

(b) The Indemnification clause and waiver of claims provisions in *Section 25* (Indemnity and Exculpation) insofar as it applies to the portion of the Premises Transferred to the Transferee;

(c) Insurance provisions requiring that all of the Transferee's liability and other insurance policies name "*The City and County of San Francisco, the San Francisco Port Commission, and their directors, employees and agents*" as additional insureds and acknowledging City's right to demand increased coverage to amounts customarily required by other San Francisco landlords for premises where business activities similar to the Transferee's are conducted;

(d) A provision under which the Transferee expressly waives any and all relocation assistance and benefits in connection with this Lease to the extent permitted by applicable Laws; and

(e) For every Transfer that is a Sublease, the following must also be included:

(i) a provision stating that if this Lease is terminated for any reason, by either party, the Subtenant's right to possession under the Sublease will terminate, subject to the provisions of any Non-Disturbance Agreement executed by Port;

(ii) a requirement that the Subtenant must pay the Rent and other sums due under the Sublease directly to Port upon receiving Port's written notice that Tenant is in default under this Lease, a copy of which Port will deliver to Tenant.

(iii) a provision stating that in the event of termination, reentry or dispossession by Port under this Lease, Port may, at its option, take over all of the right, title and interest of Tenant under such Sublease, and such Subtenant shall, at Port's option, attorn to Port pursuant to the then executory provisions of such Sublease;

(iv) a statement that the Sublease is subject to and subordinate to this Lease;

(v) a prohibition on assignment or further subleasing, in whole or in part, without Port's consent, which may be given or withheld in Port's sole discretion;

(vi) a provision similar to *Section 32* (Port's Entry) requiring Subtenant to permit Port to enter its subleased space for the purposes specified in that Section; and

(vii) a provision similar to *Section 42.1* (Tenant Estoppel) requiring Subtenant, from time to time, to provide Port an estoppel certificate substantially similar to the form attached hereto as *Exhibit M*.

26.4. Copy of Executed Agreement. Tenant shall provide Port a true and complete copy of each executed Transfer Agreement regardless of whether such agreement requires Port's consent within thirty (30) days after the execution thereof.

26.5. Non-disturbance Agreement. Provided that Port consents to a Sublease, Port will enter into a commercially reasonable non-disturbance and attornment agreement with the relevant Subtenant which shall provide that the Subtenant will not be declared in default due to the act of Tenant or any other Subtenant or be held liable for the act of Tenant or any other Subtenant and that Port shall attorn to such Subtenant and recognize the Sublease in the event of termination of this Lease due to a default by Tenant. Each Non-Disturbance Agreement shall be substantially in the form attached hereto as *Exhibit N*.

26.6. Assignment of Sublease Rents. Subject to the rights of Lenders as provided in *Section 34* (Leasehold Mortgages), Tenant immediately and irrevocably assigns to Port, as security for Tenant's obligations under this Lease, all of Tenant's interest in any rent from any Sublease, except that, until the occurrence of a Tenant Event of Default, Tenant has the right to receive, collect and enjoy such rents. Subtenant will pay the rent and other sums due under any Sublease directly to Port upon receiving written notice from Port that Tenant is in default under this Lease with respect to the payment of Rent. In the event that, notwithstanding the giving of such notice, Tenant collects any rent or other sums from any Subtenant, then Tenant will hold such sums in trust for the benefit of Port and will immediately forward the same to Port. Port's collection of such rent and other sums will not constitute an acceptance by Port or attornment by such Subtenant.

26.7. No Further Consent Implied. No material terms of Transfer or Sublease after approval by Port, may be amended without Port's prior written consent. Consent to one Transfer or Sublease will not be construed as consent to a subsequent Transfer or Sublease.

26.8. No Release of Tenant. The acceptance by Port of Rent or other payment from any other person will not be deemed to be a waiver by Port of any provision of this Lease or to be a release of Tenant from any obligation under this Lease.

26.9. Notice to Port. In addition to the obligations under *Section 8.1(c)* (Reporting Requirements), within thirty (30) days of entering into any agreement under which Tenant grants any person the right to occupy or use any portion of the Premises for any period of time, including without limitation, any assignment, sublease, license, permit, concession or vendor agreement or other agreement or renewal thereof, Tenant shall provide written notice to Port and a copy of such agreement, regardless of whether Port consent is required under this Lease for such agreement. Tenant agrees to provide such further information as may be requested by City or Port to enable compliance with reporting obligations under state Law and San Francisco Administration Code Sections 23.38 and 23.39 (or any successor ordinance).

26.10. Transfer/Sublease Audit. Tenant agrees to make its Books and Records available to, and cooperate with, any City representative for the purpose of conducting an audit under the terms and conditions described in *Section 7.7* (Audit) of the accuracy of Tenant's financial reporting on an Transfer or Sublease during the Audit Period. If an audit reveals that Tenant has understated any amounts owed to Port during said Audit Period, Tenant shall pay Port, promptly upon demand, the difference between the amount Tenant has paid and the amount it should have paid to Port, plus interest at the Interest Rate from the date of the error in the payment. If an audit reveals that Tenant has overstated amounts owed to Port for said Audit Period, Tenant shall be entitled to a credit against Rent next owed equal to the difference between the amount Tenant has paid and the amount it should have paid to Port. If Tenant understates amounts owed to Port for any Audit Period by three percent (3%) or more, Tenant shall pay the cost of the audit. A second understatement within any three (3) Lease Year period of the first such understatement shall be considered an Event of Default.

26.11. Sales. In addition to all requirements in **Section 26** (Transfer) regarding Transfers and **Section 34** regarding Leasehold Mortgages, the following provisions apply to any Transfer in the form of a Sale. "**Port's Sale Participation**" includes all amounts payable to Port as required by this Section.

(a) Participation Rent Attributable to a Sale of the Residential Portion.

Tenant is not required to make any payments under this **Section 26.11(a)** until the Reserve Account required under **Section 16.2** is fully funded. Prior to the date that the Reserve Account is fully funded, Tenant shall deposit all Net Proceeds attributable to a Sale of the Residential Portion into the Reserve Account.

(i) Tenant must pay to Port one percent (1%) of Tenant's Net Sale Proceeds Attributable to a Sale of the Residential Portion as an administrative fee ("**Administrative Fee**") concurrently with and as a condition to the Sale Closing.

(ii) Participation Rent Attributable to a Sale of the Residential Portion shall be \$ _____ in any given Lease Year ("**Deferred Rent**"). Deferred Rent shall only be payable to the extent of available Net Sales Proceeds to fund an amount equal to thirty percent (30%) of Tenant's Net Sale Proceeds attributable to the Residential portion ("**Residential Participation Rent**"). Any unpaid Deferred Rent shall accrue without interest until a Transfer occurs. Provided that there is no uncured Tenant Event of Default or Unmatured Tenant Event of Default and the Reserve Account is fully funded, Port will forgive any unpaid Deferred Rent that exceeds the Residential Participation Rent as to each Transfer, if any.

(b) Participation Rent Attributable to a Sale of the Non-Residential Portion.

Tenant must pay to Port fifteen percent (15%) of Tenant's Net Sale Proceeds ("**Non-residential Participation Rent**") attributable to the non-residential portions concurrently with and as a condition to the Sale Closing.

(c) If Tenant operates at multiple locations, then Port's Sale Participation will be calculated using only the Gross Sale Proceeds, Net Sale Proceeds, and Costs of Sale reasonably attributable to the Premises.

(d) As soon as available after Port consents to the Sale, Tenant must deliver to Port an estimated closing statement that includes Tenant's best estimate of: (i) Gross Sale Proceeds; (ii) Costs of Sale; (iii) total Net Sale Proceeds; and (iv) Port's Sale Participation. The closing statement must be updated and delivered to Port the business day before the Sale Closing. If an escrow account is not established for the Sale, Tenant's chief financial officer or independent accountant must certify to Port under penalty of perjury the accuracy of the final closing statement or provide a detailed accounting of and documentation supporting any variances from the estimated closing statement in form and content reasonably acceptable to Port. Tenant must submit the amount of any underpayment with the certificate or accounting. Tenant's obligation to pay Port's Sale Participation will survive the Sale Closing and the expiration or termination of this Lease.

(e) If Tenant constructed the Initial Improvements or Subsequent Construction at the Premises, Net Sale Proceeds will be reduced by Tenant's Adjusted Basis, but only if Port previously approved Tenant's Certified Construction Costs as follows: Within ninety (90) days after Completion of the Initial Improvements or Subsequent Construction as the case may be, Tenant must deliver to Port a Construction Costs Report in form and content acceptable to Port in its reasonable discretion, accompanied by a CPA's agreed-upon procedures report prepared in accordance with AICPA standards for compliance attestation and specifying Port as an intended user. Port will notify Tenant in writing whether Port agrees or disagrees with Tenant's Construction Costs Report within ninety (90) days after receiving it. Port will have the right to inspect Tenant's Books and Records for the Construction Costs Report. Tenant must keep accurate Books and Records of all Construction until the later of two (2) years after Tenant's submission of its Construction Costs Report or six (6) months after any dispute regarding the

Construction Costs has been resolved. Tenant's failure to submit a Construction Costs Report as and when required under this Section will be deemed a waiver of its right to make a reduction to Net Sale Proceeds for the portion of the construction for which a report was not provided.

(f) Example Calculations for illustrative purposes only.

(1) Example of Sale Calculation: if: (i) the Initial Improvements have a Class Life of 15 years; (ii) Certified Construction Costs are \$3 million; (iii) Gross Sale Proceeds are \$10 million; (iv) Costs of Sale are \$200,000, leaving Net Sale Proceeds of \$9.8 million; and (v) the Closing Date is the 6th anniversary of the "placed in service" date of the Initial Improvements, then Port's Sale Participation is \$1,170,000, as shown in the calculation below.

Gross Sale Proceeds:	\$10,000,000
Costs of Sale:	<u>\$200,000</u>
Net Sales Proceeds before Adjusted Basis reduction:	\$9,800,000
(Certified Construction Costs of Initial Improvements:	\$3,000,000)
Adjusted Basis (10/15 years amortized):	\$2,000,000
Net Sales Proceeds less Adjusted Basis:	\$7,800,000
Port's Sale Participation at 15%	\$1,170,000

(2) Example of refinancing calculation: if: (i) the initial loan amount is \$2,100,000; (ii) the principal balance of the original loan has paid down to \$1,500,000; (iii) a new loan with a principal of \$3,500,000 has replaced the initial loan; (iv) the cost of refinancing is \$100,000; (v) equity invested remains unchanged; (vi) the appraised value of the nonresidential portion has increased; and (vii) loan underwriting terms have improved; then, after deducting (a) the \$100,000 refinancing cost, (b) the \$1,500,000 principal balance of the initial loan amount, and (c) \$800,000 of loan funds invested in the project, the Net Sale Proceeds are \$700,000 and Port's Sale Participation is \$210,000, as shown in the calculation below.

New Loan Amount:	\$3,500,000
Costs of Refinancing:	\$ 100,000
Old Loan Principal Balance:	\$1,900,000
New Loan Funds Invested:	\$ 800,000
Net Sale Proceeds:	\$ 700,000
Port's Sale Participation at 15%:	\$ 105,000

26.12. Acknowledgement. Tenant acknowledges and agrees that Port's rights with respect to Transfers are reasonable limitations for purposes of California Civil Code Section 1951.4 and waives any Claims arising from Port's actions under this *Section 26*.

26.13. Permitted Limited Partners. The Parties agree that the following transactions will not be treated as a Transfer under this Lease: (i) any cumulative or aggregate sale, assignment, encumbrance, or other transfer of any percentage of general partnership interests in Tenant of less than a Controlling interest; or (ii) any transfer of a Limited Partner's interest in a general partner. Such transactions are subject to MOHCD's approval in accordance with the Loan Documents and Tenant shall provide Port with written notice of such transactions. Once approved by MOHCD, the Person will become a Permitted Limited Partner with rights under this Lease upon filing the notice required by *Section 34.4(b)* of this Lease.

26.14. Transfer Definitions. For the purpose of this Section, references to this Lease and the Premises mean this Lease and the Premises to the extent Tenant's Leasehold Estate is affected by a Transfer.

27. DEFAULT BY TENANT.

Any of the following shall constitute an event of default (the "Event of Default") by Tenant hereunder:

(a) failure to commence in accordance with the Schedule of Performance, or after commencement failure to prosecute diligently to Completion (except for Deferred Items, if any), the Construction of the Initial Improvements in accordance with the Scope of Development, approved Construction Documents, and this Lease and any such failure continues for a period of thirty (30) days from the date of written notice from Port; or

(b) Failure to comply with any applicable provision of the MMRP and such failure continues after twenty-four (24) hours following written notice from Port; or

(c) failure to pay to Port any Rent or other sum payable hereunder when due, and such default continues for a period of three (3) days following written notice from Port.

(d) abandonment or vacation of the Premises by Tenant; or

(e) failure to use the Premises solely for the Permitted Use and/or the Occupancy Restrictions, as determined by Port or MOHCD in each of its sole and absolute discretion and such failure continues for a period of twenty-four (24) hours following written notice from Port; provided, however, that notwithstanding the foregoing, failure to use the Premises solely for the Permitted Use shall, at Port's sole and absolute discretion, be deemed an incurable breach of this Lease, allowing Port to immediately terminate this Lease upon written notice without an opportunity to cure; or

(f) a Transfer, or attempted Transfer, of this Lease or the Premises by Tenant contrary to the provision of **Section 26** above (Transfers); or

(g) failure by Tenant or Tenant's broker as applicable to provide evidence of insurance coverage complying with the provisions of **Section 22** (Insurance), failure to maintain any insurance required to be maintained by Tenant pursuant to this Lease, or if any such insurance shall be canceled or terminated or shall expire or be reduced or materially changed, except as permitted in this Lease, and Tenant's or Tenant's broker's failure to deliver evidence of such coverage or failure to reinstate such coverage, all within three (3) business days following written notice from Port; or

(h) failure by Tenant to comply with the provisions of **Section 21** above (Hazardous Materials) and Tenant's failure to cure the foregoing default within twenty-four (24) hours following written notice from Port. If such default cannot reasonably be cured within such twenty-four (24) hour period, Tenant shall not be in default of this Lease if Tenant commences to cure the default within such twenty-four (24) hour period and diligently and in good faith continues to cure the default, provided, however, in no event shall Tenant have more than thirty (30) days to cure such default; or

(i) failure by Tenant to discharge any lien or encumbrance placed on the Premises or any part thereof in violation of this Lease within ten (10) days after the date such lien or encumbrance is filed or recorded against the Premises or any part thereof, or if Tenant has no knowledge of such lien, then Tenant shall discharge such lien or encumbrance within fifteen (15) days following Tenant's knowledge of such lien or encumbrance; or

(j) failure by Tenant to observe, keep or perform any of the other terms, covenants, agreements or conditions contained in this Lease and required to be observed or performed by Tenant and not specifically enumerated in this **Section 27** (Default by Tenant), and such failure continues for a period of fifteen (15) days after written notice by Port, provided that

if such default is not capable of cure within such fifteen (15) day period, Tenant shall have a reasonable period to complete such cure if Tenant promptly undertakes action to cure such default within such fifteen (15) day period and thereafter diligently prosecutes the same to completion within sixty (60) days after the receipt of notice of default from Port. Port shall not be required to provide such notice more than twice in any twelve (12) month period with respect to any material non-monetary defaults and after the second notice in any calendar year, any subsequent failure by Tenant during such twelve (12) month period shall automatically constitute an Event of Default hereunder; or

(k) Tenant shall become bankrupt or insolvent or make a transfer in fraud of creditors, or make an assignment for the benefit of creditors, or bring or have brought against Tenant any action or proceedings of any kind under any provision of the U.S. Bankruptcy Code or under any other insolvency, bankruptcy or reorganization act and, in the event such proceedings are involuntary, Tenant is not discharged from the same within sixty (60) days thereafter; or

(l) a receiver is appointed for a substantial part of the assets of Tenant and such receiver is not discharged within sixty (60) days; or

(m) this Lease or any estate of Tenant under this Lease shall be levied upon by any attachment or execution and such attachment is not stayed or lifted within sixty (60) days; or

(n) without limiting the provisions of subsections (e) or (h) above or lengthening the cure periods under those subsections, failure by Tenant to comply with Laws and Tenant's failure to cure the foregoing default within forty-eight (48) hours following written notice from Port.

28. PORT'S REMEDIES.

Upon an Event of Default described in *Section 27* (Default by Tenant), and before exercising any remedies, Port will notify Tenant, the Permitted Limited Partners, MOHCD and each Lender that provided notice under *Section 34.4* (Notices to Lender) in writing of the Tenant's purported breach, failure, or act in accordance with the notice provisions of *Section 37* (Notices), giving Tenant another sixty (60) calendar days from the giving of the notice to cure such Event of Default. If Tenant does not cure or, if the Event of Default is not reasonably susceptible to cure within that sixty (60) day period, begin to cure within sixty (60) days and diligently prosecute such cure to completion, then, subject to the rights of MOHCD and any Lender under *Section 34* (Leasehold Mortgage), Port shall, without further notice or demand of any kind to Tenant or to any other person, have all of its rights at law or in equity, including the following remedies:

28.1. Tenant's Right to Possession Not Terminated. Port has the remedy described in Section 1951.4 of the California Civil Code (a landlord may continue the lease in effect after a tenant's breach and abandonment and recover rent as it becomes due, if the tenant has the right to sublet and assign subject only to reasonable limitations) under which it may continue this Lease in full force and effect and Port may enforce all of its rights and remedies under this Lease, including the right to collect Rent when due. During the period Tenant is in default, Port may enter the Premises without terminating this Lease and relet them, or any part of them, to third parties for Tenant's account. Tenant shall be liable immediately to Port for all reasonable costs Port incurs in reletting the Premises, including, but not limited to, broker's commissions, expenses of remodeling the Premises required by the reletting and like costs. Reletting can be for a period shorter or longer than the remaining Term, at such rents and on such other terms and conditions as Port deems advisable. Tenant shall pay to Port the Rent due under this Lease on the dates the Rent is due, less the Rent Port receives from any reletting. In the event that Port shall elect to so relet, then rentals received by Port from such reletting shall be applied in the following order: (i) to reasonable attorneys' fees incurred by Port as a result of a default and costs in the event suit is filed by Port to enforce such remedies; (ii) to the payment of any

indebtedness other than Rent due hereunder from Tenant to Port; (iii) to the payment of any costs of maintaining, preserving, altering, repairing and preparing the Premises for reletting, the other costs of reletting, including but not limited to brokers' commissions, attorneys' fees and expenses of removal of Personal Property, trade fixtures and Alterations; (iv) to the payment of Rent due and unpaid hereunder; (v) to the payment of future Rent and other sums payable by Tenant hereunder as the same may become due and payable hereunder; and (vi) the balance, if any, shall be paid to Tenant upon (but not before) expiration of the Term. Should that portion of such rentals received from such reletting during any month, which is applied to the payment of Rent hereunder, be less than the Rent payable during the month by Tenant hereunder, then Tenant shall pay such deficiency to Port. Such deficiency shall be calculated and paid monthly. No act by Port allowed by this **Section 28.1** shall terminate this Lease unless Port notifies Tenant that Port elects to terminate this Lease. After Tenant's default and for as long as Port does not terminate Tenant's right to possession of the Premises, if Tenant obtains Port's consent Tenant shall have the right to assign or sublet its interest in this Lease, but Tenant shall not be released from liability.

28.2. Termination of Tenant's Right to Possession. Port may terminate Tenant's right to possession of the Premises at any time. No act by Port other than giving notice of termination to Tenant shall terminate this Lease. Acts of maintenance, efforts to relet the Premises, or the appointment of a receiver on Port's initiative to protect Port's interest under this Lease shall not constitute a termination of Tenant's right to possession. If Port elects to terminate this Lease, Port has the rights and remedies provided by California Civil Code Section 1951.2, including the right to recover from Tenant the following:

(a) The worth at the time of award of the unpaid Rent which had been earned at the time of termination; plus

(b) The worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that 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 the loss of Rent that Tenant proves could be reasonably avoided; plus

(d) Any other amounts necessary to compensate Port for the detriment proximately caused by Tenant's default, or which, in the ordinary course of events, would likely result, including, but not limited to, attorneys' fees and court costs, the costs of carrying the Premises such as repairs, maintenance, taxes and insurance premiums, utilities, security precautions and the reasonable costs and expenses incurred by Port in (i) retaking possession of the Premises; (ii) cleaning and making repairs and alterations necessary to return the Premises to good condition and preparing the Premises for reletting; (iii) removing, transporting and storing any of Personal Property left at the Premises (although Port shall have no obligation so to do); and (iv) reletting the Premises, including, without limitation, brokerage commissions, advertising costs and attorneys' fees. Efforts by Port to mitigate the damages caused by Tenant's breach of this Lease do not waive Port's rights to recover damages upon termination.

The "worth at the time of award" of the amounts referred to in **Sections 28.2(a)** (Termination of Tenant's Right to Possession) and **28.2(b)** above shall be computed by allowing interest at an annual rate equal to the lesser of the Interest Rate or the maximum non-usurious rate Port is permitted by Law to charge. The "worth at the time of award" of the amount referred to in **Section 28.2(c)** above shall be computed by discounting the amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award, plus one percent (1%).

Notwithstanding the foregoing, during the 15-year tax credit "compliance period" (as defined in Section 42 of the US Internal Revenue Code, as amended) for the Project, Port may only terminate this Lease for a default by Tenant under **Section 27(k)** (Default by Tenant) above.

28.3. Additional Remedies. If Tenant is in default of this Lease, Port shall have the right to: (a) have a receiver appointed to collect Rent and conduct Tenant's business, provided, however, that neither the filing of a petition for the appointment of a receiver nor the appointment itself shall constitute an election by Port to terminate this Lease; or (b) seek specific performance of this Lease.

28.4. Rights of Permitted Limited Partner.

(a) Port will not exercise its remedy to terminate this Lease if a Permitted Limited Partner is attempting to cure the default and the cure requires removal of the managing general partner, so long as the Permitted Limited Partner is proceeding diligently to remove the managing general partner in order to effect a cure of the default. Permitted Limited Partners shall have the same rights as Lenders described in *Section 34.8(g)* with respect to amendments of this Lease.

(b) If a Permitted Limited Partner cannot cure a default due to an automatic stay in bankruptcy court because the general partner of the Tenant is in bankruptcy, any cure period will be tolled during the pendency of such automatic stay.

28.5. No Accord and Satisfaction. No payment by Tenant or receipt by Port of an amount less than the Rent due under this Lease shall be deemed to be other than "on account" of the earliest Rent due; nor shall any endorsement or statement on any check or payment, or letter accompanying such check or payment, be deemed an accord and satisfaction. Port may accept any such partial payment or tender without prejudice to its right to recover the balance of any amount due and to pursue any other remedy herein provided at Law or in equity.

28.6. Waiver of Redemption. Tenant hereby waives, for itself and all persons claiming by and under Tenant, redemption or relief from forfeiture under California Code of Civil Procedure Sections 1174 and 1179, or under any other pertinent present or future Law, in the event Tenant is evicted or Port takes possession of the Premises by reason of any default of Tenant hereunder.

28.7. Continuation of Subleases and Other Agreements. Subject to the rights of Lenders, Port has the right, at its sole option, to assume any and all Subleases and agreements by Tenant for the maintenance or operation of the Premises, including the Management Agreement. Tenant hereby further covenants that, upon request of Port following a Tenant Event of Default and termination of Tenant's interest in this Lease, subject to the rights of Lenders, Tenant will execute, acknowledge and deliver to Port such further instruments as may be necessary or desirable to vest or confirm or ratify vesting in Port the then existing Subleases, Management Agreement, and other agreements then in force, as above specified.

28.8. Remedies Not Exclusive. The remedies set forth in *Section 28* (Port's Remedies) are not exclusive; they are cumulative and in addition to any and all other rights or remedies of Port now or later allowed by Law. Tenant's obligations hereunder shall survive any termination of this Lease.

29. DEFAULT BY PORT; TENANT'S REMEDIES.

29.1. Port Event of Default. Port will be deemed to be in default hereunder ("Port Event of Default") only if Port fails to perform or comply with any obligation on its part hereunder and such failure continues for more than sixty (60) days after written notice from Tenant, or if such default cannot reasonably be cured within such sixty (60) day period, Port does not within such period commence with due diligence and dispatch the curing of such default, or, having so commenced, thereafter fails or neglects to prosecute or complete with diligence and dispatch the curing of such default.

29.2. Tenant Remedies. Upon the occurrence of a Port Event of Default, which Port Event of Default substantially and materially interferes with the ability of Tenant to conduct the Permitted Uses, Tenant has the exclusive right (a) to offset or deduct only from the Rent

becoming due hereunder, the amount of all actual damages incurred by Tenant as a direct result of the Port Event of Default, but only after obtaining a final, unappealable judgment in a court of competent jurisdiction for such damages in accordance with applicable Law and the provisions of this Lease, or (b) to seek equitable relief in accordance with applicable Laws and the provisions of this Lease where appropriate and where such relief does not impose personal liability on Port or its Agents; provided, however, (i) in no event will Tenant be entitled to offset from all or any portion of the Rent becoming due hereunder or to otherwise recover or obtain from Port or its Agents any damages (including, without limitation, any consequential, incidental, punitive or other damages proximately arising out of a default by Port hereunder) or losses other than Tenant's actual damages as described in the foregoing clause (a), (ii) Tenant agrees that, notwithstanding anything to the contrary herein or pursuant to any applicable Laws, Tenant's remedies hereunder constitute Tenant's sole and absolute right and remedy for a default by Port hereunder, and (iii) Tenant has no remedy of self-help.

30. DELAY DUE TO FORCE MAJEURE.

(a) Effect of Force Majeure. For the purpose of this Lease, neither Party (the "Delayed Party," as applicable) will be considered in breach of or default in any obligation or satisfaction of a condition to an obligation of the other party in the event of Force Majeure, and the time fixed for performance of any such obligation or satisfaction of conditions shall be extended by a period of time equal to the duration of the Force Majeure event; provided, however, within thirty (30) days after the beginning of any such Force Majeure event, the Delayed Party shall have first notified the other party of the cause or causes of such delay and claimed an extension for the reasonably estimated period of the enforced delay.

In no event shall an event of Force Majeure extend the Term beyond December 31, 2105.

(b) Definition of Force Majeure. "Force Majeure" means events that cause delays in the Delayed Party's performance of its obligations under this Lease, or in the satisfaction of a condition to the other party's performance under this Lease, due to causes beyond the Delayed Party's control and not caused by the acts or omissions of the Delayed Party (excluding, in any case, a Delayed Party's performance of the payment of money required under the terms of this Lease), including: acts of nature or of the public enemy; war; invasion; insurrection; riots; any general moratorium in the issuance of governmental or regulatory permits applicable to the Premises or the Initial Improvements (but in the absence of such a moratorium, acts of the government relating to issuance of building permits or other Regulatory Approvals are governed by **Section 13**) (Port Acting As Owner Of Property; Regulatory Approvals); fires; floods; tidal waves; epidemics; quarantine restrictions; freight embargoes; earthquakes; unusually severe weather (but only if such unusually severe weather causes actual delays); delays of contractors or subcontractors due to any of the foregoing causes; the unanticipated presence of Hazardous Materials or other concealed conditions on the Premises that would not have reasonably been discovered through due diligence and that would actually delay or materially and adversely impair or delay Tenant's Construct the Initial Improvements; archeological finds on the Premises; strikes and substantial interruption of work because of labor disputes (excluding strikes and labor disputes directly related to any contracts between Tenant and its contractors or work performed on behalf of Tenant); inability to obtain materials or reasonably acceptable substitute materials (provided that Tenant has ordered such materials on a timely basis and Tenant is not otherwise at fault for such inability to obtain materials); or any Litigation Force Majeure (provided that the Delayed Party proceeds with due diligence to defend or commence, as applicable, such action or proceeding or take other appropriate measures to resolve any dispute that is the subject of such action or proceeding).

(c) Definition of Litigation Force Majeure. "Litigation Force Majeure" means any action or proceeding before any court, tribunal, or other judicial, adjudicative or legislative decision-making body, including any administrative appeal, brought by a third party that challenges, (a) the validity of any action taken by the City in connection with the Project or any

findings upon which any action is predicated, or (b) the failure of any Regulatory Agency to impose conditions to a Regulatory Approval including building permits or the validity of any other Regulatory Approval required in connection with the Project.

Notwithstanding anything to the contrary contained in this Lease, Litigation Force Majeure excludes any action or proceeding brought by an Affiliate of Tenant, any of Tenants' members or their Affiliates, any consultant of Tenant, or any other third party assisted by Tenant, directly or indirectly, in such action or proceeding. Performance by a party hereunder shall be deemed delayed or made impossible by virtue of Litigation Force Majeure during the pendency thereof, and until a judgment, order, or other decision resolving such matter in favor of the party whose performance is delayed has become final and unappealable.

The Parties will each proceed with due diligence and shall cooperate with one another to defend the action or proceeding or take other measures to resolve the dispute that is the subject of such action or proceeding.

(d) Limitations on Force Majeure. Under no circumstances shall the delay attributable to an event of Force Majeure or Litigation Force Majeure extend beyond twenty-four (24) months after the start of the event of Force Majeure or Litigation Force Majeure.

31. LITIGATION EXPENSES; ATTORNEYS' FEES.

31.1. *Litigation Expenses.* The prevailing party in any action or proceeding (including any cross-complaint, counterclaim, or bankruptcy proceeding) against the other party by reason of a claimed default, or otherwise arising out of a party's performance or alleged non-performance under this Lease, shall be entitled to recover from the other party its costs and expenses of suit, including but not limited to reasonable attorneys' fees, which shall be payable whether or not such action is prosecuted to judgment. "**Prevailing party**" within the meaning of this Section shall include, without limitation, a party who substantially obtains or defeats, as the case may be, the relief sought in the action, whether by compromise, settlement, judgment or the abandonment by the other party of its claim or defense.

31.2. *Appeals.* Attorneys' fees under this Section shall include attorneys' fees and all other reasonable costs and expenses incurred in connection with any appeal.

31.3. *City Attorney.* For purposes of this Lease, reasonable fees of attorneys of the City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with an equivalent number of years of professional experience (calculated by reference to earliest year of admission to the Bar of any State) who practice in San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

32. ENTRY ON PREMISES.

32.1. *Entry by City.* Subject to the rights of Residential Occupants, Tenant shall permit City and its Agents to enter the Premises during regular business hours upon reasonable prior notice (and at any time and without notice during Construction or in the event of an emergency) for the purpose of (i) inspecting the same for compliance with any of the provisions of this Lease, (ii) to observe the progress of Construction, to inspect the work being performed in Constructing the Improvements, and to monitor Tenant's compliance with the Mitigation Monitoring and Reporting Program and the risk management plan; (iii) performing any work on the Premises that City has right to perform, (iv) to serve, post, or keep posted any notices required or allowed under the provisions of this Lease; or (v) inspecting, sampling, testing, surveying, or monitoring the Premises or any portion thereof, including the Buildings, grounds, and subsurface areas, as City reasonably deems necessary or appropriate for evaluation of Hazardous Materials, or other physical, geotechnical, or environmental conditions. Nothing herein shall imply any duty on the part of City to conduct inspections, but such right of inspection shall not relieve Tenant of its independent responsibility to operate, manage, maintain,

and repair the Premises and Improvements in accordance with this Lease. Additionally, City's failure to inspect or obtain samples or to detect conditions attributable to Tenant's operations if an inspection is conducted may not be deemed to be a release of any liability for any Hazardous Materials subsequently determined to be Tenant's responsibility under this Lease.

Nothing herein shall imply any duty on the part of City to perform any work that Tenant is required to perform, nor to place upon City any obligation or liability for the care, supervision or repair of the Premises; provided, however, City shall use commercially reasonable efforts to minimize interference with the activities of Tenant and Residential Occupants and their respective Invitees during any inspection. If City elects to perform work on the Premises, it shall not be liable for inconvenience, loss of business or other damage to Tenant by reason of the performance of such work on the Premises, or on account of bringing necessary materials, supplies and equipment into or through the Premises during the course thereof, provided that City uses commercially reasonable diligence to minimize the interference that any such work may cause to the activities of Tenant, its Subtenants, or their respective Invitees.

Without limiting the forgoing, the City and its representatives will exercise due care in entering upon and/or inspecting the Premises, and will perform all entry and inspection in a professional manner. The City and its representatives will comply with any reasonable safety and security measures imposed by Tenant and provided in advance to City and its representatives.

32.2. Notice, Right to Accompany. City agrees to give Tenant reasonable prior notice of City's entering on the Premises, except in an emergency, for the purposes set forth in this Section. Such notice shall be not less than twenty-four (24) hours prior notice. Tenant shall have the right to have a representative of Tenant accompany City or its Agents on any entry into the Premises. Notwithstanding the foregoing, no notice shall be required for City's entry onto public areas of the Premises during hours such public areas are open.

32.3. Emergency Entry. City may enter the Premises at any time, without notice, in the event of an emergency. City shall have the right to use any and all means which City may deem proper in such an emergency in order to obtain entry to the Premises. Entry to the Premises by any of these means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction of Tenant from the Premises or any portion of the Premises.

32.4. No Liability. City shall not be liable in any manner, and Tenant hereby waives any Claim for damages, for any inconvenience, disturbance, loss of business, nuisance, or other damage, including without limitation any abatement or reduction in Rent, arising out of City's entry onto the Premises as provided in this Section or performance of any necessary or required work on the Premises, or on account of bringing necessary materials, supplies and equipment into or through the Premises during the course thereof, except damage resulting solely from the willful misconduct or gross negligence of City or its authorized representatives.

33. SURRENDER AND QUITCLAIM.

33.1. Surrender. Upon expiration or earlier termination of this Lease, Tenant shall surrender to Port the Premises in good order, condition, and repair (except for ordinary wear and tear occurring after the last necessary maintenance made by Tenant and except for Casualty or Condemnation as described in *Sections 23* (Damage or Destruction) and *24* (Condemnation)). Ordinary wear and tear shall not include any damage or deterioration that would have been prevented by proper maintenance by Tenant, or Tenant otherwise performing all of its obligations under this Lease. The Premises shall be surrendered clean, free of debris, waste, and Hazardous Materials, and free and clear of all liens and encumbrances other than liens and encumbrances existing as of the date of this Lease and any other encumbrances created by Port. On or before the expiration or earlier termination of this Lease, Tenant at its sole cost shall remove from the Premises, and repair any damage caused by removal of, Personal Property,

including any signage. Except as specified in Port's Notice of Removal under **Section 16** (Improvements and Alterations, Alterations and Improvements shall remain in the Premises as Port property.

If the Premises is not surrendered at the end of the Term or sooner termination of this Lease, and in accordance with the provisions of this **Section 33** (Surrender and Quitclaim) and **Section 16.2** (Removal of Improvements), Tenant shall continue to be responsible for the payment of Rent until the Premises is surrendered in accordance with this Section, and Tenant shall Indemnify the Indemnified Parties from and against any and all loss or liability resulting from delay by Tenant in so surrendering the Premises including, without limitation, any costs of Port to obtain possession of the Premises; any loss or liability resulting from any Claim against Port made by any succeeding tenant or prospective tenant founded on or resulting from such delay and losses to Port due to lost opportunities to lease any portion of the Premises to any such succeeding tenant or prospective tenant, together with, in each instance, reasonable attorneys' fees and costs.

No act or conduct of Port, including, but not limited to, the acceptance of the keys to the Premises, shall constitute an acceptance of the surrender of the Premises by Tenant before the expiration of the Term. Only a written notice from Port to Tenant confirming termination of this Lease and surrender of the Premises by Tenant shall constitute acceptance of the surrender of the Premises and accomplish a termination of this Lease.

33.2. Quitclaim. Upon the expiration or earlier termination of this Lease, the Premises shall automatically, and without further act or conveyance on the part of Tenant or Port, become the property of Port, free and clear of all liens and without payment therefore by Port and shall be surrendered to Port upon such date. Upon expiration or earlier termination of this Lease, Tenant shall promptly deliver to Port, without charge, a quitclaim deed to the Premises and any other instrument reasonably requested by Port in a form suitable for recordation in the Official Records to evidence or otherwise effect the termination of Tenant's Leasehold Estate hereunder

33.3. Abandoned Property. Any items, including Personal Property, not removed by Tenant as required herein shall be deemed abandoned. Port may retain, store, remove, and sell or otherwise dispose of abandoned Personal Property, and Tenant waives all Claims against Port for any damages resulting from Port's retention, removal and disposition of such property; provided, however, that Tenant shall be liable to Port for all costs incurred in storing, removing and disposing of abandoned Personal Property and repairing any damage to the Premises resulting from such removal. Tenant agrees that Port may elect to sell abandoned Personal Property and offset against the sales proceeds Port's storage, removal, and disposition costs without notice to Tenant or otherwise according to the procedures set forth in California Civil Code Section 1993, the benefits of which Tenant waives.

33.4. Survival. Tenant's obligation under this **Section 33** (Surrender and Quitclaim) shall survive the expiration or earlier termination of this Lease.

34. LEASEHOLD MORTGAGE

34.1. Subtenant's Rights. The provisions of this **Section 34** apply to a Commercial Subtenant and other Subtenants and Subleasehold Estates to the same extent as to Tenant and a Leasehold Estate.

34.2. No Encumbrances.

(a) Notwithstanding any other provision of this Lease and subject to the prior written consent of MOHCD and Port, which consent shall not be unreasonably withheld, conditioned or delayed, Leasehold Mortgages are permitted to be placed upon the Leasehold Estate and/or the Improvements only for the purpose of securing loans of funds to be used for financing the acquisition, design, construction, renovation or reconstruction or refinancing of the Improvements and any other expenditures reasonably necessary and appropriate to acquire, own,

develop, construct, renovate, or reconstruct the Improvements under this Lease and in connection with the operation of the Improvements, and costs and expenses incurred or to be incurred by Tenant in furtherance of the purposes of this Lease. Tenant shall not seek Port's consent until it has obtained MOHCD's consent in writing.

(b) Tenant covenants and affirms that it shall bear all of the costs and expenses in connection with (i) the preparation and securing of any Leasehold Mortgage, (ii) the delivery of any instruments and documents and their filing and recording, if required, and (iii) all taxes and charges payable in connection with any Leasehold Mortgage.

(c) Under no circumstance whatsoever shall Tenant place or suffer to be placed any lien or encumbrance on Port's fee interest in the Premises in connection with any financing permitted hereunder or otherwise. Port shall not subordinate its interest in the Premises nor its right to receive Rent to any Lender. Any mortgage, deed of trust, encumbrance or lien not permitted by this Section shall be deemed to be a violation of this covenant on the date of its execution or filing of record regardless of whether or when it is foreclosed or otherwise enforced.

(d) Notwithstanding anything to the contrary in this Lease, Tenant and each and every Subtenant shall have the right to hypothecate, transfer, assign and encumber and grant a security interest in and to its own Personal Property located in the Premises to any lender, equipment lessor or other financier, or any accounts receivable to any factor or other lender, without the consent or knowledge of Port. Upon the request of Tenant, Port shall enter into any commercially reasonable written agreement with Tenant or Subtenant (except for Residential Occupants) and its lender for Personal Property, wherein Port shall agree to subordinate any landlord lien rights it may have in and to such Personal Property to the interest of lender, and waive any claim that the same are part of the Premises by virtue of being affixed thereto but only to the extent that the provisions of this Lease authorize Tenant or Subtenant to remove such Personal Property upon the expiration or earlier termination of this Lease. As a condition to entering into such agreement, Tenant or Subtenant shall reimburse Port for all its costs (including attorneys' fees and costs incurred and Port staff time spent) associated with reviewing, negotiating and approving such agreement. Additionally, such agreement shall (a) contain a requirement that each such lender, give proper notice to Port (i) of any default by Tenant or Subtenant, and (ii) prior to any entry of the Premises to remove Personal Property due to such default and obtain Port's approval of the timing thereof, (b) prohibit the sale of Personal Property on the Premises (c) comply with all Laws, including obtaining a Port building permit if required, and contain an agreement by such lender to repair any damage to the Premises caused by such entry and removal and Indemnify the Indemnified Parties for Claims related to such entry and removal.

(e) With the exception of the rights expressly granted in this Lease to Lenders and except to the extent otherwise specifically provided in any non-disturbance agreement entered into among Port, Tenant and a Lender, the execution and delivery of a Mortgage shall not give or be deemed to give a Lender any greater rights than those granted to Tenant hereunder.

(f) Only Senior Leasehold Lender Entitled to Protection Provisions. Notwithstanding anything to the contrary set forth herein, any rights given hereunder to Lenders will only apply to the Senior Lender, unless such Senior Lender elects not to exercise its rights thereunder in which event such rights will apply to the next most senior Lender.

34.3. Required Provisions in Every Mortgage. Each Mortgage permitted under this Lease shall provide: (a) that Lender shall give written notice to Port in accordance with **Section 37** (Notices) of this Lease of the occurrence of any event of default under the Mortgage; (b) that Lender shall give written notice to Port at the time such Lender initiates any foreclosure action; (c) that only an entity controlled by a California nonprofit public benefit corporation exempt from tax under Section 501(c)(3) of the Internal Revenue Code has a right to a New

Lease or may be a Subsequent Owner such that the Premises continues to receive an exemption from state property taxes as provided under Section 214 of the California Revenue and Taxation Code or successor statute with the same effect unless Lender, with the prior written consent of MOHCD in its sole discretion, elects to change the levels of affordability specified in the Permitted Uses in **Section 2** (Key Lease Terms) to cause up to one hundred percent (100%) of the residential units to be Moderate Income Households [or Middle Income Household if permissible under state law], increases the rent paid for such units by Residential Occupants to the fair market rent for such units as determined by MOHCD in its sole discretion and proportionally increases the Rent due to Port under this Lease as further described in **Section 34.9(vi)**; and (d) subject to the provisions of **Sections 23.1(b)** and **24.1(a)**, that the disposition and application of insurance and condemnation awards shall be in accordance with the provisions of this Lease.

34.4. Notices to Lender.

(a) Copies of Notices. Whenever Port delivers any notice or demand to Tenant for any Tenant Event of Default, Port will at the same time forward a copy of such notice or demand to each Lender having a Mortgage on the Premises and each Permitted Limited Partner who has previously made a written request to Port for a copy of any such notices in accordance with **Section 34.4(b)** (Notice to Port). Port's notice will be sent to the address specified by such Lender in its most recent notice to Port. A delay or failure by Port to provide such notice required by this **Section 34.4(a)** (Copies of Notices) will extend, for the number of days until notice is given, the time allowed to Lender for cure.

(b) Notice to Port. Each Lender and each Permitted Limited Partner is entitled to receive notices from time to time given to Tenant by Port under this Lease in accordance with **Section 34.4(a)** (Copies of Notices) provided such Lender or Permitted Limited Partner has delivered a notice to Port in substantially the following form:

"The undersigned does hereby certify that it is a [Lender/Permitted Limited Partner], as such term is defined in that certain Lease entered into by and between the City and County of San Francisco, operating by and through the San Francisco Port Commission, as landlord, and _____, a _____, as tenant (the "Lease"), of tenant's interest in the Lease demising the property, a legal description of which is attached hereto as **Exhibit A-1** and made a part hereof by this reference. The undersigned hereby requests that copies of any and all notices from time to time given under the Lease to tenant by Port be sent to the undersigned at the following address: _____."

If a Lender or Permitted Limited Partner desires to have Port acknowledge receipt of its notice under this **Section 34.4(b)**, then such request must be made in bold, underlined and in capitalized letters.

Each Lender or Permitted Limited Partner filing a notice under this **Section 34.4(b)** shall also advise Port in writing once it is no longer a Lender or Permitted Limited Partner.

34.5. Preservation of Leasehold Benefits.

Until such time as a Lender notifies Port in writing that the obligations of the Tenant under its Loan Documents have been satisfied, Port agrees:

(i) That Port shall not voluntarily cancel or surrender this Lease, or accept a voluntary cancellation or surrender of this Lease by Tenant, or materially amend this Lease to increase the obligations of the Tenant or the rights of Port thereunder, without the prior written consent of the Lender who has provided the notice required by **Section 34.4** (Notices to Lender); provided that Lender's consent is not unreasonably withheld or delayed;

(ii) That Port shall not enforce against a Lender any waiver or election made by the Tenant under this Lease which has a material adverse effect on the value of the Leasehold Estate under this Lease without the prior written consent of the Lender who has

provided the notice required by **Section 34.4** (Notices to Lender); provided that Lender's consent is not be unreasonably withheld or delayed;

(iii) That Port shall provide reasonable prior notice to each Lender who has provided notice required by **Section 34.4** (Notices to Lender) of any proceedings for ~~adjustment or adjudication of any insurance or condemnation claim~~ involving the Premises and will permit each Lender to participate therein as an interested party.

34.6. Lender Not Obligated to Construct.

(a) Lender is not obligated to complete any construction of the Initial Improvements or to guarantee such completion; nor shall any covenant or any other provision of this Lease be construed so to obligate such Lender. However, in the event the Lender does undertake to complete or guarantee the Completion of the Construction of the Initial Improvements by stating its intention in writing to Port, nothing in this Lease shall be deemed or construed to permit or authorize any such Lender or its successors or assigns to devote the Premises or any portion thereof to any uses or to construct any Improvements thereon, other than the Permitted Uses and subject to any reasonable modifications in plans proposed by any Lender or its successors in interest proposed for the viability of the Premises, subject to the approval of Port which approval shall not be unreasonably withheld. Notwithstanding any other provision of this Lease or of any Mortgage, the Premises cannot be used for any purposes not consistent with any existing or future favorable Consistency Determination by Port or State Lands.

(b) In the event Lender forecloses, obtains a deed in lieu of foreclosure or otherwise obtains Tenant's interest in the Premises and undertakes construction of the Initial Improvements (A) such Lender shall not be bound by the provisions of the Schedule of Performance with respect to any deadlines for the Completion of the Initial Improvements but shall only be required to complete the Initial Improvements with due diligence and in conformance with a new Schedule of Performance as agreed upon by the Lender and Port, (B) such Lender shall only be required to complete the Initial Improvements in accordance with the Consistency Determination, all applicable building codes and ordinances, and the approved Construction Documents with such changes that are mutually agreed upon by Port and Lender pursuant to Subsection (C) hereof; and (C) Port and Lender shall negotiate in good faith such reasonable amendments and reasonable modifications to this Lease as the Parties mutually determine to be reasonably necessary based upon the financial and construction conditions then existing, but in no event shall any amendment include terms that are contrary to any existing or future favorable Consistency Determination by Port or State Lands.

(c) In any case where six (6) months after assumption of obligations pursuant to **Section 34.6(a)** (Lender Not Obligated to Construct) above, a Lender has not proceeded diligently with Completion of the construction of the Initial Improvements, Port shall be afforded the rights against such Lender it would otherwise have against Tenant under this Lease for events or failures occurring after such assumption.

34.7. Mortgage Default by Tenant and Port's Rights.

(a) In the event of a default or breach by Tenant in or of its obligations under any Leasehold Mortgage and Tenant's failure to timely commence or diligently prosecute cure of such default or breach, Port may, at its option, cure such breach or default for the period of one hundred ten (110) days after the date on which the Lender provides notice of such default to Port. In such event, Port shall be entitled to reimbursement from Tenant of all costs and expenses reasonably incurred by Port in curing the default or breach. After ninety (90) days following the date of Lender's notice of default, and following the expiration of all applicable cure periods of Tenant under the applicable Loan Documents, Port shall also have the right to assign Tenant's interest in the Lease to another entity, subject to such Lender's written consent, which may be conditioned, among other things, upon the assumption by such other entity of all obligations of the Tenant under the Leasehold Mortgage.

34.8. Lender's Right to Cure. If Tenant shall mortgage this Lease in compliance with the provisions hereof, then, so long as any such Mortgage shall remain unsatisfied of record, the following provisions shall apply:

(a) Cure Periods. Each Lender shall have the right, but not the obligation, at any time prior to termination of this Lease, to pay the Rents due hereunder, to effect any insurance, to pay taxes or assessments, to make any repairs or improvements, to do any other act required of Tenant hereunder, and to do any act which may be necessary and proper to be done in the performance and observance of the agreements, covenants and conditions hereof to prevent termination of this Lease; provided that all such acts shall be performed in compliance with the terms of this Lease. Except after Lender acquires Tenant's interest under this Lease, no such action shall constitute an assumption by such Lender of the obligations of Tenant under this Lease. Subject to compliance with the applicable terms of this Lease, each Lender and its agents and contractors shall have full access to the Premises for purposes of accomplishing any of the foregoing. Any of the foregoing done by any Lender shall be as effective to comply with Tenant's obligations under the Lease, to cure a default by Tenant under the Lease or a Tenant Event of Default, or to prevent a termination of this Lease, each as the same would have been if done by Tenant. In the case of any notice of default given by Port to Tenant and/or Lender in accordance with **Section 34.4** (Notices to Lender), Lender shall have the same concurrent cure periods as are given to Tenant under this Lease for remedying a default or causing it to be remedied, plus, in each case, an additional period of sixty (60) days after the later to occur of (i) the expiration of Tenant's cure period, or (ii) the date that Port has served such notice of default upon Lender. Port shall accept such performance by or at the instance of Lender as if the same had been done by Tenant. If a non-monetary default cannot reasonably be cured or remedied within such additional sixty (60) day period, such cure period shall be extended at Lender's request so long as Lender commences the cure or remedy within such period, and prosecutes the completion thereof with diligence and dispatch, or if such default cannot be reasonably be cured or remedied by Lender within such sixty (60) day period without obtaining possession of the Premises (if possession is required to cure or remedy) the cure period shall be extended so long as Lender is diligently seeking to obtain possession and thereafter commences the cure or remedy within such period as is reasonable.

(b) Foreclosure. Upon the occurrence of a Tenant Event of Default, other than a monetary default or other default reasonably susceptible of being cured prior to a Lender obtaining possession, Port shall take no action to effect a termination of this Lease if, within the later of sixty (60) days after notice of such Tenant Event of Default is given to each Lender or the expiration of Tenant's cure period under the applicable Loan Documents, a Lender shall have obtained possession of the Premises (including possession by a receiver), or a Lender notified Port of its intention to institute foreclosure proceedings (or to commence actions to obtain possession of the Premises through a receiver) or otherwise acquire Tenant's interest under this Lease, and thereafter promptly commences and prosecutes such proceedings with diligence and dispatch subject to normal and customary postponements and compliance with any judicial orders relating to the timing of or the right to conduct such proceedings. A Lender, upon acquiring Tenant's interest in this Lease, shall be required promptly to cure all monetary defaults and all other defaults then reasonably susceptible of being cured by such Lender to the extent not cured prior to the completion of foreclosure proceedings. The foregoing provisions of this Section are subject to the following: (A) no Lender shall be obligated to continue possession or to continue foreclosure proceedings after a Tenant Event of Default is cured; (B) nothing herein contained shall preclude Port, subject to the provisions of this Section, from exercising any rights or remedies under this Lease (other than a termination of this Lease to the extent otherwise permitted hereunder) with respect to any other Tenant Events of Default during the pendency of such foreclosure proceedings; (C) such Lender shall agree with Port in writing to comply during the foreclosure period with the terms, conditions and covenants of this Lease as are reasonably susceptible of being complied with by Lender, including the payment of all sums due and owing hereunder and the Permitted Uses; (D) anything herein contained to the contrary

notwithstanding, a Lender, and its designee or nominee (other than Tenant), shall have no obligation to cure any non-monetary Event of Default by Tenant under this Lease which is not reasonably susceptible of being cured such as a prior unapproved Transfer of the Lease; provided, that, such provisions of this Lease shall apply to and remain effective on a prospective basis notwithstanding Lender's inability to cure such previous non-monetary default. Notwithstanding anything to the contrary, including an agreement by Lender given under clause (C) of the preceding sentence, Lender shall have the right at any time to notify Port that it has relinquished possession of the Premises to Tenant or that it will not institute foreclosure proceedings or, if such foreclosure proceedings have commenced, that it has discontinued them, and, in such event, Lender shall have no further liability under such agreement from and after the date it delivers such notice to Port, and, thereupon, Port shall be entitled to seek the termination of this Lease (unless such Tenant Event of Default has been cured) and/or any other available remedy as provided in this Lease. Upon any such termination, the provisions of this Section shall apply. If Lender is prohibited by any process or injunction issued by any court having jurisdiction of any bankruptcy or insolvency proceedings involving Tenant from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof, the times specified above for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition, provided that Lender shall (x) have fully cured any monetary Tenant Event of Default, (y) continue to pay currently such Rent as and when the same become due, and (z) perform all other obligations of Tenant under this Lease to the extent that such obligations are reasonably susceptible of being performed by Lender.

(c) Limitation on Liability of Lender. Anything contained in this Lease to the contrary notwithstanding, no Lender, or its designee or nominee, shall become liable under the provisions of this Lease, unless and until such time as it becomes, and then only for so long as it remains, the owner of the Leasehold Estate created hereby, and then only with respect to those obligations arising during such period of ownership.

(d) New Lease. In the event this Lease is terminated prior to the Expiration Date, except by Major Casualty during the last ten (10) years of the Term, an event of Uninsured Casualty, or Total Condemnation, Port will deliver to each Lender who has previously made a written request to Port for a copy of any such notices in accordance with **Section 34.4(b)** (Notices to Lender) written notice that this Lease has been terminated, together with a statement of any and all sums which would at that time be due under this Lease but for such termination, and of all other defaults, if any, under this Lease then known to Port. Each Lender will thereupon have the option to obtain a new lease of the Premises ("**New Lease**"), which option must be exercised by written notice to Port within thirty (30) days after service of such notice that this Lease has been terminated, in accordance with and upon the following terms and conditions: The provisions of this **Section 34.8(d)** (New Lease) will inure only to the benefit of the holders of permitted Mortgages that comply with all terms and conditions of this Lease.

(i) Port will enter into a New Lease with the most Senior Lender that is an entity controlled by a California nonprofit public benefit corporation exempt from tax under Section 501(c)(3) of the Internal Revenue Code such that the Premises receives an exemption from state property taxes as provided under Section 214 of the California Revenue and Taxation Code or successor statute with the same effect giving notice within such thirty (30)-day period, subject to the provisions set forth in this **Section 34.8(d)** (New Lease) and provided that such Lender assumes Tenant's obligations as sublandlord under any Subleases then in effect (such Lender is sometimes referred to as a "**Subsequent Owner**"); and

(ii) If the affordable rent and use restrictions in **Section 2** (Key Lease Terms) will be maintained, the Subsequent Owner must be controlled by a California nonprofit public benefit corporation exempt from tax under Section 501(c)(3) of the Internal Revenue Code such that the Premises receives an exemption from state property taxes as provided under Section 214 of the California Revenue and Taxation Code or successor statute with the same effect; and

(iii) The New Lease will be effective as of the date of termination of this Lease, will be for the remainder of the Term, and at the Rent and upon all the agreements, terms, covenants and conditions hereof, in substantially the same form as this Lease, except for any requirements or conditions which Tenant has satisfied prior to the termination of this Lease and any new or amended ordinances or policies adopted by Port or the City applicable to real property leases. Lender will also pay for Port's reasonable Attorneys' Fees and Costs for negotiating and documenting the New Lease with Lender. The New Lease will have the same priority as this Lease. Such New Lease will require the Lender to perform any unfulfilled monetary obligation of Tenant under this Lease that would, at the time of the execution of the New Lease, be due under this Lease if this Lease had not been terminated and to perform as soon as reasonably practicable any unfulfilled non-monetary obligation which is reasonably susceptible of being performed by such Lender. Construction of the Initial Improvements and Restoration of the Improvements will be deemed to be an obligation susceptible of being performed by Lender. Upon the execution of the New Lease, Lender will pay to Port any and all sums which would at the time of the execution thereof be due under this Lease but for such termination, and will pay all expenses, including Attorneys' Fees and Costs incurred by Port in connection with such defaults and termination, the recovery of possession of the Premises, and the preparation, execution and delivery of the New Lease. The provisions of this **Section 34.8(d)** (New Lease) will survive any termination of this Lease (except as otherwise expressly set out in the first sentence of this **Section 34.8(d)** (New Lease)), and will constitute a separate agreement by Port for the benefit of and enforceable by Lender.

(e) Nominee. The rights of Lender under this **Section 34.8(d)** (New Lease) may be exercised by or through its nominee or designee (other than Tenant) which is an Affiliate of Lender; provided, however, no Lender will acquire title to the Lease through a nominee or designee which is not a Person otherwise permitted to become Tenant hereunder; provided, further that a Lender may acquire title to the Lease through a wholly owned (directly or indirectly) subsidiary of Lender.

(f) Subleases. Effective upon the commencement of the term of any New Lease executed pursuant to **Section 34.8(d)** (New Lease), any Sublease then in effect will be assigned and transferred without recourse by Port to Lender. Between the date of termination of this Lease and commencement of the term of the New Lease, so long as Lender enters into a New Lease, Port will not (1) enter into any new subleases, management agreements or agreements for the maintenance of the Premises or the supplies therefor which would be binding upon Lender, (2) cancel or materially modify any of the existing subleases, management agreements or agreements for the maintenance of the Premises or the supplies therefor or any other agreements affecting the Premises, or (3) accept any cancellation, termination or surrender of any of the above without the written consent of Lender, which consent will not be unreasonably withheld or delayed. Effective upon the commencement of the term of the New Lease, if permitted by Law or if Port holds title to the Personal Property within the Premises (except for the Personal Property of Residential Occupants), Port will also transfer to Subsequent Owner, its designee or nominee (other than Tenant), without recourse, such Personal Property within the Premises.

(g) Consent of Lender. No material modification, termination or cancellation of this Lease will be effective against the a Lender unless a copy of the proposed material modification, termination or cancellation has been delivered to the most Senior Lender and such Lender has approved the material modification, termination or cancellation in writing, which approval will not be unreasonably withheld, conditioned, or delayed. Any Lender having such approval rights will either approve or disapprove the proposed modification, termination, or cancellation, as applicable, with specified reasons for any disapproval together with reasonable requirements that if satisfied would obtain such Lender's approval, in writing, within thirty (30) days after delivery of a copy thereof. The most Senior Lender's failure to deliver an approval or disapproval notice within ten (10) days after it receives a second written notice after the

applicable time period will be deemed such Lender's approval of the proposed modification, termination, or cancellation. No merger of this Lease and the fee estate in the Premises will occur on account of the acquisition by the same or related parties of the Leasehold Estate created by this Lease and the fee estate in the Premises without the prior written consent of the most Senior Lender.

(h) Limitation on Obligation to Cure. Anything herein contained to the contrary notwithstanding, a Lender, and its designee or nominee (other than Tenant), will have no obligation to cure (i) any Tenant Event of Default occurring pursuant to **Sections 27(d)** or **27(k)** (Default by Tenant), or (ii) any other non-monetary Tenant Event of Default under this Lease which is not reasonably susceptible of being cured without possession of the Premises; provided, however, such provisions of this Lease will apply to and remain effective on a prospective basis notwithstanding Lender's inability to cure such previous Events of Default.

(i) Further Assurances. Port, through its Executive Director, and Tenant will cooperate in including in this Lease by suitable written amendment from time to time any provision which may be reasonably requested by the most Senior Lender to implement the provisions and intent of this **Section 34.8(d)** (New Lease), provided, however, that any such amendment will not adversely affect any of Port's rights and remedies under this Lease and Tenant will reimburse Port for all of Port's costs related to reviewing, negotiating and executing any such amendment.

(j) MOHCD's right to cure is described in **Section 4.4**.

34.9. Lender's Rights to Record, Foreclose and Assign.

Port hereby agrees with respect to any Leasehold Mortgage, that:

(i) the Lender may cause same to be recorded and enforced, and upon foreclosure, sell and assign the Leasehold Estate created hereby to an assignee from whom it may accept a purchase price; subject, however, to Lender's first securing written approval from Port, which approval shall not be unreasonably withheld, and if the specific affordable rent, income and use restrictions set forth in **Section 2** (Key Lease Terms) will be maintained, the Subsequent Owner must be controlled by a California nonprofit public benefit corporation exempt from tax under Section 501(c)(3) of the Internal Revenue Code such that the Premises receives an exemption from state property taxes as provided under Section 214 of the California Revenue and Taxation Code or successor statute with the same effect. Lender, furthermore, may acquire title to the Leasehold Estate in any lawful way, and if the Lender becomes the assignee, may sell and assign the Leasehold Estate subject to Port approval, which shall not be unreasonably withheld.

(ii) Notwithstanding anything to the contrary in this Lease, in the event of a loss of operating subsidy, which may include but shall not be limited to Project Based Vouchers or LOSP funds, Tenant may increase rents to the maximum allowed by unit type designated in writing by MOHCD so long as such designation continues to comply with the requirements of the State Legislation as determined by Port in its sole discretion.

(iii) each Subsequent Owner must take said Leasehold Estate subject to all of the provisions of this Lease, and except as provided elsewhere in this Lease, assume all of the obligations of Tenant under this Lease;

(iv) any Permitted Limited Partners of Tenant will have the same rights as any Lender under this Section, and any reference to a Lender in those sections will be deemed to include the Permitted Limited Partners; provided, however, that the rights of the Permitted Limited Partners are subordinate to the rights of any Lender;

(v) In the event Lender subsequently Transfers its interest under this Lease after acquiring the same by foreclosure or deed in lieu of foreclosure or subsequently Transfers its interest under any New Lease and in connection with any such

Transfer, Lender takes back a mortgage or deed of trust encumbering such Leasehold Estate to secure a portion of the purchase price given to Lender for such Transfer, then such mortgage or deed of trust shall be considered a permitted Mortgage under this Lease, and Lender shall be entitled to receive the benefit and enforce the provisions of this **Section 34** and any other provisions of this Lease intended for the benefit of Lenders.

(vi) If as described in **Section 34.3**, with the prior written consent of MOHCD, a Lender or Subsequent Owner elects to change the levels of affordability specified in the Permitted Uses in **Section 2** (Key Lease Terms) to cause up to one hundred percent (100%) of the residential units for Moderate Income Households [or Middle Income Household if permissible under state law], Base Rent shall be increased to include the then-fair market rental value taking into account the affordability restrictions agreed to by the Lender or Subsequent Owner pursuant to this **Section 34.9(vi)**. MOHCD shall determine the then-fair market rental value through its standard procedures and practices including through a mutually acceptable appraisal process with the Lender or Subsequent Owner that will include a market land valuation, as well as a market land lease rent level evaluation. Any increase in Base Rent established by this process shall be documented by MOHCD, Port and the Lender or Subsequent Owner by countersigned written addendum to this Lease.

34.10. Transfer of Mortgage. Port hereby consents to a Transfer by Lender, absolutely or as collateral security for performance of its obligations, of its Mortgage or any interest therein, provided such transfer satisfies the requirements of this Lease, and in the event of any such Transfer the new Lender or pledgee of the Mortgage shall have all the rights of its predecessor Lender hereunder until such time as the Mortgage is further transferred or released from the Leasehold Estate.

34.11. Appointment of Receiver. In the event of any default under a Mortgage, the Lender of the Mortgage shall be entitled to have a receiver appointed, irrespective of whether such Lender accelerates the maturity of all indebtedness secured by its Mortgage.

34.12. City Bankruptcy.

(a) If a bankruptcy proceeding is filed by or against the City, the City shall immediately notify each Lender of such filing and shall deliver a copy of all notices, pleadings, schedules, and similar materials regarding the bankruptcy proceedings to each Lender.

(b) The City acknowledges that (i) the Tenant seeks to construct improvements on the Premises using proceeds of the loans provided by the Lenders, and (ii) it would be unfair to both the Tenant and the Lenders to sell the Premises free and clear of the leasehold.

(c) If a bankruptcy proceeding is filed by or on behalf of the City, the City agrees as follows: (i) the Tenant shall be presumed to have objected to any attempt by the City to sell the fee interest free and clear of the leasehold under this Lease; (ii) if Tenant does not so object, each Lender shall have the right to so object on its own behalf or on behalf of the Tenant; and (iii) in connection with any such sale, the Tenant shall not be deemed to have received adequate protection under section 363(e) of the Bankruptcy Code, unless it shall have received and paid over to each Lender outstanding balance of the obligations under its respective loan.

(d) City recognizes that the Lenders are authorized on behalf of the Tenant to vote, participate in or consent to any bankruptcy, insolvency, receivership or court proceeding concerning the Leasehold Estate under this Lease.

35. TENANT RECORDS. Upon reasonable notice during normal business hours, and as often as the City may deem necessary, there shall be made available to the City and its authorized representatives for examination all records, reports, data and information made or kept by Tenant regarding its activities or operations on the Premises. Nothing contained herein shall entitle the City to inspect personal histories of residents or lists of donors or supporters. To

the extent that it is permitted by law to do so, the City will respect the confidentiality requirements of Tenant in regard to the lists furnished by Tenant of the names of Residential Occupants of the residential portion of the Premises.

36. CITY REQUIREMENTS.

The San Francisco Municipal Codes (available at www.sfgov.org) and City policies described or referenced in this Lease are incorporated by reference as though fully set forth in this Lease. The descriptions below are not comprehensive but are provided for notice purposes only; Tenant is charged with full knowledge of each such ordinance and policy and any related implementing regulations as they may be amended from time to time. Tenant understands and agrees that its failure to comply with any provision of this Lease relating to any such code provision, to the extent such code provision is applicable, shall be deemed a material breach of this Lease and may give rise to penalties under the applicable ordinance. Capitalized or highlighted terms used in this Section and not defined in this Lease shall have the meanings ascribed to them in the cited ordinance.

36.1. Nondiscrimination.

(a) Covenant Not to Discriminate. In the performance of this Lease, Tenant covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), weight, height, association with members of classes protected under this Chapter 12B or 12C of the San Francisco Administrative Code or in retaliation for opposition to any practices forbidden under Chapter 12B or 12C of the Administrative Code against any employee of Tenant, any City and County employee working with Tenant, any applicant for employment with Tenant, or any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Tenant in the City and County of San Francisco.

(b) Subleases and Other Contracts. Tenant shall include in all subleases and other contracts relating to the Premises a non-discrimination clause applicable to such subtenant or other contractor in substantially the form of subsection (a). In addition, Tenant shall incorporate by reference in all subleases and other contracts the provisions of Sections 12B.2 (a), 12B.2 (c)-(k) and 12C.3 of the Administrative Code and shall require all subtenants and other contractors to comply with such provisions.

(c) Nondiscrimination in Benefits. Tenant does not as of the date of this Lease and will not during the Term, in any of its operations in San Francisco or where the work is being performed for the City, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits (collectively "**Core Benefits**") as well as any benefits other than the Core Benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local Law authorizing such registration, subject to the conditions set forth in Section 12B.2 of the Administrative Code.

(d) CMD Form. On or prior to the Commencement Date, Tenant shall execute and deliver to City the "Nondiscrimination in Contracts and Benefits" form approved by the CMD.

(e) Penalties. Tenant understands that pursuant to Section 12B.2(h) of the Administrative Code, a penalty of \$50.00 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Lease may be assessed against Tenant and/or deducted from any payments due Tenant.

36.2. Requiring Health Benefits for Covered Employees. Unless exempt, Tenant agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in Administrative Code Chapter 12Q (Chapter 12Q).

(a) For each Covered Employee Tenant shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO.

(b) Notwithstanding the above, if Tenant meets the requirements of a "small business" by the City pursuant to Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with *Section 36.2(a)* above.

(c) If, within 30 days after receiving written notice of a breach of this Lease for violating the HCAO, Tenant fails to cure such breach or, if such breach cannot reasonably be cured within such 30-day period, Tenant fails to commence efforts to cure within such period, or thereafter fails to diligently pursue such cure to completion, the City shall have the remedies set forth in Section 12Q.5(f). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

(d) Any Sublease or Contract regarding services to be performed on the Premises entered into by Tenant shall require the Subtenant or Contractor and Subcontractors, as applicable, to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in Chapter 12Q of the Administrative Code. Tenant shall notify the Office of Labor Standards Enforcement ("OLSE") when it enters into such a Sublease or Contract and shall certify to OLSE that it has notified the Subtenant or Contractor of the obligations under the HCAO and has imposed the requirements of the HCAO on the Subtenant or Contractor through written agreement with such Subtenant or Contractor. Tenant shall be responsible for ensuring compliance with the HCAO for each Subtenant, Contractor and Subcontractor performing services on the Premises. If any Subtenant, Contractor or Subcontractor fails to comply, the City may pursue the remedies set forth in Section 12Q.5 of the Administrative Code against Tenant based on the Subtenant's, Contractor's, or Subcontractor's failure to comply, provided that OLSE has first provided Tenant with notice and an opportunity to cure the violation.

(e) Tenant shall not discharge, reprimand, penalize, reduce the compensation of, or otherwise discriminate against, any employee for notifying the City of any issue relating to the HCAO, for opposing any practice proscribed by the HCAO, for participating in any proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(f) Tenant represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the requirements of the HCAO.

(g) Tenant shall keep itself informed of the requirements of the HCAO, as they may change from time to time.

(h) Upon request, Tenant shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subtenants, Contractors, and Subcontractors.

(i) Within ten (10) business days of any request, Tenant shall provide the City with access to pertinent records relating to any Tenant's compliance with the HCAO. In addition, the City and its agents may conduct random audits of Tenant at any time during the Term. Tenant agrees to cooperate with City in connection with any such audit.

(j) If a Contractor or Subcontractor is exempt from the HCAO because the amount payable to such Contractor or Subcontractor under all of its contracts with the City or relating to City-owned property is less than \$25,000.00 (or \$50,000.00 for nonprofits) in that fiscal year, but such Contractor or Subcontractor later enters into one or more agreements with

the City or relating to City-owned property that cause the payments to such Contractor or Subcontractor to equal or exceed \$75,000.00 in that fiscal year, then all of the Contractor's or Subcontractor's contracts with the City and relating to City-owned property shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements to equal or exceed \$75,000.00 in the fiscal year.

36.3. First Source Hiring. The City has adopted a First Source Hiring Program (San Francisco Administrative Code Sections 83.1 et seq.) which establishes specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry-level positions as those terms are defined by the ordinance. Tenant acknowledges receiving and reviewing the First Source Hiring Program materials and requirements and agrees to comply with all requirements of the ordinance as implemented by City, including without limitation, notification of vacancies throughout the Term and entering into a First Source Hiring Agreement, if applicable. Tenant acknowledges and agrees that it may be subject to monetary penalties for failure to comply with the ordinance or a First Source Hiring Agreement and that such non-compliance shall be a default of this Lease.

36.4. Local Business Enterprises. The Port Commission encourages the participation of local business enterprises ("LBEs") in Tenant's operations. Tenant agrees to consult with CMD to determine appropriate methods for promoting participation by LBEs. Architecture, Engineering, Laboratory Services (Materials Testing), Trucking and Hauling, and Security Guard Services are categories of services that may provide opportunities for certified LBE participation. City maintains a list of certified LBEs at: http://sfgov.org/site/uploadedfiles/sfhumanrights/directory/vlist_1.htm.

36.5. Prohibition of Tobacco Sales and Advertising. Tenant acknowledges and agrees that no sales or advertising of cigarettes or tobacco products is allowed on the Premises. This advertising prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of cigarettes and tobacco products, or (ii) encourage people not to smoke or to stop smoking.

36.6. Prohibition of Alcoholic Beverages Advertising. Except in that portion of the Improvements authorized to sell alcohol, if any, Tenant acknowledges and agrees that no advertising of alcoholic beverages is allowed on the Premises. For purposes of this section, "alcoholic beverage" shall be defined as set forth in California Business and Professions Code Section 23004, and shall not include cleaning solutions, medical supplies and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing, selling or distributing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of alcoholic beverages, (ii) encourage people not to drink alcohol or to stop drinking alcohol, or (iii) provide or publicize drug or alcohol treatment or rehabilitation services.

36.7. Graffiti Removal. Tenant agrees to remove all graffiti from the Premises within forty-eight (48) hours of the earlier of Tenant's: (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a tenant to breach any lease or other agreement that it may have concerning its use of the real property. "Graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and that is visible from the public right-of-way, but

does not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of this Lease or the Port Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (Calif. Civil Code §§ 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

36.8. Restrictions on the Use of Pesticides. Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or "**IPM Ordinance**") describes an integrated pest management ("**IPM**") policy to be implemented by all City departments. Tenant shall not use or apply or allow the use or application of any pesticides on the Premises, and shall not contract with any party to provide pest abatement or control services to the Premises, without first receiving City's written approval of an integrated pest management plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the term of this Lease, (ii) describes the steps Tenant will take to meet the City's IPM Policy described in Section 300 of the IPM Ordinance and (iii) identifies, by name, title, address and telephone number, an individual to act as the Tenant's primary IPM contact person with the City. Tenant shall comply, and shall require all of Tenant's contractors to comply, with the IPM plan approved by the City and shall comply with the requirements of Sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM Ordinance, as if Tenant were a City department. Among other matters, such provisions of the IPM Ordinance: (a) provide for the use of pesticides only as a last resort, (b) prohibit the use or application of pesticides on property owned by the City, except for pesticides granted an exemption under Section 303 of the IPM Ordinance (including pesticides included on the most current Reduced Risk Pesticide List compiled by City's Department of the Environment), (c) impose certain notice requirements, and (d) require Tenant to keep certain records and to report to City all pesticide use by Tenant's staff or contractors. If Tenant or Tenant's contractor will apply pesticides to outdoor areas, Tenant must first obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation and any such pesticide application shall be made only by or under the supervision of a person holding a valid Qualified Applicator certificate or Qualified Applicator license under state law. City's current Reduced Risk Pesticide List and additional details about pest management on City property can be found at the San Francisco Department of the Environment website, <http://sfenvironment.org/ipm>.

36.9. MacBride Principles Northern Ireland. The City urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

36.10. Tropical Hardwood and Virgin Redwood Ban. The City urges Tenant not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood product. Except as expressly permitted by the application of Sections 802(b) and 803(b) of the Environment Code, Tenant shall not provide any items to the construction of Alterations, or otherwise in the performance of this Lease which are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. In the event Tenant fails to comply in good faith with any of the provisions of Chapter 8 of the Environment Code, Tenant shall be liable for liquidated damages for each violation in any amount equal to the contractor's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

36.11. Preservative-Treated Wood Containing Arsenic. Tenant may not purchase preservative-treated wood products containing arsenic in the performance of this Lease unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited

to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Tenant may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Tenant from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

36.12. Notification of Limitations on Contributions. Through its execution of this Lease, Tenant acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Tenant acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Tenant further acknowledges that, if applicable, the prohibition on contributions applies to each Tenant; each member of Tenant's board of directors, and Tenant's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent (20%) in Tenant; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Tenant. Additionally, Tenant acknowledges that if this **Section 36.12** (Notification of Limitations on Contributions) applies, Tenant must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 and must provide to City the name of each person, entity or committee described above.

36.13. Sunshine Ordinance. In accordance with Section 67.24(e) of the Administrative Code, contracts, contractors' bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between City and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement or benefit. Information provided which is covered by this Section will be made available to the public upon request.

36.14. Public Access to Meetings and Records. If Tenant receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, Tenant shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Lease, Tenant agrees to open its meetings and records to the public in the manner set forth in Sections 12L.4 and 12L.5 of the Administrative Code. Tenant further agrees to make good-faith efforts to promote community membership on its Board of Directors in the manner set forth in Section 12L.6 of the Administrative Code. Tenant acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Lease. Tenant further acknowledges that such material breach of this Lease shall be grounds for City to terminate and/or not renew this Lease, partially or in its entirety.

36.15. Nondisclosure of Private Information. Tenant agrees to comply fully with and be bound by all of the applicable provisions of Chapter 12M of the San Francisco Administrative Code (the "Nondisclosure of Private Information Ordinance"), including the remedies provided. Consistent with the requirements of the Nondisclosure of Private Information Ordinance, to the extent applicable, Tenant agrees to all of the following:

(a) Neither Tenant nor any of its subcontractors shall disclose Private Information, unless one of the following is true:

- (i) The disclosure is authorized by this Lease;
- (ii) Tenant received advance written approval from the Contracting Department to disclose the information; or
- (iii) The disclosure is required by law or judicial order.

(b) Any disclosure or use of Private Information authorized by this Lease shall be in accordance with any conditions or restrictions stated in this Lease. Any disclosure or use of Private Information authorized by a Contracting Department shall be in accordance with any conditions or restrictions stated in the approval.

(c) Private Information shall mean any information that: (1) could be used to identify an individual, including without limitation, name, address, social security number, medical information, financial information, date and location of birth, and names of relatives; or (2) the law forbids any person from disclosing.

(d) Any failure of Tenant to comply with the Nondisclosure of Private Information Ordinance shall be a material breach of this Lease. In such an event, in addition to any other remedies available to it under equity or law, City may terminate this Lease, debar Tenant, or bring a false claim action against Tenant.

36.16. Conflicts of Interest. Through its execution of this Lease, Tenant acknowledges that it is familiar with the provisions of Article III, Chapter 2 of Campaign and Governmental Conduct Code, and Sections 87100 et seq. and Sections 1090 et seq. of the California Government Code, and certifies that it does not know of any facts which would constitute a violation of these provisions, and agrees that if Tenant becomes aware of any such fact during the Term, Tenant shall immediately notify the City.

36.17. Drug-Free Workplace. Tenant acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1988 (41 U.S.C. §§ 701 et seq.), the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited on City premises.

36.18. Prevailing Wages and Working Conditions. Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.61. Tenant shall require its contractors and subcontractors performing (i) labor in connection with a "public work" as defined under California Labor Code Section 1720 et seq. (which includes certain construction, alteration, maintenance, demolition, installation, repair, carpet laying, or refuse hauling work if paid for in whole or part out of public funds) or (ii) Covered Construction to: (A) pay workers performing such work not less than the highest prevailing rate of wages, (B) provide the same hours, working conditions and benefits as in each case are provided for similar work performed in San Francisco County, and (C) employ apprentices in accordance with San Francisco Administrative Code Section 23.61 (collectively, "Prevailing Wage Requirements"). Tenant agrees to cooperate with the City in any action or proceeding against a contractor or subcontractor that fails to comply with the Prevailing Wage Requirements.

Tenant shall include and shall require its subtenants, and contractors and subcontractors (regardless of tier), to include the Prevailing Wage Requirements and the agreement to cooperate in City enforcement actions in any Construction Contract with specific reference to San Francisco Administrative Code Section 23.61. Each such Construction Contract shall name the City and County of San Francisco, affected workers, and employee organizations formally representing affected workers as third party beneficiaries for the limited purpose of enforcing the Prevailing Wage Requirements, including the right to file charges and seek penalties against any contractor or subcontractor in accordance with San Francisco Administrative Code Section 23.61. Tenant's failure to comply with its obligations under this Section shall constitute

a material breach of this Lease. A contractor's or subcontractor's failure to comply with this Section will enable the City to seek the remedies specified in San Francisco Administrative Code Section 23.61 against the breaching party.

Tenant shall also pay, and shall require its subtenants, and contractors and subcontractors (regardless of tier) to pay, the Prevailing Rate of Wage for the following activities on the Premises as set forth in and to the extent required by San Francisco Administrative Code Chapter 21C: a Public Off-Street Parking Lot, Garage or Automobile Storage Facility (as defined in Section 21C.3), a Show (as defined in Section 21C.4), a Special Event (as defined in Section 21C.8), Broadcast Services (as defined in Section 21C.9), Commercial Vehicles, Loading and Unloading for Shows and Special Events (as defined in Section 21C.10), and Security Guard Services for Events (as defined in Section 21C.11).

36.19. Local Hire. Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.62 (the "Local Hiring Requirements"). Tenant Improvements and Alterations under this Lease are subject to the Local Hiring Requirements unless the cost for such work is (i) estimated to be less than \$750,000 per building permit; (ii) is in connection with the set-up, execution and strike of special events of three (3) or fewer days costing in excess of the Threshold Amount; or (iii) meets any of the other exemptions in the Local Hiring Requirements. Tenant agrees that it will comply with the Local Hiring Requirements to the extent applicable. Before starting any Tenant Improvements or Alterations, Tenant shall contact City's Office of Economic Workforce and Development ("OEWD") to determine whether the work is a Covered Project subject to the Local Hiring Requirements. Tenant shall comply with the Local Hire Plan for the Initial Improvements attached hereto as *Exhibit O* which is hereby incorporated.

Tenant shall include, and shall require its subtenants to include, a requirement to comply with the Local Hiring Requirements in any contract for a Covered Project with specific reference to San Francisco Administrative Code Section 23.62. Each such contract shall name the City and County of San Francisco as a third party beneficiary for the limited purpose of enforcing the Local Hiring Requirements, including the right to file charges and seek penalties. Tenant shall cooperate, and require its subtenants to cooperate, with the City in any action or proceeding against a contractor or subcontractor that fails to comply with the Local Hiring Requirements when required. Tenant's failure to comply with its obligations under this Section shall constitute a material breach of this Lease. A contractor's or subcontractor's failure to comply with this Section will enable the City to seek the remedies specified in San Francisco Administrative Code Section 23.62 against the breaching party.

In accordance with San Francisco Administrative Code Sections 82.4(d)(1) and (2), where application of the Local Hiring Requirements would be prohibited by federal or state Laws or would violate or be inconsistent with the terms or conditions of a grant or a contract with a federal or state agency, such funds or contracts shall be segregated so as to maximize application of the Local Hiring Requirements where administratively feasible and where not administratively feasible with regard to some or all of the project in question, then Tenant shall comply with adapted requirements established by OEWD that advance the purposes of the Local Hiring Requirements to the maximum extent feasible without conflicting with federal or state Laws or with terms or conditions of the state or federal grant or contract in question..

36.20. Compliance with Disability Laws. Tenant acknowledges that, pursuant to Disability Laws, programs, services and other activities provided by a public entity to the public, whether directly or through Tenant or contractor, must be accessible to the disabled public.. Tenant shall not discriminate against any person protected under Disability Laws in connection with the use of all or any portion of the Real Property and Tenant shall comply at all times with the applicable provisions of Disability Laws. Tenant shall be solely responsible for conducting its own independent investigation of this matter, for determining which Disability Laws apply

and for ensuring that the design of all Alterations and Improvements strictly complies with all requirements of Disability Laws.

36.21. Public Transit Information. Tenant shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Tenant employed on the Premises, including, without limitation, the distribution to such personnel of written materials explaining the convenience and availability of public transportation facilities adjacent or proximate to the Premises and encouraging use of such facilities, all at Tenant's sole expense.

36.22. Food Service and Packaging Waste Reduction Ordinance. Tenant agrees to comply fully with and be bound by all of the provisions of the Food Service and Packaging Waste Reduction Ordinance, as set forth in Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. By entering into this Lease, Tenant agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Tenant agrees that the sum of one hundred dollars (\$100.00) liquidated damages for the first breach, two hundred dollars (\$200.00) liquidated damages for the second breach in the same year, and five hundred dollars (\$500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Lease was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Tenant's failure to comply with this provision.

36.23. San Francisco Bottled Water Ordinance. Tenant is subject to all applicable provisions of Environment Code Chapter 24 (which are hereby incorporated) prohibiting the sale or distribution of drinking water in plastic bottles with a capacity of twenty-one (21) fluid ounces or less at City-permitted events held on the Premises with attendance of more than 100 people.

36.24. Consideration Of Criminal History In Hiring And Employment Decisions.

(a) Tenant agrees to comply with and be bound by all of the applicable provisions of San Francisco Administrative Code Chapter 12T (Criminal History in Hiring and Employment Decisions; "Chapter 12T"), which are hereby incorporated, including the remedies and implementing regulations as may be amended from time to time, with respect to applicants and employees of Tenant who would be or are performing work at the Premises.

(b) Tenant shall incorporate by reference the provisions of Chapter 12T in all subleases of some or all of the Premises, and shall require all subtenants to comply with such provisions. Tenant's failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.

(c) Tenant and subtenants shall not inquire about, require disclosure of, or if such information is received base an Adverse Action on an applicant's or potential applicant for employment, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

(d) Tenant and subtenants shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection (c) above. Tenant and subtenants shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

(e) Tenant and subtenants shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment with Tenant or subtenant at the Premises, that the Tenant or subtenant will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

(f) Tenant and subtenants shall post the notice prepared by the Office of Labor Standards Enforcement ("OLSE"), available on OLSE's website, in a conspicuous place at the Premises and at other workplaces within San Francisco where interviews for job opportunities at the Premises occur. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the Premises or other workplace at which it is posted.

(g) Tenant and subtenants understand and agree that upon any failure to comply with the requirements of Chapter 12T, the City shall have the right to pursue any rights or remedies available under Chapter 12T or this Lease, including but not limited to a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Lease.

(h) If Tenant has any questions about the applicability of Chapter 12T, it may contact City for additional information. City may consult with the Director of the City's Office of Contract Administration who may also grant a waiver, as set forth in Section 12T.8.

36.25. Employee Signature Authorization Ordinance. The City has adopted an Employee Signature Authorization Ordinance (S.F. Admin Code Sections 23.50-23.56). That ordinance requires employers of employees in hotel or restaurant projects on public property with fifty (50) or more employees (whether full-time or part-time) to enter into a "card check" agreement with a labor union regarding the preference of employees to be represented by a labor union to act as their exclusive bargaining representative. Tenant shall comply with the requirements of such ordinance, if applicable, including, without limitation, any requirements in the ordinance with respect to its Subtenants or operators.

36.26. Vending Machines; Nutritional Standards and Calorie Labeling Requirements; Offerings. Tenant shall not install or permit any vending machine on the Premises without the prior written consent of Port. Any permitted vending machine must comply with the food and beverage nutritional standards and calorie labeling requirements set forth in San Francisco Administrative Code section 4.9- 1(c), as may be amended from time to time (the "Nutritional Standards Requirements"). Tenant agrees to incorporate the Nutritional Standards Requirements into any contract for the installation of a vending machine on the Premises or for the supply of food and beverages to that vending machine. Failure to comply with the Nutritional Standards Requirements or to otherwise comply with this Section shall be deemed a material breach of this Lease. Without limiting Port's other rights and remedies under this Lease, Port shall have the right to require the immediate removal of any vending machine on the Premises that is not permitted or that violates the Nutritional Standards Requirements. In addition, any Restaurant including any employee eating establishment located on the Premises is encouraged to ensure that at least twenty-five percent (25%) of Meals (as capitalized terms are defined in San Francisco Administrative Code section 4.9-1) offered on the menu meet the nutritional standards set forth in San Francisco Administrative Code section 4.9-1(e), as may be amended.

36.27. Supervision of Minors. In accordance with California Public Resources Code Section 5164, if Tenant or any its Subtenants or Agents is providing services at the Premises, Tenant shall not hire, and shall prevent its Subtenants or Agents from hiring, any person for employment or a volunteer position in a position having supervisory or disciplinary authority over a minor if that person has been convicted of any offense listed in Public Resources Code Section 5164. In addition, if Tenant or any its Subtenants or Agents is providing services to the City involving the supervision or discipline of minors or where Tenant or any its Subtenants or

Agents will be working with minors in an unaccompanied setting on more than an incidental or occasional basis, Tenant or any its Subtenants or Agents shall comply with any and all applicable requirements under federal or state law mandating criminal history screening for such positions and/or prohibiting employment of certain persons including but not limited to California Penal Code Section 290.95. In the event of a conflict between this section and Section 36.24 (Consideration of Criminal History in Hiring and Employment Decisions), this section shall control.

37. NOTICES.

Except as otherwise expressly provided in this Lease or by Law, all notices (including notice of consent or non-consent) required or permitted by this Lease or by Law must be in writing and be delivered by: (a) hand delivery; (b) first class United States mail, postage prepaid; or (c) overnight delivery by a nationally recognized courier or the United State Postal Service, delivery charges prepaid. Notices to a party must be delivered to that party's mailing address in **Section 2** (Key Lease Terms), unless superseded by a notice of a change in that party's mailing address for notices, given to the other party in the manner provided above, or by information provided by Tenant in Tenant's written response to Port's written request for such information.

All notices under this Lease shall be deemed to be duly delivered: (a) on the date personal delivery actually occurs; (b) if mailed, on the business day following the business day deposited in the United States mail or, if mailed return receipt requested, on the date of delivery or on which delivery is refused as shown on the return receipt; or (c) the business day after the business day deposited for overnight delivery.

Notices may not be given by facsimile or electronic mail, but either party may deliver a courtesy copy of a notice by facsimile or electronic mail.

38. REPRESENTATIONS AND WARRANTIES OF TENANT.

Tenant, and each of its partners executing this Lease, represents and warrants as follows as of the date hereof and the Commencement Date:

(a) Valid Existence; Good Standing. Tenant is a California limited partnership duly organized and validly existing and is in good standing under the laws of the State of California. Tenant, and each of its partners executing this Lease, has all requisite power and authority to conduct its business as presently conducted.

(b) Authority. Tenant, and each of its partners executing this Lease, has all requisite power and authority to execute and deliver this Lease and to carry out and perform all of the terms and covenants of this Lease.

(c) No Limitation on Ability to Perform. Neither Tenant's, nor any of its partners executing this Lease, articles of formation, limited partnership agreement, nor any other agreement or Law in any way prohibits, limits or otherwise affects the right or power of Tenant or any of its partners executing this Lease, to enter into and perform all of the terms and covenants of this Lease. Neither Tenant nor any of its partners executing this Lease, is a party to or bound by any contract, agreement, indenture, trust agreement, note, obligation or other instrument that could prohibit, limit or otherwise affect the same. Other than the Regulatory Approvals required to Construct the Initial Improvements, no consent, authorization or approval of, or other action by, and no notice to or filing with, any governmental authority, regulatory body or any other Person is required for the due execution, delivery and performance by Tenant or any of its partners executing this Lease or any of the terms and covenants contained herein. There are no pending or threatened lawsuits or proceedings or undischarged judgments affecting Tenant or any of its partners executing this Lease before any court, governmental agency, or arbitrator that might materially and adversely affect the enforceability of this Lease or the business, operations, assets or condition of Tenant or any of its partners executing this Lease.

(d) Valid Execution. The execution and delivery of this Lease by Tenant and each of its partners executing this Lease has been duly and validly authorized by all necessary action. This Lease will be a legal, valid and binding obligation of Tenant and each of its partners executing this Lease, enforceable against each of them in accordance with their terms once executed.

(e) Defaults. The execution, delivery and performance of this Lease (i) do not and will not violate or result in a violation of, contravene or conflict with, or constitute a default under (A) any agreement, document or instrument to which Tenant or each of its partners or by which Tenant's or any of its partners' assets may be bound or affected, (B) any Law, or (C) the certificate of partnership or Tenant's or any its partners executing this Lease, limited partnership agreement, and (ii) do not and will not result in the creation or imposition of any lien or other encumbrance upon the assets of Tenant or any of its partners executing this Lease.

(f) Meeting Financial Obligations. There is no material adverse change in Tenant's or any of its partners' executing this Lease financial condition and Tenant, and each of its general partners is meeting its current liabilities as they mature; no federal or state tax liens have been filed against it; and neither Tenant nor any of its general partners, is in default or claimed default under any agreement for borrowed money.

The representations and warranties in this Section shall survive any expiration or earlier termination of this Lease.

39. QUIET ENJOYMENT.

Subject to the terms and conditions of this Lease and applicable Laws, Port agrees that Tenant, upon observing and keeping all of the covenants under this Lease on its part to be kept, shall lawfully and quietly hold, occupy and enjoy the Premises during the Term of this Lease without hindrance by, through or under Port. Tenant expressly acknowledges that Tenant's right to quiet possession of the Premises does not preclude Port's right to enter the Premises and/or conduct work and make alterations or repairs as permitted by this Lease. Port shall not be liable for any interference or disturbance by other tenants or third persons, nor shall Tenant be released from any of the obligations of this Lease because of such interference or disturbance.

40. MISCELLANEOUS PROVISIONS.

40.1. Successors and Assigns. This Lease is binding upon and will inure to the benefit of the successors and assigns of City and Tenant, subject to the limitations on Transfers set forth in **Section 26** (Transfers). Where the term "Tenant," or "City" is used in this Lease, it means and includes their respective successors and assigns. Whenever this Lease specifies Port as a Party or MOHCD or Port as the holder of the right or obligation to give approvals or consents, if Port or MOHCD or a comparable public body which has succeeded to Port's rights and obligations no longer exists, then the City (or the State, if applicable) will be deemed to be the successor and assign of Port and MOHCD for purposes of this Lease.

40.2. Technical Corrections. The Parties reserve the right, upon mutual agreement of Port's Executive Director and Tenant, to enter into memoranda of technical corrections hereto to reflect any non-material changes in the actual legal description and square footages of the Premises and the Initial Improvements, and upon full execution thereof, such memoranda shall be deemed to become a part of this Lease.

40.3. Counterparts. This Lease may be executed in counterparts, each of which is deemed to be an original, and all such counterparts constitute one and the same instrument.

40.4. Extensions by Port. Upon the request of Tenant, Port, acting through its Executive Director, may, by written instrument, extend the time for Tenant's performance of any term, covenant or condition of this Lease or permit the curing of any default upon such terms and conditions as it determines appropriate, including the time within which Tenant shall agree to such terms or conditions, provided, however, that any such extension or permissive curing of any

particular default will not operate to release any of Tenant's obligations nor constitute a waiver of Port's rights with respect to any other term, covenant or condition of this Lease or any other default in, or breach of, this Lease or otherwise effect the time of the essence provisions with respect to the extended date or the other dates for performance under this Lease.

40.5. Further Assurances. The Parties agree to execute and acknowledge such other and further documents and take such other reasonable actions as may be necessary or reasonably required to effectuate the terms of this Lease. Port's Executive Director is authorized to execute on behalf of Port any closing or similar documents and any contracts, agreements, memoranda or similar documents with State, regional or local entities or other Persons that are necessary or proper to achieve the purposes and objectives of this Lease and do not materially increase the obligations of Port under this Lease, if the Executive Director determines, in consultation with the City Attorney, that the document is necessary or proper and in Port's best interests. The Executive Director's signature on any such document shall conclusively evidence such a determination by him or her.

40.6. Severability. If any provision of this Lease, or its application to any Person or circumstance, is held invalid by any court, the invalidity or inapplicability of such provision shall not affect any other provision of this Lease or the application of such provision to any other Person or circumstance, and the remaining portions of this Lease shall continue in full force and effect, unless enforcement of this Lease as so modified by and in response to such invalidation would be grossly inequitable under all of the circumstances, or would frustrate the fundamental purposes of this Lease.

40.7. Entire Agreement. This Lease contains all of the representations and the entire agreement between the Parties with respect to the subject matter of this Lease. Any prior correspondence, memoranda, agreements, warranties, or representations, whether written or oral, relating to such subject matter are superseded in total by this Lease. No prior drafts of this Lease or changes from those drafts to the executed version of this Lease shall be introduced as evidence in any litigation or other dispute resolution proceeding by any party or other person, and no court or other body should consider those drafts in interpreting this Lease.

40.8. Interpretation of Lease.

(a) References in this Lease to Tenant's acts or omissions will mean acts or omissions by Tenant and its Agents and Invitees unless the context requires or specifically stated otherwise.

(b) Whenever an exhibit or schedule is referenced, it means an attachment to this Lease unless otherwise specifically identified. All exhibits and schedules are incorporated in this Lease by reference.

(c) Whenever a section, article or paragraph is referenced, it refers to this Lease unless otherwise specifically provided. The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only and must be disregarded in the construction and interpretation of this Lease. Wherever reference is made to any provision, term, or matter "in this Lease," "herein" or "hereof" or words of similar import, the reference will be deemed to refer to any reasonably related provisions of this Lease in the context of the reference, unless the reference refers solely to a specific numbered or lettered article, section, subdivision, or paragraph of this Lease.

(d) References to all Laws, including specific statutes, relating to the rights and obligations of either party mean the Laws in effect on the effective date of this Lease and as they are amended, replaced, supplemented, clarified, corrected, or superseded at any time during the Term or while any obligations under this Lease are outstanding, whether or not foreseen or contemplated by the Parties. References to specific code sections mean San Francisco ordinances unless otherwise specified.

(e) The terms "include," "included," "including" and "such as" or words of similar import when following any general term, statement, or matter may not be construed to limit the term, statement, or matter to the specific items or matters, whether or not language of non-limitation is used, but will be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of the term, statement, or matter, and will be deemed to be followed by the phrase "without limitation" or "but not limited to."

(f) This Lease has been negotiated at arm's length between persons sophisticated and knowledgeable in the matters addressed. In addition, each party has been represented by experienced and knowledgeable legal counsel, or has had the opportunity to consult with counsel. Accordingly, the provisions of this Lease must be construed as a whole according to their common meaning in order to achieve the intents and purposes of the Parties, without any presumption (including a presumption under California Civil Code § 1654) against the party responsible for drafting any part of this Lease.

(g) The party on which any obligation is imposed in this Lease will be solely responsible for paying all costs and expenses incurred in performing the obligation, unless the provision imposing the obligation specifically provides otherwise.

(h) Whenever required by the context, the singular includes the plural and vice versa, the masculine gender includes the feminine or neuter genders and vice versa, and defined terms encompass all correlating forms of the terms (e.g., the definition of "waive" applies to "waiver," "waivers," "waived," "waiving," etc.).

(i) References to days mean calendar days unless otherwise specified, provided that if the last day on which a party must give notice, respond to a notice, or take any other action under this Lease occurs on a day that is not a business day, the date by which the act must be performed will be extended to the next business day.

40.9. No Implied Waiver. No failure by Port to insist upon the strict performance of any obligation of Tenant under this Lease or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, and no acceptance of full or partial Rent during the continuance of any such breach shall constitute a waiver of such breach or of Port's rights to demand strict compliance with such term, covenant or condition. Port's consent to or approval of any act by Tenant requiring Port's consent or approval shall not be deemed to waive or render unnecessary Port's consent to or approval of any subsequent act by Tenant. Any waiver by Port of any default must be in writing and shall not be a waiver of any other default (including any future default) concerning the same or any other provision of this Lease.

40.10. Survival of Indemnities. Termination or expiration of this Lease shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Lease, the ability to collect any sums due, nor shall it affect any provision of this Lease that expressly states it shall survive termination or expiration hereof.

40.11. Relationship of the Parties. City is not, and none of the provisions in this Lease shall be deemed to render City, a partner in Tenant's business, or joint venturer or member in any joint enterprise with Tenant. Neither Tenant nor City shall act as the agent of the other in any respect hereunder. This Lease is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided.

40.12. Recordation. Except for any Certificate of Final Completion or other document to be prepared by the CHE, whenever this Lease requires or allows recordation in the Official Records of any other document or agreement, including by a Lender, Tenant shall prepare the necessary documents at no cost to Port in form and content satisfactory to Port and the City Attorney. Upon Port's approval, Tenant shall record such approved document or agreement in the Official Records and provide Port and MOHCD with a copy of the recorded document

40.13. Additional Written Agreement Required. Tenant expressly agrees and acknowledges that no officer, director, or employee of City is authorized to offer or promise, nor is City required to honor, any offered or promised rent credit, monetary concession or abatement, or any other form of monetary consideration (individually and collectively, "Concession") without a written agreement executed by City authorizing such Concession and, if applicable, certification of the Concession from the City's Controller.

40.14. California Law. This Lease is governed by, and shall be construed and interpreted in accordance with, the Laws of the State of California and City's Charter. Port and Tenant hereby irrevocably consent to the jurisdiction of and proper venue in the Superior Court for the City and County of San Francisco.

40.15. Real Estate Broker's Fees. Port will not pay, nor will Port be liable or responsible for, any finder's or broker's fee in connection with this Lease. Tenant agrees to Indemnify Port from any Claims, including attorneys' fees, incurred by Port in connection with any such Claim or Claims of any person(s), finder(s), or broker(s) to a commission in connection with this Lease.

40.16. Cumulative Remedies. All rights and remedies of either party hereto set forth in this Lease shall be cumulative, except as may otherwise be provided herein.

41. LIMITATION ON DAMAGES.

41.1. No Recourse Beyond Value of Premises. Notwithstanding anything to the contrary contained in this Lease, Tenant agrees that Tenant will have no recourse with respect to, and City shall not be liable for, any obligation of City under this Lease, or for any claim based upon this Lease, except to the extent of the fair market value of City's fee interest in the Premises (as encumbered by this Lease). Tenant shall look solely to the fair market value of City's fee interest in the Premises for the recovery of any judgment or award. By Tenant's execution and delivery hereof and as part of the consideration for City's obligations hereunder, Tenant expressly waives all other liability. Before filing suit for an alleged default by City, Tenant shall give City notice and reasonable time to cure the alleged default.

41.2. Non-Liability of City Officials, Employees and Agents. No elective or appointive board, commission, member, officer, employee or other Agent of City shall be personally liable to Tenant, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to Tenant, its successors and assigns, or for any obligation of City under this Lease. Under no circumstances shall City, or its Agents be liable under any circumstances for any consequential, incidental or punitive damages.

41.3. Non-Liability of Tenant's Members, Partners, Shareholders, Directors, Officers and Employees. No present or future member, officer, partner, shareholder, director, or employee of Tenant will be personally liable to Port for a Tenant Event of Default or for any amount which may become due to Port or for any obligations under the terms of this Lease.

41.4. Limitation on City's Liability Upon Transfer. In the event of any transfer of City's interest in and to the Premises, City (and in case of any subsequent transfers, the then transferor), subject to the provisions hereof, will be automatically relieved from and after the date of such transfer of all liability with regard to the performance of any covenants or obligations contained in this Lease thereafter to be performed on the part of City, but not from liability incurred by City (or such transferor, as the case may be) on account of covenants or obligations to be performed by City (or such transferor, as the case may be) hereunder before the date of such transfer.

42. ESTOPPEL CERTIFICATES.

42.1. Estoppel Certificate by Tenant. Tenant shall execute, acknowledge and deliver to City (or at City's request, to a prospective purchaser, lessee, or Lender of City's interest in the Premises), within thirty (30) days after request, a certificate in substantially the same form as

Exhibit M. In addition, if requested by City, Tenant shall attach to such certificate a copy of this Lease, and any amendments thereto, and include in such certificate a statement by Tenant that such attachment is a true, correct and complete copy of this Lease, as applicable, including all modifications thereto. City, any successor agency, and any prospective purchaser, lessee or Lender of the Premises or any part of City's interest in the Premises, may rely upon any such certificate therein. Tenant also will use commercially reasonable efforts (including inserting a provision similar to this **Section 42.1** (Estoppel Certificate by Tenant) into each Sublease) to cause Subtenants under Subleases to execute, acknowledge and deliver to City, within thirty (30) days after request, an estoppel certificate in substantially the same form as **Exhibit M** with respect to each such applicable Sublease, but Tenant shall not be in default hereunder for failure of any particular Subtenant to deliver such estoppel certificate to City.

42.2. Estoppel Certificate by City. Subject to City's receipt of its review costs as set forth in **Section 43.2** (Fees for Review), City shall execute, acknowledge and deliver to Tenant (or at Tenant's request, to a prospective Lender, Permitted Limited Partner, or other prospective transferee of Tenant's interest under this Lease), within thirty (30) days after request, a certificate in substantially the same form as **Exhibit P**. Port agrees to modify **Exhibit P** as may be reasonably requested by a Lender or Permitted Limited Partner if revisions are approved by MOHCD, and provided that revisions are materially consistent with this Lease and Port's authority as trustee under the Burton Act, the favorable Consistency Determination made by the Port Commission and State Lands in the Resolutions referenced in **Recitals O** and **Q** or required to be made hereafter, and do not increase Port's liability as reasonably determined by Port. In addition, if requested, City shall attach to such certificate a copy of this Lease and any amendments thereto, and include in such certificate a statement by City that such attachment is a true, correct and complete copy of this Lease, including all modifications thereto. Tenant, any prospective Lender, or other prospective transferee of Tenant's interest under this Lease may rely upon any such certificate.

43. APPROVALS BY PORT; FEES FOR REVIEW.

43.1. Approvals by Port. Unless this Lease otherwise expressly provides or unless the City's Charter otherwise requires, all approvals, consents or determinations to be made by or on behalf of Port under this Lease shall be made by Port's Executive Director and shall not be unreasonably withheld or delayed. Port's Executive Director, or his or her designee, is authorized to execute on behalf of Port any closing or similar documents and any contracts, agreements, memoranda or similar documents with State, regional or local authorities or other Persons that are necessary or proper to achieve the purposes and objectives of this Lease and that do not materially increase the obligations of Port hereunder, if the Executive Director determines, after consultation with, and approval as to form by, the City Attorney, that the document is necessary or proper and in Port's best interests. The Executive Director's signature on any such documents shall be conclusive evidence of such a determination by him or her. Wherever this Lease requires or permits the giving by Port of its consent or approval, or whenever an amendment, waiver, notice, or other instrument or document is to be executed by or on behalf of Port, the Executive Director, or his or her designee, shall be authorized to execute such instrument on behalf of Port, except as otherwise provided by applicable Law, including the City's Charter.

43.2. Fees for Review. Within ten (10) days after Port's written request, Tenant shall pay Port, as Additional Rent, Port's reasonable costs, including attorneys' fees and costs and costs for Port staff time, incurred in connection with the review, investigation, processing, documentation, disapproval and/or approval of any proposed Transfer, Sublease, Mortgage, certificate, or Subsequent Construction. Tenant shall pay such costs regardless of whether or not Port consents to such proposal.

44. NO MERGER OF TITLE.

There shall be no merger of the Leasehold Estate with the fee estate in the Premises by reason of the fact that the same Person may own or hold (a) the Leasehold Estate or any interest in such Leasehold Estate, and (b) any interest in such fee estate.

45. APPROVAL OF BOARD OF SUPERVISORS.

Notwithstanding anything to the contrary contained in this Lease, Tenant acknowledges and agrees that no officer or employee of City has authority to commit City to this Lease unless and until City's Board of Supervisors shall have duly adopted a resolution approving this Lease and authorizing the transactions contemplated hereby. Therefore, any obligations or liabilities of City hereunder are contingent upon adoption of such a resolution and this Lease shall be null and void if City's Mayor and the Board of Supervisors do not approve this Lease, in their respective sole discretion. Approval of this Lease by any department, commission or agency of City shall not be deemed to imply that such resolution will be enacted, nor will any such approval create any binding obligations on City.

46. DEFINITIONS.

Definitions used in this Lease are found in the specified locations in this Lease or are set forth below. Definitions that are not capitalized below are not capitalized when used in this Lease.

"**Additional Rent**" means Port's Sale Participation and all taxes, assessments, insurance premiums, operating and maintenance charges, fees, costs, expenses, liabilities and obligations of every description which Tenant assumes or is obligated to pay or discharge pursuant to this Lease, together with every fine, penalty, interest or other charge which may be added for non-payment or late payment, whether payable to Port or to other persons, parties or entities designated herein.

"**Adjusted Basis**" means the value of the Certified Construction Costs of the Initial Improvements or the Subsequent Construction, to the extent unamortized on the Transfer Date.

"**Affiliate**" means: (i) a Person that Controls or is Controlled by Tenant, or is Controlled by the same Person that Controls Tenant; or (ii) if Tenant is a natural Person, any designated successor by trust, will, or court order following Tenant's death or incapacity.

"**Agents**" when used with reference to either party to this Lease or any other person means the officers, directors, employees, agents, and contractors of the party or other person, and their respective heirs, legal representatives, successors, and assigns.

"**Alterations**" means any alterations, installations, improvements, or additions to any Improvements or to the Premises.

"**Anniversary Date**" means the first and each subsequent anniversary of the Commencement Date; provided, however, that if the commencement date is not the first day of a month, then each Anniversary Date shall be calculated from the first day of the thirteenth (13th) month after the Commencement Date. Once the Certificate of Final Completion and Occupancy for the Residential Portion of the Building is issued, the Anniversary Date will mean each subsequent anniversary of the date of the Certificate of Final Completion and Occupancy for the Residential Portion of the Building; provided, however, that if the the date of the Certificate of Final Completion and Occupancy for the Residential Portion of the Building is not the first day of a month, then each Anniversary Date shall be calculated from the first day of the thirteenth (13th) month after the date of the Certificate of Final Completion and Occupancy for the Residential Portion of the Building.

"**Annual Retail Rent Statement**" is defined in *Section 7.2(c)* (Retail Rent).

"Approved Flood Protection Plan" is defined in *Section 5.13(b)* (CHE Determination Notice).

"Area Median Income" or **"AMI"** means median income as published annually by MOHCD, derived from the income limits determined by the United States Department of Housing and Urban Development for the San Francisco area, adjusted solely for household size, but not high housing cost area, also referred to as **"Unadjusted Median Income."**

"Authorized Restaurant Sublease" means a Restaurant Sublease that meets the criteria set forth in *Section 26.2(b)* (Authorized Restaurant Sublease).

"Award" means all compensation, sums or anything of value paid, awarded or received for a Taking, whether pursuant to judgment, agreement, settlement or otherwise.

"Base Rent" is defined in *Section 2* (Key Lease Terms).

"BCDC" means the San Francisco Bay Conservation and Development Commission.

"Building" is defined in *Section 2* (Key Lease Terms).

"building permit(s)" means a permit or permits issued by the Port in its regulatory capacity that will allow Tenant to commence Construction of the Initial Improvements or any Subsequent Construction described in such permit or permits.

"Building Systems" means the plumbing, electrical, fire protection, life safety, security and other mechanical, electrical, and communications systems of the Building.

"Burton Act" means the provisions of Chapter 1333 of the Statutes of 1968 adopted by the California Legislature, as amended, providing for the transfer to City from State, subject to specified terms, conditions and reservations, of the control and management of the certain tide and submerged lands comprising the Harbor of San Francisco.

"business day" means any week day during which businesses are generally open for business, excluding local, state, and federal holidays observed by the City.

"Cal-OSHA" means the Division of Occupational Safety and Health of the California Department of Industrial Relations.

"Capital Needs Assessment report" or **"CNA"** is defined in *Section 17.2*.

"Cash Consideration" means cash or its equivalent in immediately available funds.

"Casualty" is defined in *Section 22.1(a)* (General).

"Casualty Notice" is defined in *Section 23.1(c)* (Notice).

"Certificate of Final Completion and Occupancy" means a Certificate of Final Completion and Occupancy issued by the Chief Harbor Engineer or his or her designee pursuant to Port Building Code Section 109A or its successor provisions.

"Certificate of Final Completion and Occupancy for the Residential Portion" means the Certificate of Final Completion and Occupancy issued by the Chief Harbor Engineer or his or her designee pursuant to Port Building Code Section 109A or its successor provisions as pertains to the Residential Units. The Certificate of Final Completion and Occupancy for the Residential Portion may also include the Ground Floor Unit(s) of the Building.

"Certified Construction Costs" are Construction Costs that Port has approved through the procedures described in *Section 26.11* (Participation in Sale).

"Chief Harbor Engineer" or **"CHE"** means the Port's Chief Harbor Engineer acting in his/her regulatory capacity as the Port's chief building official in accordance with applicable Laws.

"CHE Determination" as defined in *Section 5.13(a)* (Flood Protection Measures).

"CHE Determination Notice" as defined in *Section 5.13(b)* (CHE Determination Notice).

"City" means the City and County of San Francisco, a municipal corporation. **"City"** shall refer to the City operating by and through its Port and/or MOHCD, where appropriate in the context. All references to the City shall include Port and MOHCD.

"Claims" means all liabilities, injuries, losses, costs, claims, demands, rights, causes of action, judgments, settlements, damages, liens, fines, penalties and expenses, including without limitation, direct and vicarious liability of any kind for money damages, compensation, penalties, liens, fines, interest, attorneys' fees, costs, equitable relief, mandamus relief, specific performance, or any other relief.

"Class Life" means the classification of and amortization period applicable to the Initial Improvements or the Subsequent Construction under Internal Revenue Code section 168(e).

"Close of Escrow" means Port's Delivery of the Premises to Tenant pursuant to the terms and conditions of the Option Agreement and this Lease.

"Commencement Date" is defined in *Section 2* (Key Lease Terms).

"Commercial Subtenant" is defined in *Section 7.2*.

"Commission" means the San Francisco Port Commission.

"Completion" in reference to the Initial Improvements means Port's issuance of a Certificate of Final Completion and Occupancy as further defined in *Section 14.9(a)* (Certificate of Final Completion and Occupancy; Issuance Process). **"Completion"** in reference to any Subsequent Construction means the issuance of a Certificate of Completion by Port.

"Conduct Code" is defined in *Section 36.12* above.

"Concession" is defined in *Section 40.13* (Additional Written Agreement Required).

"Condemnation" means the taking or damaging, including severance damage, of all or any part of any property, or the right of possession thereof, the right of access and ingress thereto, the right of egress therefrom, by eminent domain, inverse condemnation, or for any public or quasi-public use under the law. Condemnation may occur pursuant to the recording of a final order of condemnation, or by a voluntary sale of all or any part of any property to any Person having the power of eminent domain (or to a designee of any such Person).

"Condemnation Date" means the earlier of: (a) the date when the right of possession of the condemned property is taken by the condemning authority; or (b) the date when title to the condemned property (or any part thereof) vests in the condemning authority.

"Condemned Land Value" is defined in *Section 24.4(a)* (Award and Distribution).

"Construction" means all new construction, replacement, rehabilitation, and demolition occurring on the Premises, or where applicable, off-Premises, pursuant to this Lease.

"Construct" will have a correlative meaning.

"Construction Costs" means actual costs paid by Tenant for all categories of costs for the Initial Improvements or the Subsequent Construction without interest, amortized on a straight line basis over the Class Life of the Initial Improvements.

"Construction Costs Report" means a report prepared by a CPA specifying the Class Life of and verifying Tenant's actual Construction Costs for the Initial Improvements, accompanied by copies of documentation substantiating all expenditures, such as: (a) executed contracts; (b) invoices for labor, services, goods, and materials, bills of lading, and other bills or receipts marked "Paid" or similarly indicating payment in full; (c) canceled checks or other written evidence of payment; and (d) other documents reasonably requested by Port.

"Construction Documents" means the Schematic Design (which is attached to this Lease as *Exhibit C*), the Preliminary Construction Documents and the Final Construction Documents approved by Port prior to the Close of Escrow for this Lease pursuant to the terms of the Option Agreement for the Initial Improvements and the construction documents for any Subsequent Construction. **"Construction Documents"** does not mean any contracts between Tenant and any contractor, subcontractor, architect, engineer or consultant. With respect to the Initial Improvements, Construction Documents shall not include any documents pertaining to any planned commercial spaces, excepting the "cold shell" of such space.

"Control" means the direct or indirect ownership of: (a) fifty percent (50%) or more of each class of equity interests in the entity; or (b) fifty percent (50%) or more of each class of interests that have the right to nominate, vote for, or otherwise select the members of the governing body that directs or causes the direction of substantially all of the management and policies of the entity or otherwise has the right to direct or cause the direction of substantially all of the management and policies of the entity.

"Costs of Sale" means the following costs, but only to the extent Tenant actually incurred them in connection with a Sale: (a) reasonable (as determined by Port in its reasonable discretion) brokerage commissions; (b) customary closing fees and costs, including title insurance premiums, survey fees, escrow fees, recording charges, and transfer taxes; (c) reasonable attorneys' fees; and (d) new tenant improvements to be made solely in connection with the Sale and performed in compliance with *Section 26.11* (Participation in Sale). Costs of Sale exclude rents, taxes, or other income or expense items customarily prorated in connection with sales of real property.

"CPA" means an independent certified public accounting firm acceptable to Port in its reasonable discretion.

"CMD" means the Contract Monitoring Division of the City's General Services Agency.

"CPA" means an independent certified public accounting firm acceptable to Port in its reasonable discretion.

"Davis Street Project" is defined in *Recital H*.

"Debt Service" is defined in *Section 7.2(b)(i)* (Retail Rent).

"Deferred Items" is defined in *Section 14.9(b)* (Condition to Issuance).

"Delayed Party" is defined in *Section 30(a)* (Delay due to Force Majeure).

"Deliver" or **"Delivery"** means execution and delivery through Escrow by Port to Tenant, of a leasehold estate in the Premises by this Lease.

"Disability Laws" means the Americans with Disabilities Act (42 U.S.C. §§ 12101 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794) and the Fair Housing Amendments Act (42 U.S.C. §§3601 et seq.) and all regulations and guidelines related thereto, together with any and all laws, rules, regulations, ordinances, codes and statutes now or hereafter enacted by local or state agencies having jurisdiction thereof, including all requirements of Title 24 of the State of California, as any of the same may be in effect on the date of this Lease and may be hereafter modified, amended or supplemented.

"Excluded Condition" is defined in *Section 21.4(b)*.

"Environmental Laws" means any Laws relating to Hazardous Material (including its Handling, Release, or Remediation) or to human health and safety, industrial hygiene, or environmental conditions in the environment, including structures, soil, air, bay water, and groundwater, and any environmental mitigation measure adopted under Environmental Laws affecting any portion of the Premises.

"Environmental Regulatory Action" when used with respect to Hazardous Materials means any inquiry, investigation, enforcement, Remediation, agreement, order, consent decree, compromise, or other action that is threatened, instituted, filed, or completed by an Environmental Regulatory Agency in relation to a Release of Hazardous Materials, including both administrative and judicial proceedings.

"Environmental Regulatory Agency" means the United States Environmental Protection Agency, OSHA, any California Environmental Protection Agency board, department, or office, including the Department of Toxic Substances Control and the San Francisco Bay Regional Water Quality Control Board, Cal-OSHA, the Bay Area Air Quality Management District, the San Francisco Department of Public Health, the San Francisco Fire Department, the San Francisco Public Utilities Commission, Port (in its regulatory capacity), or any other Regulatory Agency now or later authorized to regulate Hazardous Materials.

"Environmental Regulatory Approval" means any approval, license, registration, permit, or other authorization required or issued by any Environmental Regulatory Agency, including any hazardous waste generator identification numbers relating to operations on the Premises and any closure permit.

"Exacerbate" or "Exacerbating" when used with respect to Hazardous Materials means any act or omission that increases the quantity or concentration of Hazardous Materials in the affected area, causes the increased migration of a plume of Hazardous Materials in soil, groundwater, or bay water, causes a Release of Hazardous Materials that had been contained until the act or omission, or otherwise requires Investigation or Remediation that would not have been required but for the act or omission other than mere discovery of such Hazardous Materials. Exacerbate also includes the disturbance, removal or generation of Hazardous Materials in the course of Tenant's operations, Investigations, maintenance, repair, Improvements and Alterations under this Lease. **"Exacerbation"** has a correlating meaning.

"Excess Rent" is defined in *Section 7.3* (Excess Rent).

"Expiration Date" means the date on which the Term expires as specified in *Section 2* (Key Lease Terms).

"Extended Term" is defined in *Section 2* (Key Lease Terms).

"Extension Notice" is defined in *Section 6.1(b)(i)* (Conditions to Extend).

"Extension Option" is defined in *Section 2* (Key Lease Terms).

"Exterior Improvements" means any improvements, furnishings, fixtures, or equipment located in the exterior areas of the Improvements (whether public access or not and including the roof) and/or located in the public access areas of the Premises, which may include mechanical equipment, photovoltaic panels, satellite dishes, antennae and other communication equipment, public art, bollards, flower baskets, benches, tables, chairs, umbrellas, heaters, railings, gates, trash receptacles, cleats, Signs, kiosks, flagpoles, canopies, awnings, landscaping, planter boxes, light poles, lighting fixtures, fountains, ticket booths, bicycle racks, plaques, markers, tents, models, other street furniture, and paving or other surface treatments.

"Extremely Low Income Household" means a household with combined initial income that does not exceed the lesser of: (i) thirty percent (30%) of AMI, or (b) thirty percent (30%) income level for the County of San Francisco as published by the TCAC.

"Event of Default" is defined in *Section 27* above.

"favorable Consistency Determination" means that all findings, approvals or other determinations required by the State Legislation and any other statutes governing the use of SWL 322-1 have been made by the Port Commission and State Lands and they have determined that the permitted uses, consideration to the Port, and other pertinent provisions of this Agreement and the Ground Lease are (1) consistent with the State Legislation and other governing statutes,

and (2) do not require the Port to acquire additional land or make a deposit to the Kapiloff Land Bank Fund pursuant to Section 5 of Assembly Bill 2649, as amended or any other statute governing the use of Port lands.

"Final Mitigated Negative Declaration" or **"FMND"** means the Final Mitigated Negative Declaration issued by the San Francisco Planning Department on March 9, 2018.

"financial statements" mean a current balance sheet and profit and loss statements that have been reviewed or examined by a CPA.

"Flood Protection Measures" is defined in *Section 5.13(a)* (Flood Protection Measures).

"Flood Protection Plan" is defined in *Section 5.13(b)* (Flood Protection Measures).

"Force Majeure" is defined in *Section 30(b)* (Delay Due to Force Majeure).

"foreclosure" means a foreclosure of a Mortgage or other proceedings in the nature of foreclosure (whether conducted pursuant to court order or pursuant to a power of sale contained in the Mortgage), deed or voluntary assignment or other conveyance in lieu thereof.

"goodwill" means the value assigned to Tenant's intangible business assets in connection with a Transfer, but only if the Transferee will continue to operate the same business that Tenant operated at the Premises and Port reasonably agrees with the valuation.

"Gross Revenues" means, subject only to the exceptions stated below, all sales, payments, revenues, income, fees, rentals, receipts, proceeds and amounts of any kind whatsoever, whether for cash, credit or barter, received or receivable by Tenant or any other party from any business, use or occupation, or any combination thereof, transacted, arranged or performed, in whole or in part, on the Premises, including without limitation, all returns and refunds, employee meals, discounted and complimentary meals, beverages and services or similar benefits and/or goodwill, the total value, based on price, for the tickets, cover charges, merchandise and any other items and the operation of any event, including any special or fundraising event, and catering or food delivery business conducted by, from or at the Premises (irrespective of where the orders therefor originated or are accepted and irrespective of where the food or beverages are consumed). Except as specified below, Gross Revenues shall be determined without reserve or deduction for failure or inability to collect (including, without limitation, spillage and waste) and without deduction or allowance for cost of goods sold or other costs, charges or expenses of purchasing or selling incurred by Tenant. No value added tax, no franchise or capital stock tax and no income, gross receipts or similar tax based upon income, profits or gross receipts as such shall be deducted from Gross Revenues. The following shall be excluded from Gross Revenues, provided that, Tenant provide to Port separate records to support such deductions or exclusions, as the case may be, and separate notations are made for same on Tenant's Monthly and Annual Statements: (i) the amount of any refund made or credit allowed due to a bona fide complaint from a customer concerning the quality of food, beverages, merchandise or service by Tenant; (ii) sales by redemption of gift certificates or like vouchers, but only to the extent previously reported as part of Gross Revenues; (iii) sums collected for any sales or excise tax imposed directly upon Tenant by any duly constituted governmental authority, but only if stated separately from the selling price of the goods or merchandise, or services, and collected from customers and such amounts are in fact paid to the appropriate governmental entities for which they are collected; and (iv) food and beverage sales to employees of Tenant, not to exceed, however, one percent (1%) of Gross Revenues in any single month, and provided further that said sales are at a discount; and (v) tips paid to Tenant's employees by its customers, so long as such tips go directly to Tenant's employees (and not Tenant or Tenant's management).

"Gross Sale Proceeds" means all consideration in any form directly or indirectly received by or for the account of the Tenant in connection with a Sale, including: (a) Cash Consideration; (b) the principal amount of any loan by Tenant to the Transferee to finance the Sale; and (c) the

fair market value of any other non-cash consideration representing a portion of the purchase price.

"Ground Floor Unit" is defined in *Section 2* (Key Lease Terms).

"Handle" or **"Handling"** means to use, generate, process, manufacture, produce, package, treat, transport, store, emit, discharge, or dispose of a Hazardous Material.

"Hazardous Material" means any substance, waste, or material that is now or in the future designated by any Regulatory Agency to be capable of posing a present or potential risk of injury to human health or safety, the environment, or property. This definition includes anything designated or defined in any Environmental Law as hazardous, hazardous substance, hazardous waste, toxic, pollutant, or contaminant; any asbestos, asbestos-containing material, and presumed asbestos-containing materials, whether or not part of the structure of any existing Improvements on the Premises, any Improvements to be constructed on the Premises by or on behalf of Tenant, or occurring in nature; and other naturally-occurring substances such as petroleum, including crude oil or any fraction, and natural gas or natural gas liquids.

"Hazardous Material Claim" means any Environmental Regulatory Action or any Claim made or threatened by any third party against the Indemnified Parties, or the Premises, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence or Release of any Hazardous Materials, including, without limitation, Claims based in common law. Hazardous Material Claims include, without limitation, Investigation and Remediation costs, fines, natural resource damages, damages for decrease in value of the Premises or other Port property, the loss or restriction of the use or any amenity of the Premises or other Port property, and attorneys' fees and consultants' fees and experts' fees and costs.

"Hazardous Material Condition" means the presence, Release, or threatened Release of Hazardous Materials in, on, or about the Premises, other Port property, or the environment, or from any vehicles or vessels Tenant, or its Agents and Invitees uses during Tenant's occupancy of the Premises.

"Impositions" means all taxes (including possessory interest, real and personal taxes), assessments, liens, levies, fees, charges or expenses of every description, whether general or special, ordinary or extraordinary, foreseen or unforeseen, or hereinafter levied or assessed in lieu of or in substitution of any of the foregoing of every character as they relate to the Premises.

"Improvements" mean all physical Construction on the Premises (and off-Premises where so designated in the Scope of Development), the Initial Improvements (including, without limitation, all structural and substructural elements of the Initial Improvements), and all buildings, structures, fixtures, landscaping, pathways, and other improvements erected, built, renovated, rehabilitated, restored, placed, or installed upon or within the Premises on or after the Commencement Date.

"Indemnified Parties" is defined in *Section 25.1* above.

"Indemnify" means to indemnify, protect, defend, and hold harmless forever.

"Indemnification" and **"Indemnity"** have correlating meanings.

"Initial Improvements" means construction of the Building as further defined in *Recital G* and the Construction Documents for the Initial Improvements.

"Initial Term" is defined in *Section 6.1* (Initial Term).

"Interest Rate" means ten percent (10%) per year or, if a higher rate is legally permissible, the highest rate an individual is permitted to charge under Law.

"Investigate" or **"Investigation"** when used with reference to Hazardous Materials means any activity undertaken to determine and characterize the nature and extent of Hazardous Materials that have been, are being, or are threatened to be Released in, on, under or about the

Premises, other Port property, or the environment, and includes, without limitation, preparation and publication of site history, sampling, and monitoring reports, performing equipment and facility testing such as testing the integrity of secondary containment and above and underground tanks, and sampling and analysis of environmental conditions before, during, and after Remediation begins and continuing until the appropriate Environmental Regulatory Agency has issued a no further action letter, issued a clean-up order, or taken similar action.

"**Invitees**" means Tenant's clients, customers, invitees, patrons, guests, members, licensees, permittees, concessionaires, assignees, subtenants, and any other person whose rights arise through them, except that for the purposes of **Section 26** (Transfers), "**Invitees**" excludes Tenant's licensees, assignees, subtenants, and any other person whose rights arise through them.

"**Late Charge**" means a fee equivalent to fifty dollars (\$50.00).

"**Law**" means any present or future law, statute, ordinance, code, resolution, rule, regulation, judicial decision, requirement, proclamation, order, decree, policy (including the Waterfront Land Use Plan), and Regulatory Approval of any Regulatory Agency with jurisdiction over any portion of the Premises, including Disability Laws and Regulatory Approvals issued to Port which require Tenant's compliance, and any and all recorded and legally valid covenants, conditions, and restrictions affecting any portion of the Premises, whether in effect when this Lease is executed or at any later time and whether or not within the present contemplation of the Parties, as amended from time to time.

"**Lease**" is defined in the preamble to this Lease.

"**Lease Memorandum**" means the memorandum of the Ground Lease, suitable for recordation in the Official Records and in the form of **Exhibit E**. This Lease will not be recorded by either Party.

"**Lease Year**" means the twelve (12) month period commencing on the Commencement Date and ending on the anniversary of such date. Once the Certificate of Final Completion and Occupancy for the Residential Portion of the Building is issued, the Lease Year will mean the twelve (12) month period commencing on such date and ending on the anniversary of such date.

"**Leasehold Estate**" means the estate held by the Tenant pursuant to and created by this Lease.

"**Leasehold Loans**" is defined in in **Section 7.2(b)(i)** (Debt Service).

"**Lender**" means MOHCD and a lender of any mortgage, deed of trust assignment of rents, fixture filing, security agreement or similar security instrument or assignment of Tenant's Leasehold Estate in compliance with the provisions of **Section 34** (Leasehold Mortgage) and approved by Port, including the successors or assigns of such Lender. Multiple financial institutions participating in a single financing secured by a single Mortgage shall be deemed a single Lender for purposes of this Lease.

"**Loan Documents**" means those certain loan agreements, notes, deeds of trust and declarations and any other documents executed and delivered in connection with the construction and permanent financing for the Premises, including MOHCD's Loan Agreement.

"**Local Operating Subsidy**" or "**LOSP**" means a local operating subsidy provided to Tenant by the City, the amount of which is sufficient to permit Tenant to operate the Project in accordance with the terms of the MOHCD Loan Agreement for Residential Occupants at income levels specified by MOHCD in writing.

"**LOSP Program**" means the program administered by MOHCD that regulates the distribution of LOSP.

"**Low Income Household**" means a tenant households with combined initial income that does not exceed the lesser of: sixty percent (60%) of AMI, or (ii) sixty percent (60%) income level for the County of San Francisco as published by the TCAC.

"**Major Casualty**" is defined in *Section 23.4* (Tenant's Right to Terminate Due to Casualty).

"**Middle Income Household**" means a tenant household with combined initial income that does not exceed one hundred twenty percent (120%) of AMI.

"**Moderate Income Household**" means a tenant household with combined initial income that does not exceed one hundred percent (100%) of AMI.

"**MMRP**" means the Mitigation Monitoring and Reporting Program to implement that Mitigation Measures and Improvement Measures relating to the Project as described in the FMND.

"**MOHCD**" means the San Francisco Mayor's Office of Housing and Community Development.

"**MOHCD Loan Agreement**" means that certain loan agreement, secured promissory note, deed of trust, declaration of restrictions, and any other document executed and delivered by Tenant and the MOHCD in connection with the predevelopment, construction and permanent financing of the Initial Improvements.

"**Mortgage**" means any mortgage, deed of trust, trust indenture, letter of credit or other security instrument, including but not limited to the deeds of trust securing a Mortgage and which are part of the Loan Documents, and any assignment of the rents, issues and profits from the Premises, or any portion thereof, which constitute a lien on the Leasehold Estate created by this Lease and approved in writing by Port.

"**Net Awards and Payments**" is defined in *Section 24.4* (Award and Distribution).

"**Net Cash Flow**" means Gross Revenues less Operating Expenses.

"**Net Revenues**" is defined in *Section 7.2(b)(ii)* (Retail Rent).

"**Net Sale Proceeds**" means Gross Sale Proceeds less Costs of Sale and goodwill. If Tenant made Initial Improvements or performed Subsequent Construction at the Premises, Tenant's Adjusted Basis may be deducted if Tenant previously complied with *Section 26.11(d)* (Certified Construction Costs).

"**New Capital Loans**" means

"**New Lease**" is defined in *Section 34.8(d)* (New Lease).

"**Notice of Completion**" is defined in *Section 14.9(d)(ii)* (Effect).

"**Notice of Removal**" is defined in *Section 16.2 above* (Removal of Improvements).

"**Notice to Cease Prohibited Use**" is defined in *Section 10.3 above* (Notice of Prohibited Use Charge).

"**Official Records**" means the official records of the City and County of San Francisco.

"**Operating Expenses**" is defined in *Section 7.2(b)(iii)* (Retail Rent).

"**Option Agreement**" is defined in *Recital O*.

"**OSHA**" means the United States Occupational Safety and Health Administration.

"**Partial Condemnation**" is defined in *Section 24.3* (Partial Condemnation).

"**Parties**" means Port and Tenant.

"Permitted Limited Partner" means an investor limited partner or a special limited partner and their respective successors and assigns approved by MOHCD in accordance with the Loan Documents.

"Person" means any natural person, corporation, limited liability entity, partnership, joint venture, or governmental or other political subdivision or agency.

"Personal Property" means all fixtures, furniture, furnishings, equipment, machinery, supplies, software and other tangible personal property that is incident to the ownership, development or operation of the Improvements and/or the Premises, whether now or hereafter located in, upon or about the Premises, belonging to Tenant, Residential Occupant or any Subtenant and/or in which Tenant, Residential Occupant or any Subtenant has or may hereafter acquire an ownership interest, together with all present and future attachments, replacements, substitutions and additions thereto or therefor.

"Port" means the San Francisco Port Commission.

"Port Event of Default" is defined in *Section 29*.

"Port program or project" shall mean any development, removal or renovation, by public and/or private parties, of a building, pier or seawall lot in, on or in the vicinity of the Premises (including, but not limited to any Development Project defined in *Section 5.5* (Proximity of Development Projects)).

"Port representative" means a Port auditor, or any auditor or representative designated by Port.

"Port's Sale Participation" is defined in *Section 26.11* (Port's Participation in Sale).

"Port Work" is defined in *Section 16.5* (Port's Alterations).

"Port's Repair Notice" is defined in *Section 17.4* (Port's Right to Repair).

"Premises" is defined in *Section 2* (Demise).

"preservative-treated wood containing arsenic" is defined in *Section 36.11* above.

"prevailing party" is defined in *Section 31.1* above.

"Prohibited Use(s)" is defined in *Section 10.2* above.

"Project" is defined in *Recital E*.

"Project Based Vouchers" means

"Project Requirements" means the following with respect to the Initial Improvements: (i) green building requirements, (ii) all applicable Laws, including the Port Building Code, required Regulatory Approvals, the Waterfront Land Use Plan, Environmental Laws, disabled access Laws, Laws regulating construction on the Premises, (iii) the Mitigation Measures and Improvements Measures in the MMRP; and (iv) the Equal Opportunity Program.

"Property Manager" is defined in *Section 2* (Key Lease Terms).

"Public Trust" means the public trust for commerce, navigation and fisheries, including the statutory trust imposed by the Burton Act.

"Real Property" is defined in *Section 2* (Demise).

"Refinancing" shall mean any debt financing or refinancing incurred by Tenant and secured by any Mortgage.

"Regulatory Agency" means the municipal, county, regional, state, or federal government and their bureaus, agencies, departments, divisions, courts, commissions, boards, officers, or other officials, including BCDC, any Environmental Regulatory Agency, Port (in its regulatory

capacity), other departments, offices, and commissions of the City and County of San Francisco (each in its regulatory capacity), Port's Chief Harbor Engineer, the Dredged Material Management Office, State Lands, the Army Corps of Engineers, the United States Department of Labor, the United States Department of Transportation, or any other governmental agency now or later having jurisdiction over Port property.

"Regulatory Approval" means any authorization, approval, license, registration, or permit required or issued by any Regulatory Agency.

"Release" when used with respect to Hazardous Materials means any actual or imminent spilling, introduction, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about the Premises, other Port property, or the environment.

"Remediate" or "Remediation" when used with respect to Hazardous Materials means to clean up, abate, contain, treat, stabilize, monitor, remediate, remedy, remove, or otherwise control Hazardous Materials, or to restore the affected area to the standard required by the applicable Environmental Regulatory Agency in accordance with applicable Environmental Laws and any additional Port requirements. **"Remediation"** also includes the creation of a remedial work plan to be approved by the appropriate Environmental Regulatory Agency when required.

"Rent" means the Base Rent, Retail Rent, Excess Rent, Additional Rent and all other sums payable by Tenant to Port hereunder, including, without limitation, any Late Charge and any interest assessed pursuant to **Section 7 (Rent)**.

"Rent Adjustment Date" is defined in **Section 7.1**.

"Rent Commencement Date" means the date on which the payment of Rent commences as specified in **Section 2 (Key Lease Terms)**.

"Renewable Energy System" is defined in **Section 19.1**.

"Required Element" means those portions of the Construction Documents for the Initial Improvements that address: (i) conformity and compliance with the Project Requirements, (ii) exterior architectural appearance and aesthetics of structures on the Premises, (iii) alterations to any structures on the Premises, (iv) landscape and design of all outdoor areas, including those required under Regulatory Approvals to be accessible to the public, and (v) the design and appearance of all exterior signs (whether temporary or permanent).

"Reserve Account" is defined in **Section 16.2 (Removal of Improvements)**

"Residential Occupant" means any person or entity authorized by Tenant to occupy a Residential Unit in the Building.

"Residential Portion" is defined in in **Section 2 (Key Lease Terms)**.

"Residential Unit(s)" is defined in in **Section 2 (Key Lease Terms)**.

"Restoration" and "Restore" means the restoration, replacement, renovation, reconstruction, repair, or rebuilding of the Improvements (or the relevant portion thereof) in accordance with all Laws then applicable.

"Restoration Cost" is defined in **Section 23.7(a) (Estimators)**.

"Restaurant Sublease" means a Sublease of a Ground Floor Unit for use as a restaurant or café operation open to the general public.

"Retail Rent" is defined in **Section 7.2 (Retail Rent)**.

"Retail Sublease" means a Sublease for a Subtenant selling products or services to the public for their own use.

"Retail Subtenant" means a Subtenant with a Retail Sublease for a Ground Floor Unit.

"Rules and Regulations" means Port's rules and regulations for restaurants attached hereto as *Exhibit K*, as may be amended from time to time and any other Port rules and regulations applicable to the Premises as adopted and amended from time to time.

"Sale" means, to the extent otherwise allowed under this Lease: (a) Tenant's or a Subtenant's Transfer of its entire interest in this Lease or the entire Leasehold Estate or Subleasehold Estate, including the sale of Personal Property at the Premises (other than the Personal Property of Residential Occupants) and Tenant's or a Subtenant's goodwill to any other Person or entity; or (b) a Transfer affecting ownership of the beneficial interests in or business assets of Tenant or a Subtenant, including in either case any debt financing or refinancing incurred by Tenant or a Subtenant and secured by a Mortgage.

"Sale Closing" means the date that any Sale closes.

"saltwater immersion" is defined in *Section 36.11* above.

"Schedule of Performance" means the Schedule of Performance attached hereto as *Exhibit F* as may be subsequently amended and approved in writing by Port from time to time.

"Scope of Development" means the narrative document attached hereto as *Exhibit B*.

"Security Deposit" means the amount specified in *Section 2* (Key Lease Terms) and as further described in *Section 9* above.

"Senior Lender" means any lender and its successors, assigns, and participants or other entity holding the first deed of trust on the Leasehold Estate or otherwise the most senior Lender.

"Sign" means any sign, whether free-standing or affixed to a structure, flag, advertisement, poster, or banner.

"State Lands" means the California State Lands Commission.

"State Legislation" means Senate Bill 815 (Chapter 660) (2007); Assembly Bill 2649 (Chapter 757) (2012); Assembly Bill 2797 (Chapter 529) (2016); and Assembly Bill 1423 (Chapter xxx) (2018), if enacted, and amendments thereto any other applicable statutes governing the Port's granted lands that permits lifting Public Trust use restrictions otherwise applicable from the Premises to allow development of the Project.

"Sublease" means a proposed or actual Transfer of all or any part of the Premises under a sublease or a sub-sublease or agreement of similar effect.

"Subleasehold Estate" means the estate held by a Subtenant for a subdivided parcel of the Premises.

"Subletting Expenses" means verifiable and reasonable brokerage commissions incurred in connection with a Sublease and the costs of any new tenant improvements for which Tenant is responsible under the Sublease.

"Subsequent Construction" means all alterations, installations, Improvements, repairs to and reconstruction, replacement, addition, expansion, restoration, alteration or modification of Initial Improvements, or any construction of additional Improvements, following Completion of the Initial Improvements.

"Subsequent Owner" means any successor (including a Lender or an affiliate or assignee of a Lender as applicable) to the Tenant's interest in the Leasehold Estate and the Improvements who obtains a New Lease under the terms and conditions set forth in *Section 34.8(d)* (New Lease)

"Subtenant" means the Person with whom Tenant makes a Sublease.

"SWPPP" is defined in *Section 21.6(a)* above.

"**TCAC**" means the California Tax Credit Allocation Committee.

"**Tenant**" means the party identified as Tenant in the Preamble.

"**Term**" is defined in *Section 6* (Term).

"**Total Condemnation**" is defined in *Section 24.2* (Total Condemnation).

"**trade fixtures**" means those items of personalty, furniture, equipment, machinery used in trade by Tenant which are customarily removed without damage to the Premises at the end of a lease term in the ordinary course of businesses of the type operated by Tenant at the Premises.

"**Transfer**" means any of the following events or proposed events, whether voluntary, involuntary, or by operation of Law: (a) any sale, assignment, encumbrance, sublease, or other transfer any of Tenant's interest in this Lease or in the Premises; (b) any Person other than Tenant occupies or claims a right of possession to any part of the Premises; (c) the entity which owns or Controls Tenant's equity interests or business assets (such as goodwill, inventory, and profits) changes (including without limitation a dissolution, merger, consolidation, transfer or sale); or (d) any interest of any Transferee of Tenant's interest is sold, assigned, encumbered, or otherwise Transferred. So long as Tenant is an entity whose outstanding stock is listed on a nationally recognized security exchange or if at least eighty percent (80%) of Tenant's voting stock is owned by another entity, the voting stock of which is so listed, transfer of such stock does not constitute a Transfer under this Lease.

"**Transfer Agreement**" means all document(s) effecting or evidencing Tenant's proposed sale, assignment, encumbrance, or other Transfer.

"**Transfer Date**" means the effective date of a Transfer.

"**Transfer Notice**" means Tenant's prior written notice to City of an intent to Transfer, specifying: (a) the Transferee's name, address, other contact information, and, if the Transferee is not a natural Person, its form of organization and the identity of each Person with Control of the Transferee; (b) the proposed Transfer Date and a full description of the Transfer Terms; (c) a description of the Transferee's proposed use of the Premises, including any required or desired Alterations or Improvements to the Premises that the Transferee may undertake in order to facilitate its proposed use; and (d) a list of the Transferee's personal, business, and credit references.

"**Transfer Terms**" means the terms and conditions in the proposed or final Transfer Agreement, as appropriate in context.

"**Transferee**" means the Person to which Tenant makes or proposes to make a Transfer.

"**Uninsured Casualty**" is defined in *Section 23.4* (Tenant's Right to Terminate Due to Casualty).

"**Unmatured Event of Default**" means any default that, with the giving of notice or the passage of time, or both, would constitute a Tenant Event of Default.

"**Utilities**" means electricity, water, gas, heat, sewers, oil, telecommunication services and all other Utilities.

"**Very Low-Income Household**" means: (a) during the Initial Term, a household with combined initial income that does not exceed fifty percent (50%) of Area Median Income; and (b) for any period of the Term (or Extended Term) thereafter, a tenant household with combined initial income that does not exceed fifty percent (50%) of area median income, as published by the TCAC.

"**WDAC**" means the Waterfront Design Advisory Committee authorized under Planning Code Section 240.

"**Waiving Party**" is defined in *Section 22.5* above.

"worth at the time of award" is defined in *Section 28.2* above.

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IN WITNESS WHEREOF, PORT and TENANT execute this Lease as of the last date set forth below.

PORT: **CITY AND COUNTY OF SAN FRANCISCO,**
 a municipal corporation, operating by and through the
 SAN FRANCISCO PORT COMMISSION

By: _____
Michael J. Martin
Deputy Director, Real Estate and Development

Date: _____

[Signatures Continue on Next Page]

TENANT:

**88 BROADWAY FAMILY LP,
a California limited partnership**

By: 88 Broadway Family BRIDGE LLC,
a California limited liability company,
its managing general partner

By: MCB Family Housing, Inc.,
a California nonprofit public benefit corporation,
its sole member and manager

By: _____

Rebecca Hlebasko, Vice President

Date: _____

By: JSCo 88 Broadway Family LLC,
a California limited liability company,
its administrative general partner

By: John Stewart Company,
a California corporation,
its sole member and manager

By: _____

Jack D. Gardner, President

Date: _____

[Signatures Continue on Next Page]

CONSENT: **CITY AND COUNTY OF SAN FRANCISCO,**
a municipal corporation, operating by and through the
MAYOR'S OFFICE OF HOUSING AND COMMUNITY
DEVELOPMENT

By: _____
 Name, Title

Date Signed: _____

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

By: _____
Name: _____
 Deputy City Attorney

Port Commission Resolution No.
Board of Supervisors Resolution No.

Lease Prepared By: Ricky Tijani (initial)

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EXHIBIT A-1

LEGAL DESCRIPTION OF PREMISES

[Attachment on following page]

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EXHIBIT A-2

SITE PLAN

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EXHIBIT B

PROJECT DESCRIPTION/SCOPE OF DEVELOPMENT

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EXHIBIT C

SCHEMATIC DESIGN

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EXHIBIT D

COMMENCEMENT DATE AND EXPIRATION DATE MEMORANDUM

Landlord: **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation,
operating by and through the **SAN FRANCISCO PORT COMMISSION**

Tenant:

Lease Number:

Lease Date:

Premises: [_____, Suite ____]
San Francisco, California

The Commencement Date of the Lease is hereby established as _____, 20____, the
Rent Commencement Date of the Lease is hereby established as _____, 20____ the
Anniversary Date is hereby established as _____, 20____ and the Expiration Date as
_____, 20____.

PORT: **CITY AND COUNTY OF SAN FRANCISCO**,
a municipal corporation, operating by and through the
SAN FRANCISCO PORT COMMISSION

By: _____
Michael J. Martin
Deputy Director, Real Estate and Development

Date Signed: _____

Tenant:

By: _____
Name: _____
Title: _____

Date Signed: _____

EXHIBIT E

FORM OF LEASE MEMORANDUM

[Attachment on following page]

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EXHIBIT F

SCHEDULE OF PERFORMANCE

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EXHIBIT G

MANAGEMENT PLAN

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EXHIBIT H
MITIGATION MONITORING AND REPORTING PROGRAM

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EXHIBIT I

GOOD NEIGHBOR POLICIES

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EXHIBIT J

PERMITTED TITLE EXCEPTIONS

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EXHIBIT K
RESTAURANT RULES AND REGULATIONS

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EXHIBIT L

TENANT INCOME CERTIFICATION

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EXHIBIT M

FORM TENANT ESTOPPEL CERTIFICATE

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EXHIBIT N

FORM NON-DISTURBANCE AGREEMENT

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EXHIBIT O

LOCAL HIRE PLAN

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EXHIBIT P

FORM CITY ESTOPPEL CERTIFICATE

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SCHEDULE 2

FEMA Disclosure Notice

The Federal Emergency Management Agency ("FEMA") is revising Flood Insurance Rate Maps ("FIRMs") for San Francisco Bay Area communities. As part of this effort, FEMA is preparing a FIRM for the City and County of San Francisco for the first time. That process may have significant impacts for developing new structures and reconstructing or repairing existing structures on San Francisco's waterfront.

FEMA prepares the FIRMs to support the National Flood Insurance Program ("NFIP"), a federal program that enables property owners, businesses, and residents in participating communities to purchase flood insurance backed by the federal government. The San Francisco Board of Supervisors has adopted a floodplain management ordinance governing new construction and substantial improvements in flood prone areas of San Francisco and authorizing the City's participation in NFIP (as amended, the "Floodplain Ordinance"). The Floodplain Ordinance imposes requirements on any new construction or substantial improvement of structures in city-designated flood zones that are intended to minimize or eliminate flood hazard risks. NFIP regulations allow a local jurisdiction to issue variances to its floodplain management ordinance under certain narrow circumstances, without jeopardizing the local jurisdiction's eligibility in the NFIP. However, the particular projects that are granted variances by the local jurisdiction may be deemed ineligible for federally-backed flood insurance by FEMA.

FIRMs identify areas that are subject to inundation during a flood having a 1% chance of occurrence in a given year (also known as a "base flood" or "100-year flood"). FEMA refers to an area that is at risk from a flood of this magnitude as a special flood hazard area ("SFHA"). To prepare the FIRM for San Francisco, FEMA has performed detailed coastal engineering analyses and mapping of the San Francisco Bay shoreline. The San Francisco Bay Area Coastal Study includes both regional hydrodynamic and wave modeling of the San Francisco Bay, as well as detailed onshore coastal analysis used to estimate wave runup and overtopping, as well as overland wave propagation. These onshore analyses form the basis for the Base Flood Elevations (BFEs) and SFHAs shown on the FIRM..

In November 2015, FEMA issued a preliminary FIRM of San Francisco tentatively identifying SFHAs along City's shoreline in and along the San Francisco Bay consisting of "A zones" (areas subject to inundation by tidal surge) and "V zones" (areas subject to the additional hazards that accompany wave action). These zones generally affect City property under the jurisdiction of the Port of San Francisco and other areas of the San Francisco waterfront, including parts of Mission Bay, Hunters Point Shipyard, Candlestick Point, Treasure and Yerba Buena Islands, and an area adjacent to Islais Creek. FEMA plans to finalize the FIRM in mid-2018. Six months after this date, the FIRM will become effective and will be used for flood insurance and floodplain management purposes. During this six-month period, the City plans to amend the Floodplain Ordinance to adopt the FIRM.

The federal legislation and regulations implementing the NFIP are located at 42 U.S.C. §§ 4001 et seq.; 44 C.F.R. Parts 59-78, §§ 59.1-78.14. FEMA also publishes "Answers to Questions About the NFIP" and FEMA Publication 186 entitled "Mandatory Purchase of Flood Insurance Guidelines." Additional information on this matter can be found on the City's and FEMA's websites at the following links:

<http://sfgsa.org/san-francisco-floodplain-management-program>

<https://www.fema.gov/national-flood-insurance-program-flood-hazard-mapping>

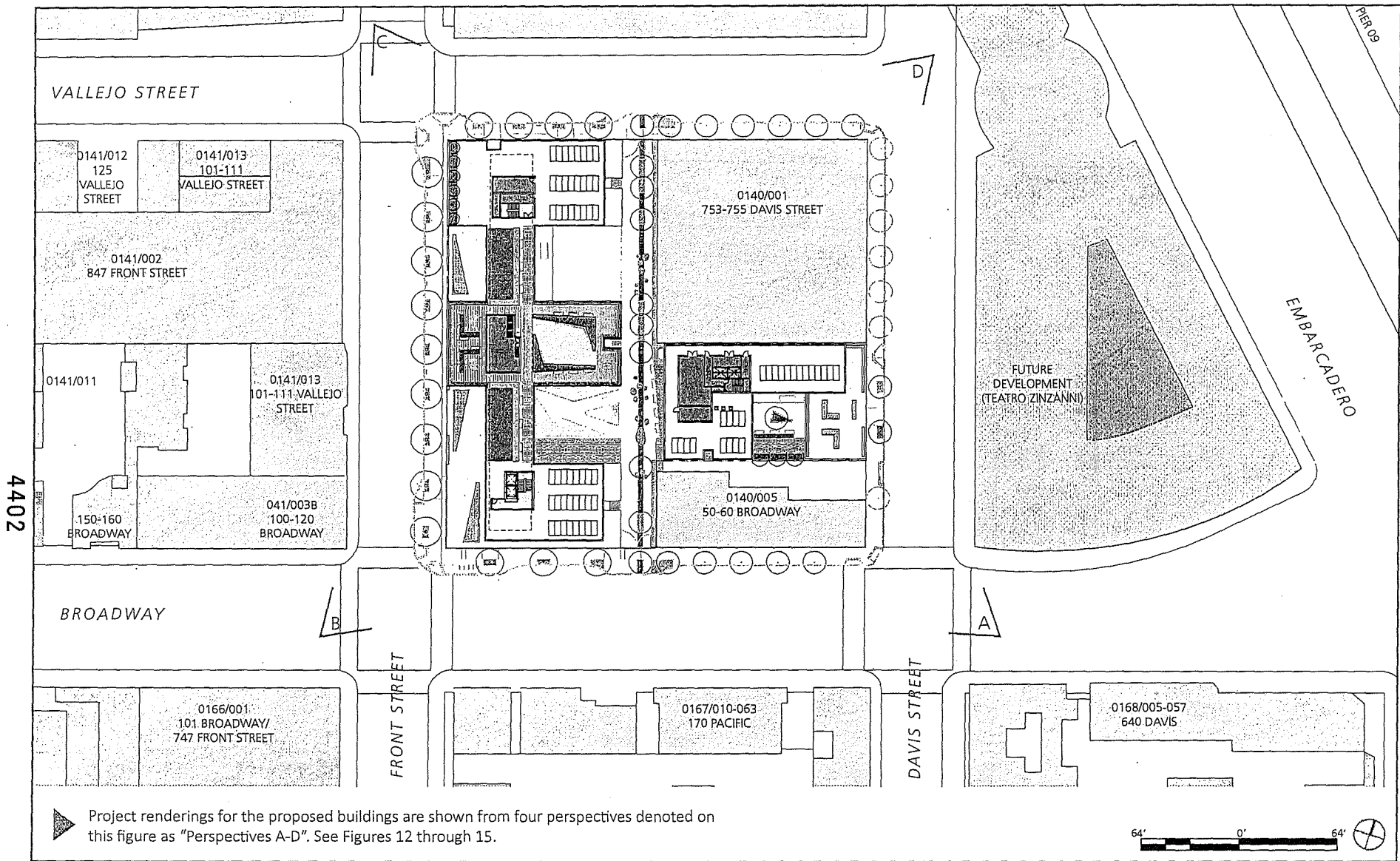
<https://www.fema.gov/national-flood-insurance-program>

[http://www.r9map.org/Docs/Oct13-SanFranCo-FEMA_Factsheet_rev%20\(2\).pdf](http://www.r9map.org/Docs/Oct13-SanFranCo-FEMA_Factsheet_rev%20(2).pdf)

SCHEDULE 3

HAZARDOUS MATERIALS DISCLOSURE

[Attachment on following page]

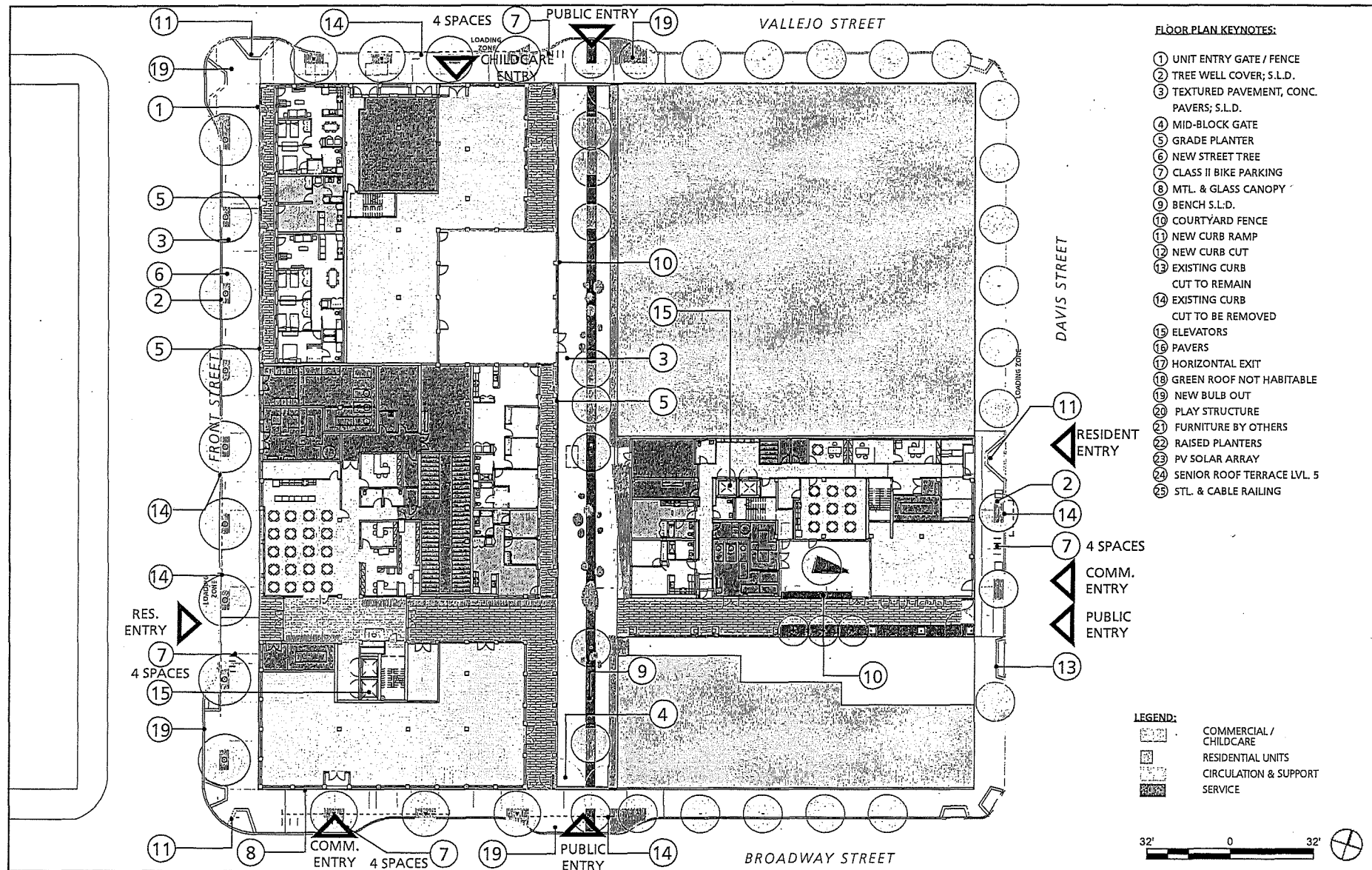


Source: The John Stewart Company, Bridge Housing, Leddy Maytum Stacy Architects, February 26th, 2018.

88 BROADWAY & 735 DAVIS STREET PROJECT INITIAL STUDY

Case No. 2016-007850ENV

FIGURE 2
Proposed Site Plan

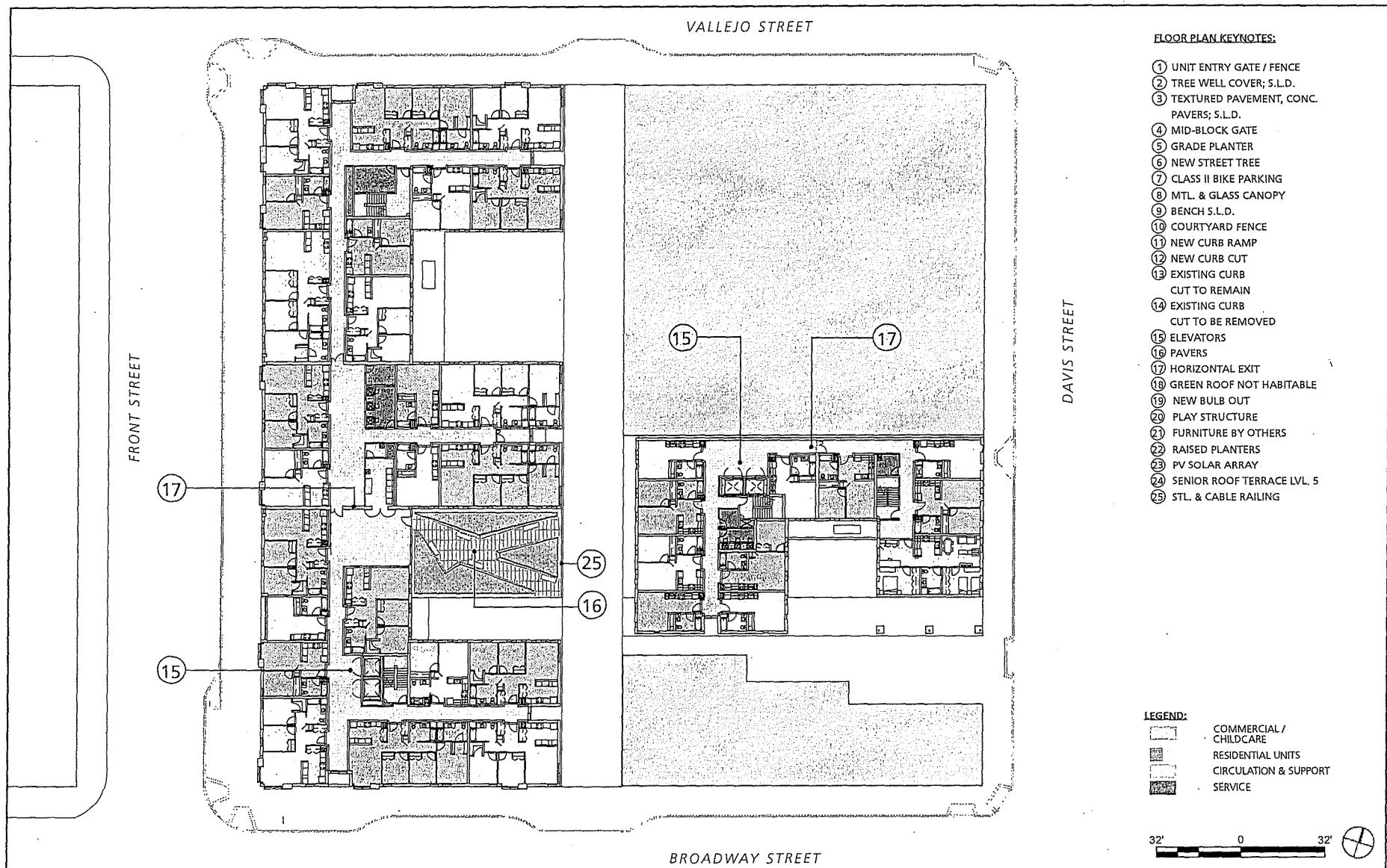


88 BROADWAY & 735 DAVIS STREET PROJECT INITIAL STUDY

Case No. 2016-007850ENV

FIGURE 3

Proposed Level 1 (Ground Floor) Plan

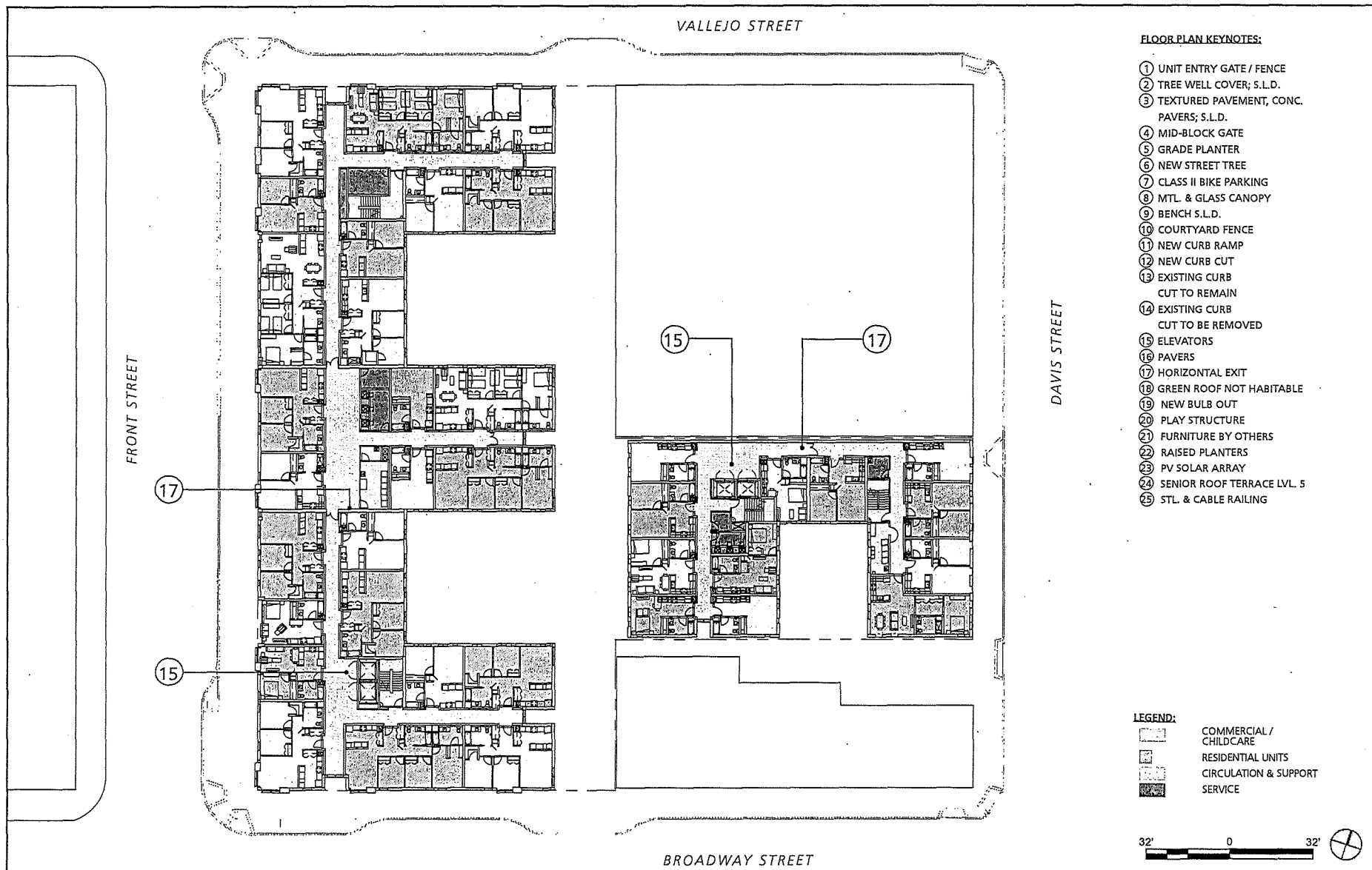


Source: The John Stewart Company, Bridge Housing, Leddy Maytum Stacy Architects, February 26th, 2018.

88 BROADWAY & 735 DAVIS STREET PROJECT INITIAL STUDY

Case No. 2016-007850ENV

FIGURE 4
Proposed Level 2 Plan

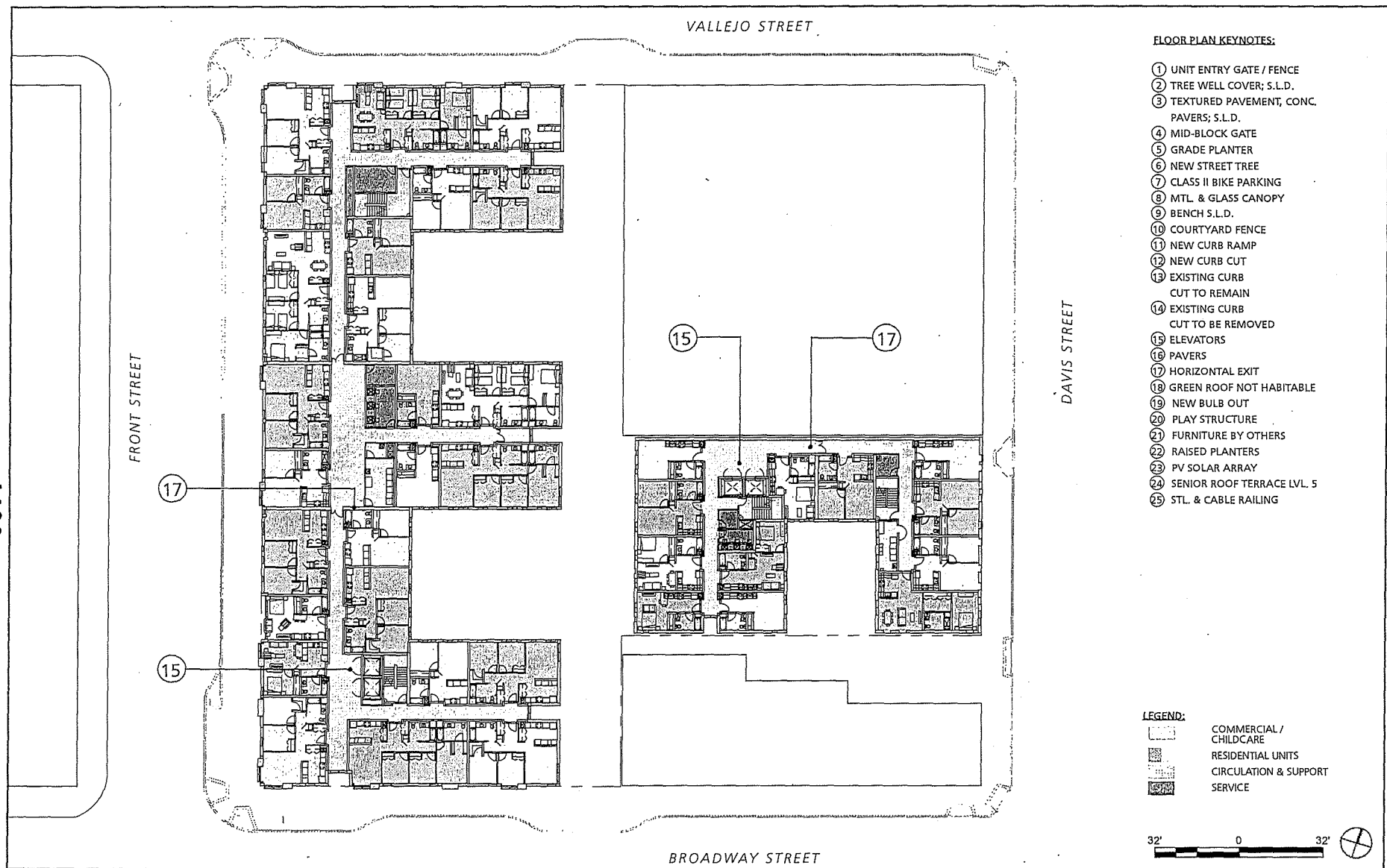


Source: The John Stewart Company, Bridge Housing, Leddy Maytum Stacy Architects, February 26th, 2018.

88 BROADWAY & 735 DAVIS STREET PROJECT INITIAL STUDY

Case No. 2016-007850ENV

FIGURE 5
Proposed Level 3 Plan

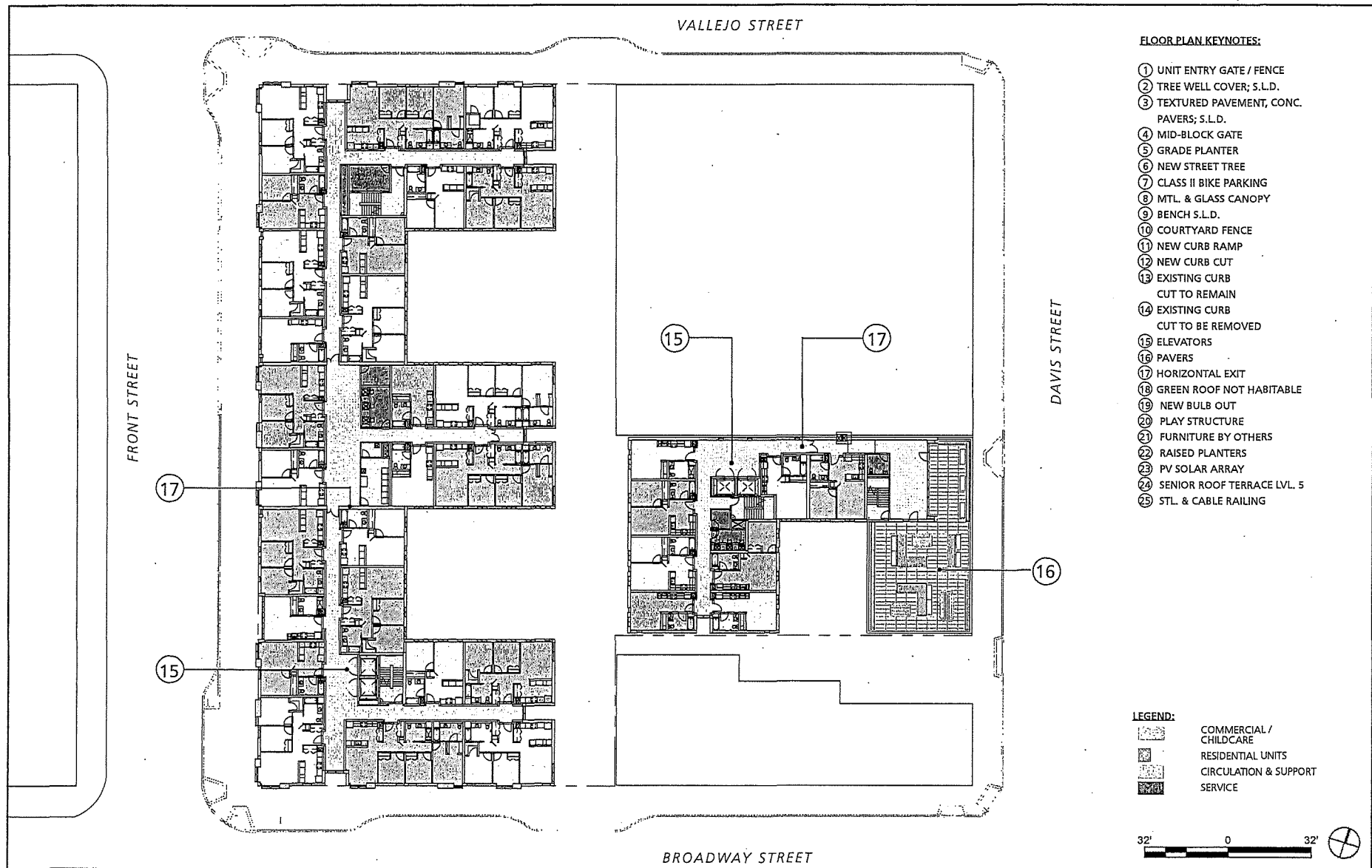


Source: The John Stewart Company, Bridge Housing, Leddy Maytum Stacy Architects, February 26th, 2018.

88 BROADWAY & 735 DAVIS STREET PROJECT INITIAL STUDY

Case No. 2016-007850ENV

FIGURE 6
Proposed Level 4 Plan

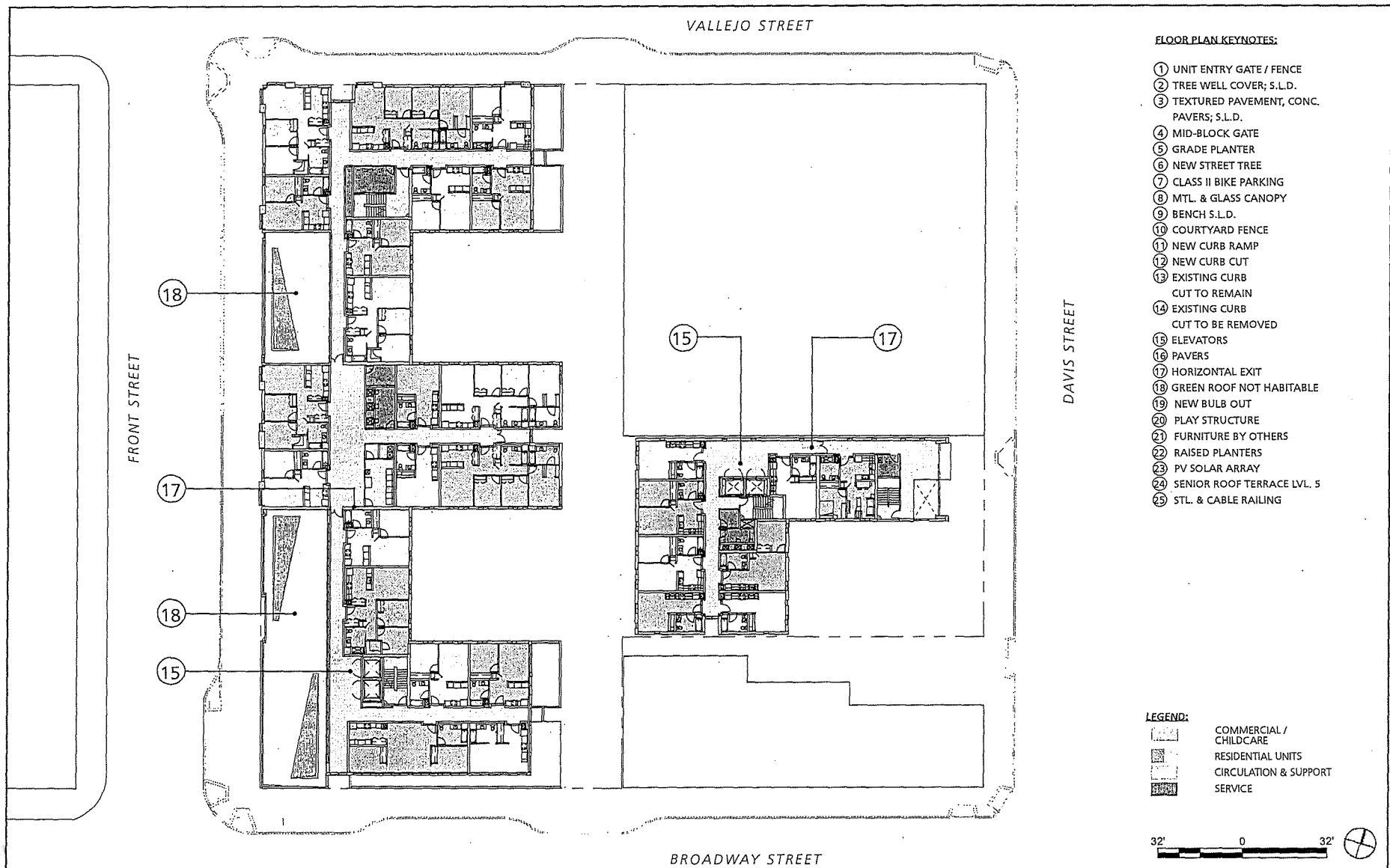


Source: The John Stewart Company, Bridge Housing, Leddy Maytum Stacy Architects, February 26th, 2018.

88 BROADWAY & 735 DAVIS STREET PROJECT INITIAL STUDY

Case No. 2016-007850ENV

FIGURE 7
Proposed Level 5 Plan

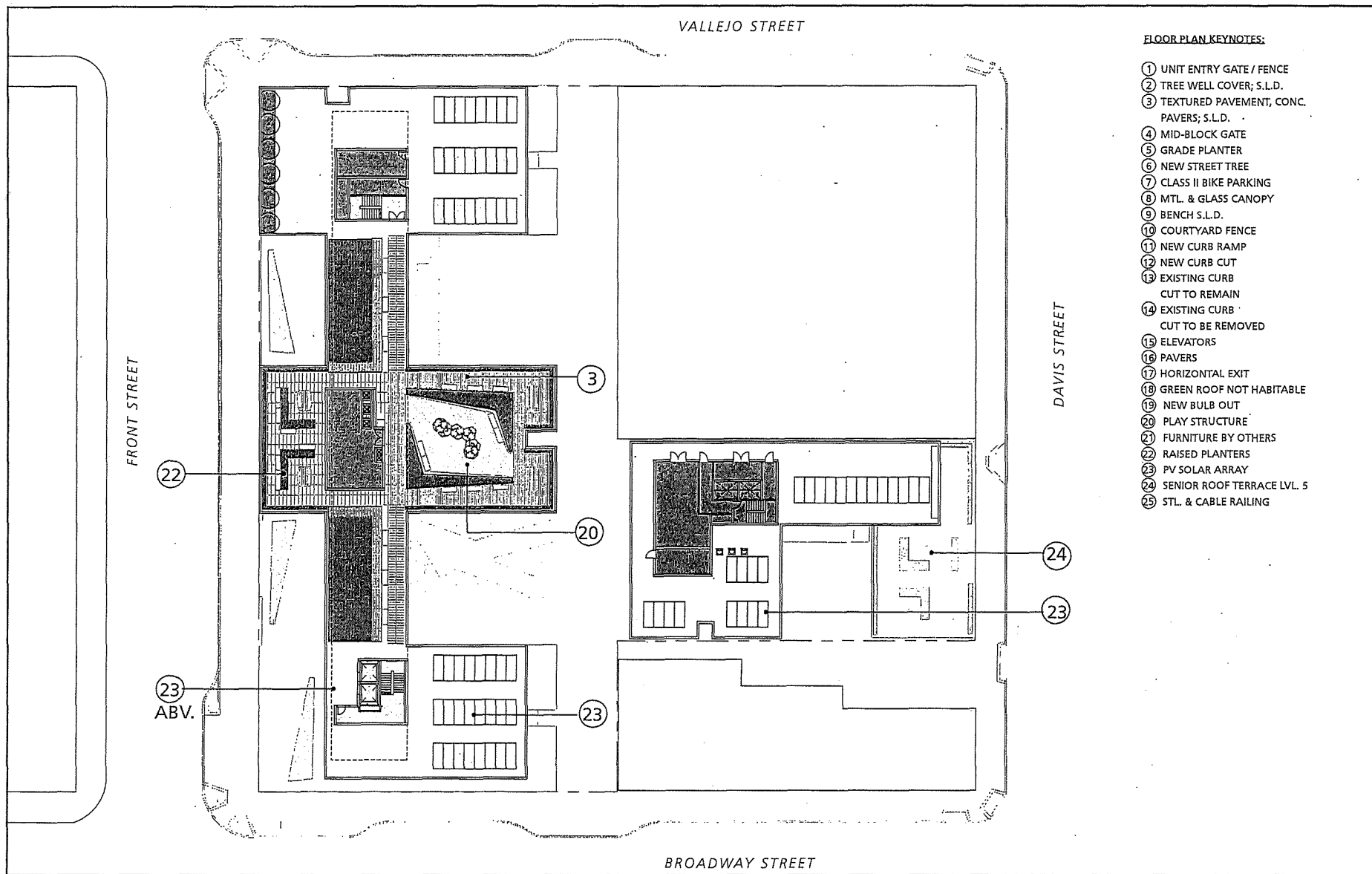


Source: The John Stewart Company, Bridge Housing, Leddy Maytum Stacy Architects, February 26th, 2018.

88 BROADWAY & 735 DAVIS STREET PROJECT INITIAL STUDY

Case No. 2016-007850ENV

FIGURE 8
Proposed Level 6 Plan

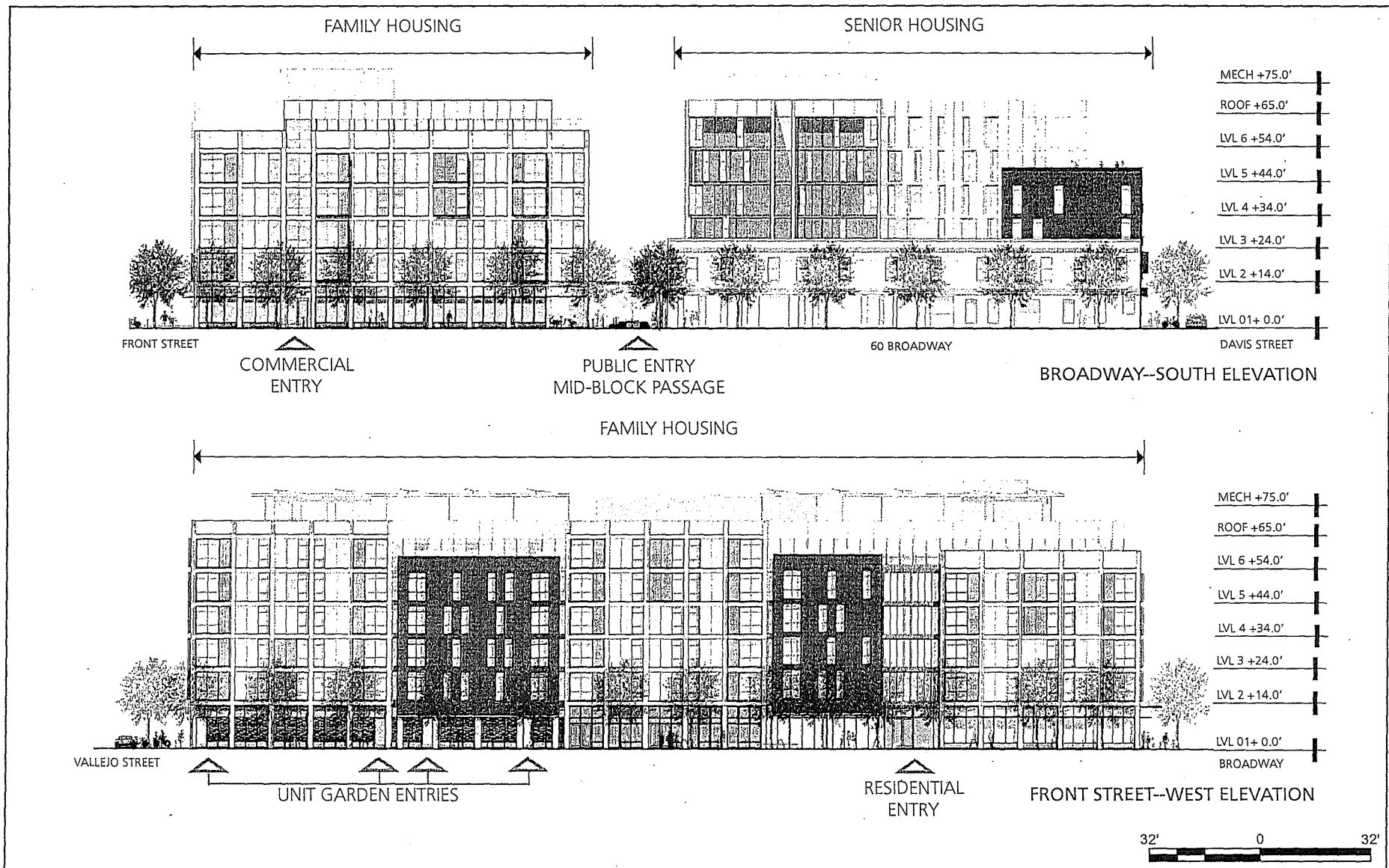


Source: The John Stewart Company, Bridge Housing, Leddy Maytum Stacy Architects, February 26th, 2018.

88 BROADWAY & 735 DAVIS STREET PROJECT INITIAL STUDY

Case No. 2016-007850ENV

FIGURE 9
Proposed Roof Plan

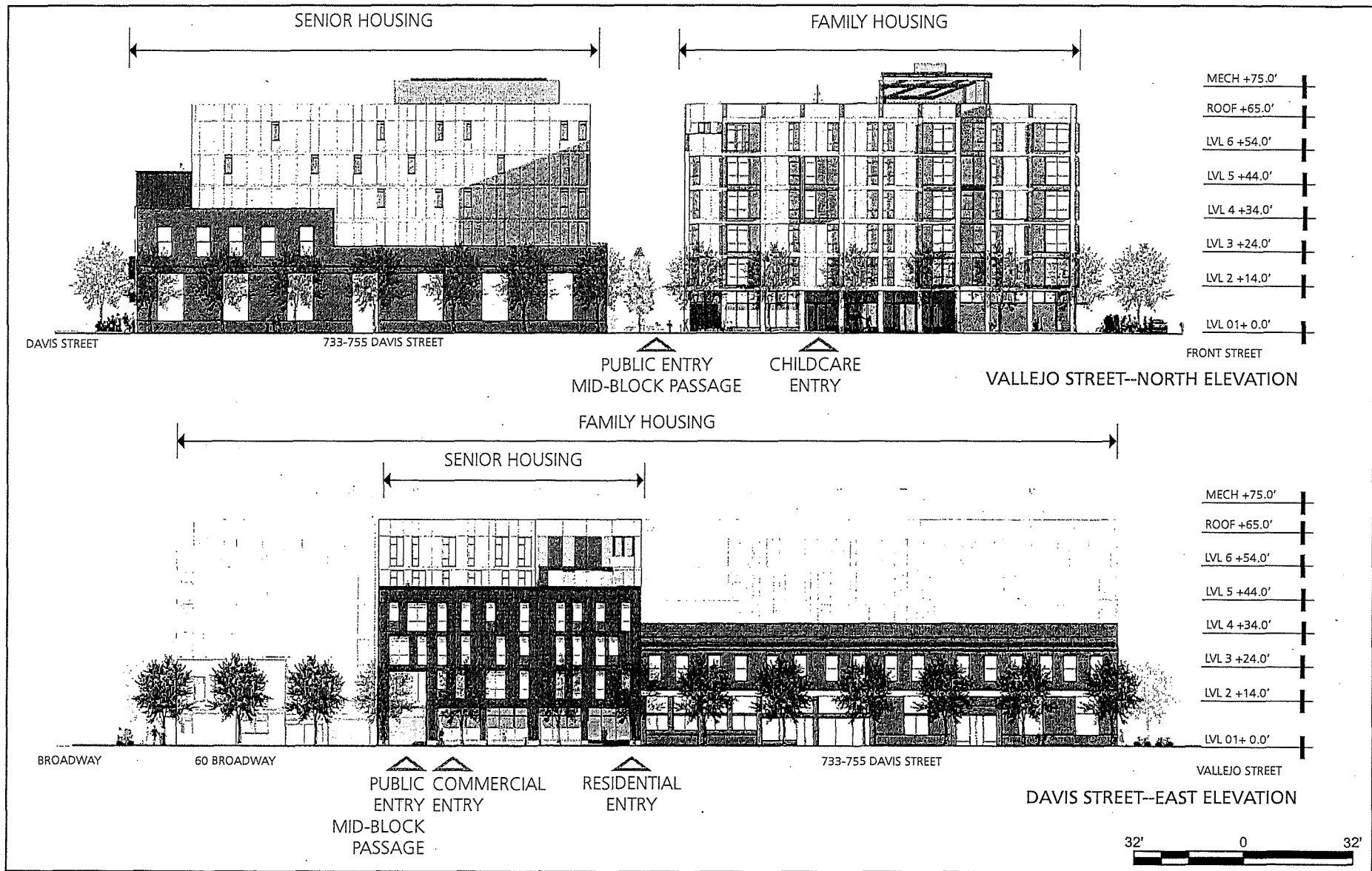


Source: The John Stewart Company, Bridge Housing, Leddy Maytum Stacy Architects, February 26th, 2018.

88 BROADWAY & 735 DAVIS STREET PROJECT INITIAL STUDY

Case No. 2016-007850ENV

FIGURE 10
Proposed South and West Elevations



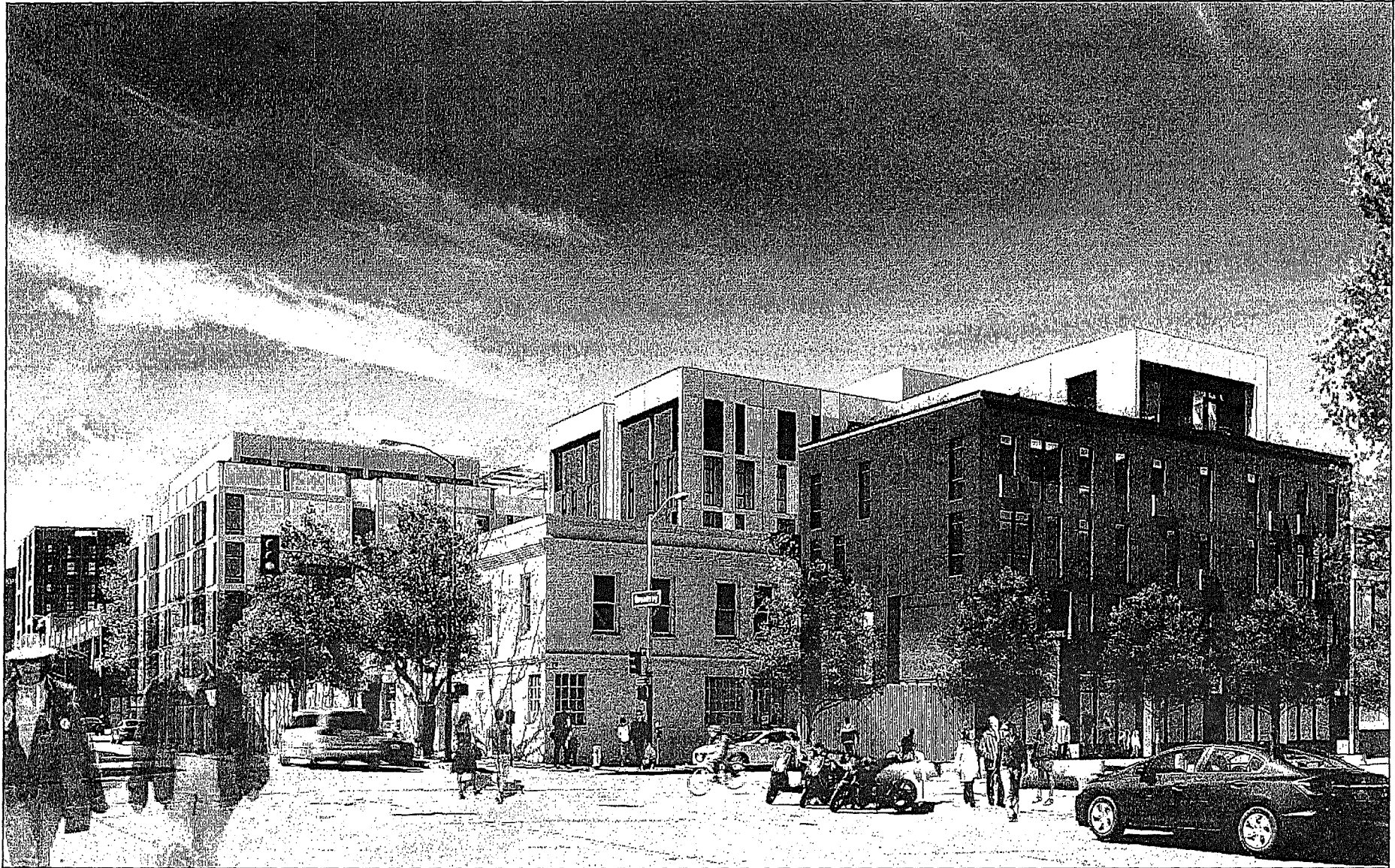
Source: The John Stewart Company, Bridge Housing, Leddy Maytum Stacy Architects, February 26th, 2018.

88 BROADWAY & 735 DAVIS STREET PROJECT INITIAL STUDY

Case No. 2016-007850ENV

FIGURE 11

Proposed North and East Elevations



Source: The John Stewart Company, Bridge Housing, Leddy Maytum Stacy Architects, February 26th, 2018.

88 BROADWAY & 735 DAVIS STREET PROJECT INITIAL STUDY

Case No. 2016-007850ENV

FIGURE 12

Perspective A: Davis Street/Broadway Intersection



Source: The John Stewart Company, Bridge Housing, Leddy Maytum Stacy Architects, February 26th, 2018.

88 BROADWAY & 735 DAVIS STREET PROJECT INITIAL STUDY

Case No. 2016-007850ENV

FIGURE 13

Perspective B: Front Street/Broadway Intersection



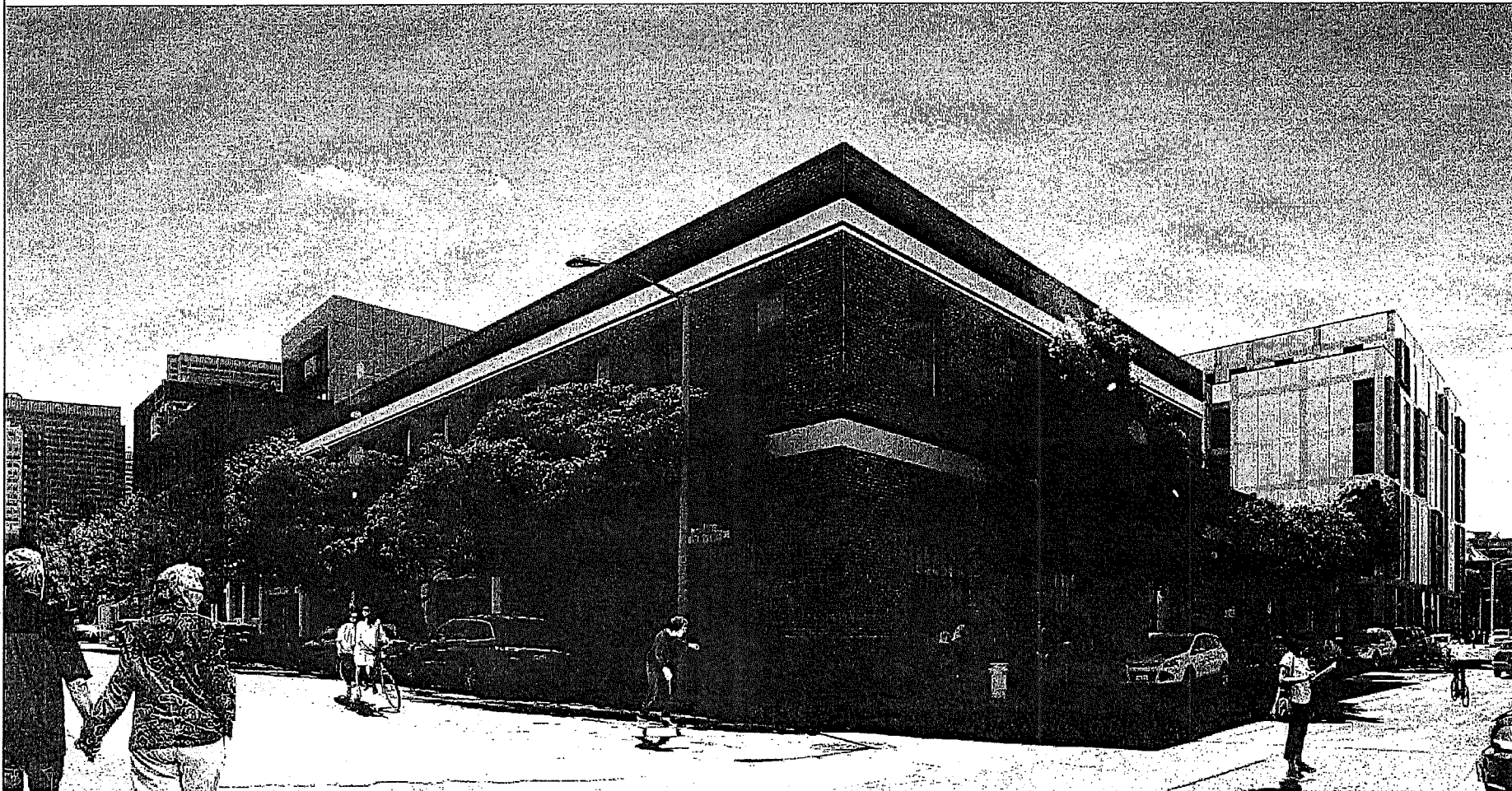
Source: The John Stewart Company, Bridge Housing, Leddy Maytum Stacy Architects, February 26th, 2018.

88 BROADWAY & 735 DAVIS STREET PROJECT INITIAL STUDY

Case No. 2016-007850ENV

FIGURE 14

Perspective C: Front Street/Vallejo Street Intersection



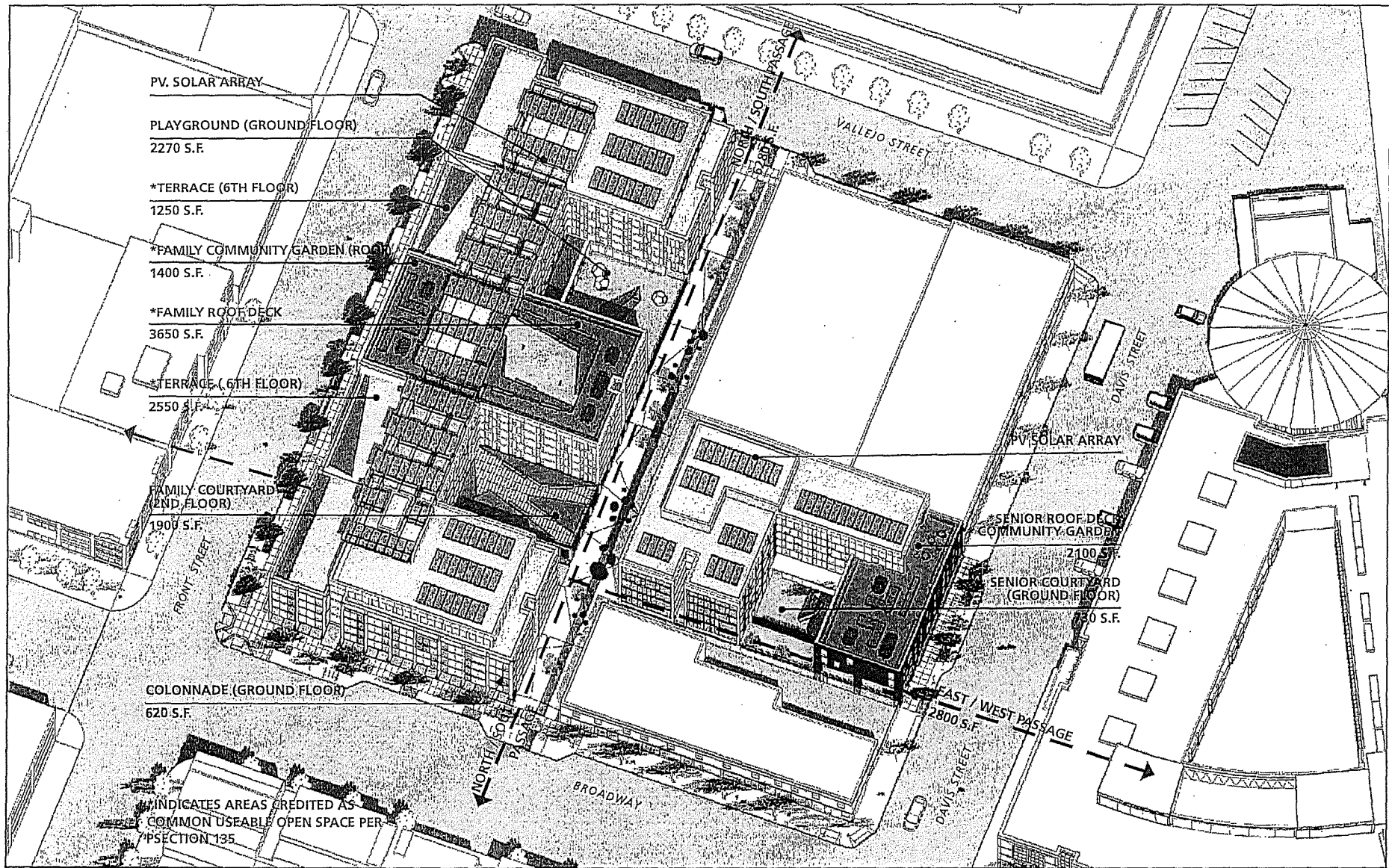
Source: The John Stewart Company, Bridge Housing, Leddy Maytum Stacy Architects, February 26th, 2018.

88 BROADWAY & 735 DAVIS STREET PROJECT INITIAL STUDY

Case No. 2016-007850ENV

FIGURE 15

Perspective D: Vallejo Street/Davis Street Intersection



Source: The John Stewart Company, Bridge Housing, Leddy Maytum Stacy Architects, February 26th, 2018.

88 BROADWAY & 735 DAVIS STREET PROJECT INITIAL STUDY

Case No. 2016-007850ENV

FIGURE 16
Open Space



**CITY AND COUNTY OF SAN FRANCISCO
MARK FARRELL, MAYOR**

OPTION AGREEMENT

BY AND BETWEEN

**THE CITY AND COUNTY OF SAN FRANCISCO
OPERATING BY AND THROUGH THE
SAN FRANCISCO PORT COMMISSION**

AND

**88 BROADWAY FAMILY LP,
A CALIFORNIA LIMITED PARTNERSHIP**

**ELAINE FORBES
EXECUTIVE DIRECTOR**

SAN FRANCISCO PORT COMMISSION

**KIMBERLY BRANDON, PRESIDENT
WILLIE ADAMS, VICE PRESIDENT
GAIL GILMAN, COMMISSIONER
VICTOR MAKRAS, COMMISSIONER
DOREEN WOO HO, COMMISSIONER**

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EXHIBIT J	PERMITTED TITLE EXCEPTIONS

OPTION AGREEMENT
SEAWALL LOT 322-1/88 BROADWAY

This Option Agreement (“**Agreement**”) dated for references purposes as of April 15, 2018 is by and between the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation (“**City**”), acting by and through the **SAN FRANCISCO PORT COMMISSION** (“**Port**”) and 88 Broadway Family LP, a California limited partnership and its permitted successors and assigns hereunder (the “**Optionee**” or “**Developer**” and together with the Port, the “**Parties**”), with reference to the following facts:

RECITALS

This Agreement is made with reference to the following facts and circumstances:

A. Port is an agency of the City, exercising its functions and powers over property under its jurisdiction and organized and existing under the Burton Act and the City’s Charter. The Port of San Francisco Waterfront Land Use Plan, including the Waterfront Design and Access Element (“**WLUP**”) is Port’s adopted land use document for property within Port jurisdiction, which provides the policy foundation for waterfront development and improvement projects.

B. Most Port property consists of tidelands and submerged lands that are subject to the common law public trust doctrine, the California Constitution, the Burton Act, and the related transfer agreement under which the State of California (the “**State**”) transferred most of the San Francisco waterfront to the City in 1969.

C. Seawall Lot 322-1 (“**SWL 322-1**”) is a rectangular land parcel, assigned AP Lot 007, Block 0140, with frontages on Broadway, Front and Vallejo Streets and is located in the Northeast Waterfront area of the WLUP. SWL 322-1 is also known by its address as “**88 Broadway**” and is more particularly described in *Exhibit A* attached hereto (the “**Property**”). SWL 322-1 is located in the Northeast Waterfront Historic District and is within a C-2 (Community Business) zoning district, Waterfront Special Use District No. 3, and a 65-X Height and Bulk district.

D. The WLUP and the Planning Department’s Northeastern Waterfront Subarea Plan and Northeast Embarcadero Study list hotel, entertainment, theatre and public open space as acceptable uses for the Sea Wall Lots.

E. Port and the San Francisco Mayor’s Office of Housing and Community Development (“**MOHCD**”) have been jointly working to site an affordable housing development on the Property under state legislation (Senate Bill 815 (Chapter 660) (2007); Assembly Bill 2649 (Chapter 757) (2012); and Assembly Bill 2797 (Chapter 529) (2016)) (“**State Legislation**”) that permits lifting Public Trust use restrictions otherwise applicable from the Property to allow development of affordable housing for a 75-year term (“**Project**”). In March 2014, Port and MOHCD executed a Memorandum of Understanding (the “**Predevelopment MOU**”) that sets forth their respective roles and responsibilities with respect to the Project (Port Commission Reso. 14- 16). As contemplated by the Predevelopment MOU, in 2015/2016, MOHCD conducted a competitive solicitation process to select a developer responsible for predevelopment, construction, and operation of the Project. In April 2016, MOHCD awarded the opportunity to a developer-team led by Bridge Housing Corporation (“**BRIDGE**”) and the John Stewart Company (“**JSCo**”) who formed 88 Broadway Family LP (“**Developer**”) to serve as the developer for the Project.

F. On or about July 1, 2017, Port, MOHCD and Optionee entered into an Agreement On Term Sheet And Port Transaction Documents For The Implementation Of 88 Broadway Project On Seawall Lot 322-1 at Broadway and Front Streets, San Francisco to set forth the process, terms, and conditions upon which the parties to that agreement would negotiate terms for the

transaction documents for the pre-development phase and development and operation of the proposed Project ("**Negotiation Agreement**") including terms for an option agreement and a long-term ground lease with the Port as well as other related agreements and documents to which the Developer and Port are parties, if any. The term of the Negotiation Agreement is coterminous with the term of the Predevelopment MOU.

G. The Project includes developing the Property with up to 120-130 affordable rental family housing units, ground floor retail/commercial space of less than 5,000 square feet each, other ancillary uses and open space consisting of two mid-block passages to allow for neighborhood passage to the Northeast Waterfront and public art (the "**Initial Improvements**") as further described in the Project Description/Scope of Development attached hereto as **Exhibit B**.

H. Concurrently with its development of the Project, Developer intends to construct or cause construction of an estimated 50 to 55 units of senior housing at 735 Davis Street ("**Davis Street Project**"), which is a property adjacent to the Property and controlled by MOHCD. The Davis Street Project is not subject to the provisions of this Agreement.

I. MOHCD will finance a portion of the development costs of the Project, including pre-development costs pursuant to that certain Loan Agreement dated May 12, 2017 between MOHCD and Developer. MOHCD and Port will enter into another Memorandum of Understanding (the "**Development MOU**") under which MOHCD will, prior to execution of the ground lease, pay Port the fair market value of the Property as appraised based on its value for its highest and best use without restriction no more than ninety (90) days prior to ground lease execution. In exchange for such fair market value payment, the Port will impose restrictions limiting the Property to affordable housing uses for the term of the ground lease. Rent under the ground lease shall be twenty thousand (\$20,000) per year plus a share of any cash flow generated by any commercial uses, which is the fair market value of the leasehold interest with the affordable housing restrictions imposed. The Development MOU will replace the Predevelopment MOU. Execution of the Development MOU is a condition precedent to the execution of this Agreement and the Development MOU will be presented to the Port Commission and Board of Supervisors for approval at the same time as this Agreement and the form of ground lease and shall be operative concurrently with the ground lease. Given MOHCD's financial commitments to the Project and because it is the City agency responsible for matters relating to affordable housing, including compliance with laws governing affordable housing, the ground lease will be subject to MOHCD's consent and MOHCD will assist Port with certain enforcement activities and will have an opportunity to cure certain tenant defaults under the ground lease.

J. Optionee intends to develop the Project with tax-exempt bonds, 4% Low Income Housing Tax Credits, San Francisco Federal Home Loan Bank Affordable Housing Program funding, City financing through MOHCD and other sources, if necessary.

K. As of the Effective Date, City has been advised that State Legislation can be read as placing certain restrictions on uses of the Property other than certain types of housing units (AB 2649; § 5). The City is currently seeking legislation, which would not become operative until January 1, 2019 at the soonest, to explicitly exempt from the restrictions other types of housing units and uses ancillary to the provision of affordable housing.

L. In order to apply for Project financing, Optionee desires to obtain from the Port, and the Port desires to grant to Optionee, upon the specific terms and conditions set forth in this Agreement, an option to ground lease the Property.

M. The Planning Department reviewed the Project combined with the adjacent Davis Street Project and issued a Preliminary Mitigated Negative Declaration (2017-007850ENV) on October 25, 2017. The Mitigated Negative Declaration became final on March 9, 2018. The Mitigation Measures and Improvement Measures in the Final Mitigated Negative Declaration

will be enforceable conditions of the Mitigation Monitoring and Reporting Program which will be incorporated into the ground lease.

N. As required by Assembly Bill 2649, which authorized Port to submit to the procedures set forth in the Planning Code for obtaining a Certificate of Appropriateness or comparable determination, on April 4, 2018, the Historic Preservation Commission adopted a Certificate of Appropriateness with conditions by Motion No.0335 for the Project.

O. On May 3, 2018, the Director of the SF Planning Department adopted the Final Mitigated Negative Declaration and authorized the Project and the Davis Street Project pursuant to its authorization under SF Planning Code Section 315 and found that, on balance, the Project is consistent with the City's General Plan.

P. On [____], 2018, by Resolution No. XX-XX, the Port Commission adopted the Final Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program, and, among other things, approved this Agreement, the attached form of ground lease (*Exhibit D*), and attached schematic design ("Schematic Design") (*Exhibit C*), made findings that the Project is consistent with the State Legislation and authorized the Executive Director to seek necessary approvals from the Board of Supervisors and the California State Lands Commission ("State Lands").

Q. On [____], 2018, by Resolution No. XX-XX, the Board of Supervisors adopted the Final Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program, confirmed the Port Commission's trust-related findings and approved the form of ground lease.

R. On [____], 2018, as required by and in accordance with the State Legislation, State Lands made a favorable Consistency Determination, lifted the Public Trust use restrictions, and made the required findings and approved the form of ground lease and the consideration to be received by the Port under the ground lease and the Development MOU, which consideration from MOHCD limits the Property to affordable housing uses.

Now, therefore, in consideration of the mutual promises contained in this Agreement, the Parties agree as follows:

AGREEMENT

1. GRANT OF OPTION

1.1. **Option Grant.** Port hereby grants to Optionee the option to lease the Property subject to the Optionee's exercise of the Option to Lease substantially in the form and substance of the form of ground lease attached hereto as *Exhibit D* ("Form Ground Lease" or, when referring to a final effective ground lease, "Ground Lease") to construct or cause construction of the Project for the consideration and under the terms, covenants and conditions set forth in this Agreement (the "Option") and any other Transaction Documents.

1.2. **Option Fee.** Concurrently with the execution of this Agreement and in consideration thereof, Optionee shall pay and deliver to the Port the sum of One Hundred Dollars (\$100.00) as consideration for the Port's execution of this Agreement ("Option Fee"). The Option Fee is related to the Option only and in no way relates to Ground Lease payments that will be owed to the Port. The Option Fee is non-refundable.

1.3. **Other Agreements.** This Agreement addresses, among other matters, the conditions precedent to exercising the Option and the Close of Escrow and Delivery of the Ground Lease to Optionee. If the conditions precedent for the Close of Escrow as set forth in Section 5 are satisfied, then upon Close of Escrow, Port will lease the Property to Optionee, and Optionee will lease the Property from Port, pursuant to the Ground Lease. The Negotiation Agreement is coterminous with this Agreement and the Parties hereby agree that, upon earlier termination of this Agreement, the Negotiation Agreement will also terminate without further

action including notice and without cost or liability to either Party. In case of any conflict between this Agreement and the Negotiation Agreement, this Agreement shall control. From and after Close of Escrow, the Ground Lease will exclusively govern the rights and obligations of the Parties with respect to use and occupancy of the Property.

2. CONDITIONS PRECEDENT; EXERCISE OF OPTION. Optionee's right to exercise the Option is conditioned upon all the following:

(a) Optionee has performed all obligations under this Agreement required to be performed on its part before exercising the Option and no uncured Optionee Event of Default exists.

(b) Port and MOHCD staff have reviewed and approved Optionee's initial Financing Plan including its Development Budget. An initial Development Budget is attached hereto as **Exhibit F**. Revisions to the initial Financing Plan are subject to the Parties' mutual consent.

(c) Optionee has submitted commitment letters or other satisfactory evidence of funding commitments adequate to meet or exceed the requirements of the approved Financing Plan and sufficient to construct the Project; provided that with respect to the commercial space, Optionee will only be obligated to show evidence and commitments of financing up to and including the "cold shell" of such space), with (1) no conditions to funding other than standard and customary conditions and (2) no provisions requiring acts of Optionee prohibited in this Agreement or the other Transaction Documents, or prohibiting acts of Optionee required in this Agreement or the other Transaction Documents, and such documentation shows sources and uses of funds as may be required by such leasehold lender.

(d) Port and MOHCD staff have reviewed Optionee's proposed scope of development ("**Scope of Development**") attached hereto as **Exhibit B** and proposed schedule for the development of construction documents and its overall schedule for Project development ("**Schedule of Performance**") attached hereto as **Exhibit E** and found them acceptable. Revisions to the proposed Scope of Development and the proposed Schedule of Performance are subject to the Parties' mutual consent.

(e) A favorable Consistency Determination has been obtained by the Port.

(f) Optionee has obtained all other required Regulatory Approvals necessary to commence construction of the Initial Improvements except for building permits which will be obtained prior to commencing any Construction.

(g) Optionee and each of its partners executing this Agreement have delivered to Port a certificate to confirm the accuracy of the representations and warranties described in Section 12 substantially in the form of **Exhibit G** as of the date of the Option Notice.

(h) Port and MOHCD have entered into the Development MOU providing for MOHCD's payment of fair market value to Port and addressing other issues including coordination and roles during the Option Term and the Ground Lease term.

3. TERM OF OPTION; EXERCISE.

3.1. Term. The term of this Agreement ("**Term**") shall be for a period commencing on the Effective Date of this Agreement and ending on the earlier of: (i) June 30, 2020 (the "**Close of Escrow Deadline**"), or (ii) the date a Lease Memorandum is recorded in the Official Records, unless extended in the sole discretion of Port as provided in Section 3.3 ("**Expiration Date**").

3.2. Exercise of Option. No later than sixty (60) days before the Close of Escrow Deadline, and upon Optionee's satisfaction of the conditions set forth in Section 2, Optionee may exercise the Option by giving written notice to the Port ("**Option Notice**") which shall be irrevocable. After receipt of the Option Notice, the Port shall Deliver the Property to the

Optionee pursuant to the terms and conditions of this Agreement and the Ground Lease ("Close of Escrow") on such date as agreed by the Parties, but not later than the Close of Escrow Deadline.

3.3. Close of Escrow Deadline Extension. Upon Optionee's written request accompanied by an explanation of the need for an extension and provided that there is no uncured Optionee's Event of default, Port's Executive Director may, in her or his sole discretion, extend the Close of Escrow Deadline for up to twelve (12) months.

3.4. Termination. If the Close of Escrow does not occur by or on the Close of Escrow Deadline, as may be extended pursuant to Section 3.3, then this Agreement will terminate on the Close of Escrow Deadline unless earlier terminated in accordance with this Agreement and the Parties will have no further rights, obligations or liabilities under this Agreement except for those that survive its expiration or termination.

3.5. Quitclaim. Upon expiration or earlier termination of this Agreement without an effective Ground Lease, upon a written request by Port, Optionee shall sign and deliver a quitclaim deed or such other document as may be reasonably required by the Port to evidence the termination of the Option.

4. PREDEVELOPMENT ACTIVITIES. The following activities will take place prior to the Close of Escrow.

4.1. Exclusive Negotiation. Without limiting Port's rights under Section 4.6, during the Term of this Agreement and so long as there is no uncured Optionee Event of Default, Port will not solicit or consider any other proposals or negotiate with any other tenant or developer with respect to the long-term development of the Property without Optionee's consent.

4.2. Due Diligence. Port will extend the term of License 16358, dated February 6, 2018 for reference purposes (the "License"), with Optionee for a term concurrent with the Term of this Agreement to allow Optionee to perform due diligence in the form attached as **Exhibit H**. If Optionee desires to perform invasive testing or other invasive due diligence, Port may amend the License to allow such uses and account for the additional risks associated with such activities, including increased insurance coverage and/or amounts and broader indemnity and release provisions.

4.3. Schedule of Performance. Optionee will complete the assigned tasks set forth in this Agreement pursuant to the Schedule of Performance by the dates specified therein unless extended by Port's Executive Director in her or his reasonable discretion; provided that the Close of Escrow Deadline can only be extended in accordance with Section 3.3.

4.4. Building Permit; Preparation of the Construction Documents. Optionee will prepare and submit the Construction Documents as set forth in this Section.

(a) Department of Building Inspection. Port will delegate to the City's Department of Building Inspection ("DBI") review of Construction Documents and construction inspections for the initial construction of the Project. Port intends to rely on DBI's review of the Construction Documents and intends to perform a summary review of DBI's work in order to approve the Construction Documents. However, in the event that DBI does not review the Construction Documents or perform the inspections as contemplated by this Section 4.4(a) or if the Port needs assistance in performing a summary review of DBI's work, Port reserves the right to perform any independent review it deems necessary, including possible review by a third party. Port also retains final authority to approve/issue all building permits including permits for the initial construction of the Project and for long-term inspection and permitting over ongoing operations for the term of the Ground Lease. Optionee will submit all permit applications and Construction Documents relating to the Initial Improvements directly to Port and then submit them with Port's stamp of receipt to DBI for processing. Optionee shall be responsible for payment of all DBI permit review fees.

(b) **Building Permit.** Optionee will submit a complete application for the building permit (subject to Optionee's election to make deferred submittals in accordance with the Port Building Code) within a time adequate to obtain the same before the date set forth in the Schedule of Performance.

(c) Optionee shall pay all costs of DBI's review of Construction Documents and construction inspections for the initial construction of the Project to Port as such fees are determined and calculated under the Port Building Code. Port will pay DBI under an interagency agreement between the departments. In addition, as further described in Section 4.9(a), Optionee is required to reimburse Port for Port's Building Permit Costs.

(d) The design of the Initial Improvements will be subject to the design review process pursuant to Planning Code Section 240 (Waterfront Special Use District). Port and DBI's review and approval of the Construction Documents will be consistent with the design matters previously approved by the Port Commission and the Planning Department pursuant to the Section 240 process. Except by agreement with Optionee, Port and DBI will not disapprove or require changes subsequently in, or in a manner that is inconsistent with, matters that it has approved previously.

(e) In the case of any disagreement between Port and DBI, Port's determination shall be final and conclusive.

(f) Definitions.

"Construction Documents" means the Schematic Design (which is attached to this Agreement as **Exhibit C**), the Preliminary Construction Documents and the Final Construction Documents for the Initial Improvements. As used in this Agreement "Construction Documents" does not mean any contracts between Optionee and any contractor, subcontractor, architect, engineer or consultant. Construction Documents shall not include any documents pertaining to any planned commercial spaces in the building, excepting the "cold shell" of such space.

"Preliminary Construction Documents" are design drawings and must be in sufficient detail and completeness to show that the Initial Improvements and the Construction thereof will comply with the Project Requirements and matters previously approved and will generally include, without limitation:

- (A) Site plan(s) at appropriate scale showing the buildings, streets, walks, Exterior Improvements, and other open spaces. All land uses shall be designated. All site development details and bounding streets, points of vehicular and pedestrian access shall be shown.
- (B) All building plans and elevations at appropriate scale.
- (C) Building sections showing all typical cross sections at appropriate scale.
- (D) Floor plans.
- (E) Preliminary tenant improvement plans.
- (F) Preliminary Exterior Improvement plans.
- (G) Plans for public access areas showing details of features intended to be Constructed as part of the Improvements, including but not limited to, walls, fences, railings, benches, lockers, bicycle racks, street furniture, markers, plaques, models, paving, exterior lighting, signs, trash containers, and other Exterior Improvements.
- (H) Outline specifications for materials, finishes and methods of construction.
- (I) Plans for interior and exterior signs required by the Port Building Code.

- (J) Site and exterior and interior (for common areas only) lighting plans.
- (K) Material and color samples for exterior facades, public plazas and open space, and other public areas.
- (L) Roof plans showing all proposed mechanical and other equipment, vents, photo-voltaic panels, satellite dish(es), antennae(s), and mechanical or elevator penthouses.
- (M) Geotechnical, structural, and other engineering assessments and investigation reports.
- (N) Utilities, placement and sources.

The Preliminary Construction Documents must be in conformance with the Schematic Design and the Scope of Development, and must incorporate conditions, modifications and changes specified by Port or DBI or required as a condition of Regulatory Approvals necessary to commence construction of the Initial Improvements as approved by Port as well as any requirements of the Mitigation Monitoring and Reporting Program ("MMRP") relating to the Project as described in the FMND.

Notwithstanding any other provision of this Agreement or the Ground Lease to the contrary, the Port Commission's approval of the Schematic Design is in no manner intended to, and is not, evidence or be deemed to evidence Port's approval of the Preliminary Construction Documents or the Final Construction Documents.

"Final Construction Documents" must include all plans and specifications required under applicable Laws to be submitted with an application for a building permit, including, to the extent applicable: (i) geotechnical, structural, and other engineering assessments and investigation reports, and (ii) a technical report summarizing construction objectives and methodology, operational requirements, project design criteria, and preliminary cost estimates. The Final Construction Documents must be a final development of, and be based upon and conform to, the approved Preliminary Construction Documents for the Initial Improvements. The Final Construction Documents must incorporate conditions, modifications and changes required by Port or DBI or for the approval of the Preliminary Construction Documents for the Initial Improvements. The Final Construction Documents must include all drawings, specifications and documents necessary for the Initial Improvements to be constructed and completed in accordance with this Agreement.

(i) The Construction Documents must be prepared by or signed by an architect (or architects) duly licensed to practice architecture in and by the State of California. A California licensed architect must coordinate the work of any associated design professionals, including engineers and landscape architects.

(ii) A California licensed structural engineer must review and certify (by wet-stamp on the Construction Documents) all final structural plans and the sufficiency of structural support elements to support the Initial Improvements.

(g) **Submission of Construction Documents.** Optionee will prepare and submit the Construction Documents to Port for review and approval as provided in Sections 4.4(a) at the time or times established in the Schedule of Performance. If DBI is performing a review of the permit application and Construction Documents as contemplated in Section 4.4(a), Port will concurrently or immediately following DBI's review perform a summary review of the permit application and Construction Documents.

(h) **Port Review of Construction Documents.**

(i) **Scope of Review.** Port's review of the Construction Documents will be reasonable and may address the following, each a "Required Element": (i) conformity and compliance with the Project Requirements, (ii) exterior architectural appearance and aesthetics of

structures on the Property, (iii) alterations to any structures on the Property, (iv) landscape and design of all outdoor areas, including those required under Regulatory Approvals to be accessible to the public, and (v) the design and appearance of all exterior signs (whether temporary or permanent).

(ii) Effect of Review. The Construction Documents are subject to the Port's review pursuant to this Agreement. Following its review, Port will approve or disapprove the Construction Documents. Except by mutual agreement with Optionee, Port will not disapprove or require changes subsequently in, or in a manner that is inconsistent with, matters that it has approved previously. If there is a disagreement between Port and Optionee as to whether or not a matter contained in a particular submittal has been approved previously or whether Port is acting in a manner that is inconsistent with matters that it approved previously, Port's reasonable judgment will apply in resolving the disagreement.

(iii) Method of Port Action/Prior Approvals. As to Port's review and/or approval of any aspect of any Construction Document (except for changes to Construction Documents, which will be governed by Section 4.4(i)), Port will approve, disapprove or approve conditionally each such element in writing, within thirty (30) days of proper submission by Optionee. If Optionee has properly submitted each set of the applicable Construction Documents and Port fails to meet such time frame, then Optionee may submit a written notice to Port requesting Port's approval or disapproval. The notice must display prominently in at least 16 point font on the envelope enclosing such request and on the first page of such request, substantially the following: **"APPROVAL REQUEST FOR CONSTRUCTION DOCUMENTS OF 88 BROADWAY PROJECT. IMMEDIATE ATTENTION REQUIRED; FAILURE TO RESPOND WITHIN TEN (10) BUSINESS DAYS WILL RESULT IN THE REQUEST BEING DEEMED APPROVED."** If Port fails to approve or disapprove the request within ten (10) business days following receipt of the notice, then such submission will be deemed approved by Port.

(iv) Timing of Port Disapproval/Conditional Approval and Optionee Resubmission. If Port disapproves aspects of the Construction Documents in whole or in part, Port in the written disapproval will state the reason or reasons for such disapproval and may recommend changes and make other recommendations. If Port conditionally approves aspects of the Construction Documents, the conditions will be stated in writing and a time will be stated for satisfying the conditions. Optionee will resubmit as expeditiously as possible and Port will approve or disapprove of such changes at the next Bi-Weekly Meeting. Optionee may continue making resubmissions until such time as Port approves the aspects of the Construction Documents subject to the process set forth in this Section.

(v) Exterior Improvements. Optionee acknowledges that any Exterior Improvements not otherwise approved by Port during Port's review of Construction Documents will need Port's prior approval before installation, which may require, in Port's sole discretion, review by the WDAC. Optionee will provide to Port the size, design, color, dimensions, text, materials, location, and method of installation of the Exterior Improvements to enable Port to evaluate the proposed request for approval.

(i) Changes in Final Construction Documents. Optionee will not make or cause to be made any material or substantial changes to any Port-approved aspect of the Construction Documents or as to a Required Element without Port's express written approval. Port will determine if any change is material or substantial at or before the Bi-Weekly Meeting immediately following the Optionee's proper submission of the change. Any changes that the Port determines are not material or substantial will be deemed approved. The provisions of Sections 4.4(b), 4.4(c) and 4.4(d) will apply to changes submitted by Optionee under this Section 4.4(i). The provisions of Section 4.4(g) will apply to material and substantial changes, except that the Port shall approve or disapprove the submitted change at or before the Bi-

Weekly Meeting immediately following the Optionee's proper submission of the change. Port's determination of whether such changes are material or substantial will be conclusive.

(j) ***Conflict With Other Governmental Requirements.*** Port will not withhold its approval, where otherwise required under this Agreement, of elements of the Construction Documents or changes in Construction Documents required by any other governmental body with jurisdiction if all of the following have occurred:

(i) Port or DBI receives written notice of the required change;

(ii) Port or DBI is afforded at least thirty (30) days to discuss such element or change with the governmental body having jurisdiction of and requiring such element or change and with Optionee's architect;

(iii) Optionee cooperates fully with the governmental body having jurisdiction in seeking reasonable modifications of such requirement, or reasonable design modifications of the Initial Improvements, or some combination of such modifications, all to the end that a design solution reasonably satisfactory to Port may be achieved despite the imposition of such requirement; and

(iv) any conditions imposed in connection with such requirements is in compliance with Laws and other Regulatory Approvals.

(v) Optionee and Port recognize that the foregoing kind of conflict may arise at any stage in the preparation of the Construction Documents, but that it is more likely to arise at or after the time of the preparation of the Final Construction Documents and may arise in connection with the issuance of building permits. Accordingly, time is of the essence when such a conflict arises. Both Parties agree to use their best efforts to reach a solution expeditiously that is mutually satisfactory to Optionee and Port.

(k) ***Progress Meetings/Consultation.*** During the preparation of Construction Documents, Port and Optionee shall hold and attend periodic progress meetings every two weeks ("Bi-Weekly Meetings"). The Bi-Weekly Meetings shall be coordinated by the Developer and DBI staff shall also attend as appropriate. The Bi-Weekly Meetings may be cancelled by the Parties by mutual agreement. The Bi-Weekly Meetings will be held to coordinate the preparation of, submission to, and review by Port and DBI of Construction Documents and changes thereto in accordance with the provisions of this Section. Port staff and Optionee (and its applicable consultants) agree to communicate and consult informally as frequently as is reasonably necessary to assure that the formal submittal of any Construction Documents to Port can receive prompt and speedy consideration and response by Port and DBI.

4.5. Other Regulatory Approvals.

(a) Other Regulatory Approvals.

(i) Optionee understands that its construction of the Initial Improvements require Regulatory Approvals from Regulatory Agencies, which may include RWQCB, the City's Planning Commission and/or Zoning Administrator, SFPUC, and other Regulatory Agencies. Except with respect to the Consistency Determination, Optionee will be solely responsible for obtaining any such Regulatory Approvals, as further provided in this Section 4.5(a).

(ii) Optionee understands and agrees that Port is entering into this Agreement in its capacity as a landowner with a proprietary interest in the Property (subject to the Public Trust) and not as a Regulatory Agency with certain police powers. Optionee agrees and acknowledges that Port has made no representation or warranty that the necessary Regulatory Approvals to allow for Construction of the Initial Improvements can be obtained. Optionee agrees and acknowledges that although Port is an agency of the City, Port staff and executives have no authority or influence over officials or Regulatory Agencies responsible for

the issuance of any Regulatory Approvals, including Port and/or City officials acting in a regulatory capacity. Accordingly, there is no guarantee, nor a presumption, that any of the Regulatory Approvals required for the approval or Construction of the Initial Improvements will be issued by the appropriate Regulatory Agency and Optionee understands and agrees that neither entry by Port into this Agreement nor any approvals given by Port under this Agreement will be deemed to imply that Optionee will obtain any required approvals from Regulatory Agencies which have jurisdiction over the Property, including Port itself in its regulatory capacity. Port's status as an agency of the City will in no way limit the obligation of Optionee, at Optionee's own cost and initiative, to obtain Regulatory Approvals from Regulatory Agencies that have jurisdiction over the Property or Construction of the Initial Improvements. By entering into this Agreement, Port is in no way modifying or limiting the obligations of Optionee to Construct the Initial Improvements in accordance with all Laws. Without limiting the foregoing, except with respect to the Consistency Determination, Optionee understands and agrees that Port staff have no obligation to advocate, promote or lobby any Regulatory Agency and/or any local, regional, state or federal official for any Regulatory Approval, for approval of the Initial Improvements, this Agreement or the Ground Lease, and any such advocacy, promotion or lobbying will be done by Optionee at Optionee's sole cost and expense.

With respect to Regulatory Approvals under this Section 4.5(a), Port's sole obligation will be to seek a Consistency Determination as set forth in Section 4.7. Optionee hereby waives any Losses against the Indemnified Parties, and fully releases and discharges the Indemnified Parties to the fullest extent permitted by Law, from any liability relating to the failure of Port, the City or any Regulatory Agency to issue any required Regulatory Approval or to issue any approval of the Initial Improvements, including without limitation the Consistency Determination. Nothing in this Section shall relieve the Port of its obligations under this Agreement to seek a Consistency Determination as set forth in Section 4.8.

(iii) Optionee will not seek any Regulatory Approval without first obtaining approval of Port, which (except as set forth in this Section 4.5(a)) will not be unreasonably withheld, conditioned or delayed. Throughout the Term, Optionee will submit all applications and other forms of request for required Regulatory Approvals on a timely basis and will consult and coordinate with Port in Optionee's efforts to obtain Regulatory Approvals. Port will provide Optionee with its approval or disapproval thereof in writing to Optionee within ten (10) days after receipt of Optionee's written request, or if Port's Executive Director determines that Port Commission or Board of Supervisors action is necessary, at the first Port and subsequent Board hearings after receipt of Optionee's written request subject to notice requirements and reasonable staff preparation time. If Port disapproves any request under this subsection (iii), such disapproval shall state the reasons therefor in writing. The Parties agree that Construction Documents and building permits for the Initial Improvements will be governed by the provisions of Section 4.3, and not by this Section 4.5(a) (and for avoidance of doubt, the waiver and release set forth in Section 4.5(a)(i) does not apply to the submission, review and approval or disapproval of Construction Documents and building permits as contemplated in this Agreement).

(iv) Port will cooperate reasonably with Optionee in its efforts to obtain the Regulatory Approvals required for the Project. However, Optionee will not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a Regulatory Approval if Port is required to be a co-permittee, applicant or co-applicant under such Regulatory Approval or the conditions and/or restrictions in the Regulatory Approval could create any obligations on the part of Port or could otherwise encumber, restrict or change the use of Port property, unless in each instance, Port has previously approved, in Port's sole and absolute discretion, such conditions or restrictions.

(v) Optionee will bear, and will pay as they are incurred, all costs associated with (x) applying for and obtaining any necessary Regulatory Approval, and (y) complying with any and all conditions or restrictions imposed by Regulatory Agencies as part of

any Regulatory Approval, including the economic costs of any development concessions, waivers, or other impositions, and whether such conditions or restrictions are on the Property or require off-site improvements, removal, or other measures. Optionee has the right to appeal or contest any condition in any manner permitted by law imposed upon any such Regulatory Approval. Optionee will provide Port with prior notice of any such appeal or contest and keep Port informed of such proceedings. Optionee will pay or discharge any fines, penalties or corrective actions imposed as a result of Optionee's failure to comply with the terms and conditions of any Regulatory Approval subject to Optionee's right to appeal and contest such fines, penalties or corrective actions. No Port approval will limit Optionee's obligation to pay all the costs of complying with any conditions or restrictions.

(b) Without limiting any other Indemnification provisions of this Agreement, Optionee will Indemnify Port and the Indemnified Parties from and against any and all Losses which may arise in connection with Optionee's failure to seek to obtain in good faith, or to comply with the terms and conditions of any Regulatory Approval except to the extent that such Losses arise solely from the gross negligent or willful acts or omissions of Port acting in its proprietary capacity.

4.6. Current Use of the Property. Optionee acknowledges and understands that, under Port Lease No. L- 16141, SP Plus – Hyde Parking Joint Venture, a California General Partnership, leases SWL 322-1. Port has the right to terminate such lease on thirty (30) days' prior written notice. Port reserves the right to execute new leases or other property use agreements allowing uses of the Property or any portion thereof prior to the anticipated delivery of the Property pursuant to the Ground Lease, provided that (i) any such new agreement shall expire or be terminable by Port without cost to Optionee, prior to delivery of the Property to Optionee; (ii) Port will allow Optionee access to the Property as contemplated in Section 4.1; and (iii) Port will provide a copy of any new agreement to Optionee upon request. Any such new agreement will require an acknowledgement and agreement that such user is not eligible for relocation benefits or assistance and that such user may not unreasonably interfere with Optionee's rights to investigate and perform due diligence on the Property. Port will require its tenants and any other users of the Property to maintain the Property in its existing condition during the Term of this Agreement.

4.7. Uses. As of the Effective Date, the City is currently seeking legislation to modify the definition of affordable housing and make certain other changes for the benefit of the Project. The Parties understand that such legislation would not become operative until January 1, 2019 at the soonest. Optionee is assuming all risks associated with seeking such legislation, including without limitation, the risk that such legislation will not be enacted and Optionee hereby waives any Losses against the Indemnified Parties, and fully releases and discharges the Indemnified Parties to the fullest extent permitted by Law, from any liability relating to the City's efforts with respect to such legislation.

4.8. Consistency Determination. Optionee acknowledges that the Property is subject to the Public Trust and that the Port Commission and State Lands must make certain findings required by, and otherwise determine the Project is consistent with the State Legislation, and any other applicable statutes governing the Port's granted lands and that Port cannot enter into this Agreement or the Ground Lease absent such findings. Optionee further acknowledges that: (i) obtaining a favorable Consistency Determination may involve a lengthy and complex entitlement process, the result of which Port cannot guarantee; (ii) Port is making no representations or assurances regarding the Project's consistency with the State Legislation or the likelihood that the Project will obtain a favorable Consistency Determination; (iii) Optionee is assuming the risk of not obtaining a favorable Consistency Determination that will permit the development and construction of the Project; and (iv) Port has final discretion over the form and substance of and is solely responsible for seeking a Consistency Determination for the Project. If, in order to obtain a favorable Consistency Determination, the Project must be revised, Port

will use good faith efforts to consult with Optionee and MOHCD to determine the best way to implement such revisions.

4.9. Port's Costs.

(a) Port will pay for the appraisal and other costs related to the Consistency Determination, its internal staff time, and its consultants and legal costs associated with the negotiation of any Transaction Documents. Notwithstanding the preceding sentence, Optionee is responsible for State Lands' costs and Optionee must reimburse Port for any costs Port pays to State Lands to reimburse State Lands for its costs associated with its approvals (currently estimated at \$50,000 for informational purposes only). Optionee is responsible for all other costs, including the cost of obtaining Regulatory Approvals.

(b) Port's Building Permit Costs. Optionee shall reimburse Port for Port's Building Permit Costs in the manner described in Section 4.4(b) and this Section.

(i) No later than the Effective Date, Optionee shall make an advance payment to Port of Fifty Thousand dollars (\$50,000) to reimburse Port's Building Permit Costs (a "Payment Advance").

(ii) Within thirty (30) days after the end of each calendar quarter, Port will provide a reasonably detailed statement showing Port's Building Permit Costs for the immediately preceding quarter, including a calculation of the difference between the amounts of the Payment Advance and actual costs for the immediately preceding quarter ("Port Statement"). Port will include any invoices for outside consultants providing engineering and inspection services to the Port during that quarter in the Port Statement. Port will apply the Payment Advance to the Port Statement. Not later than fifteen (15) days after Port's delivery of the Port Statement, Optionee shall pay any remaining balance on a Port Statement and will replenish any portion of the Payment Advance so applied such that the Payment Advance will remain at \$50,000.

(iii) Optionee expressly agrees that upon expiration or termination of this Agreement, Port may apply any overpayment against any costs or other amounts then owed to Port under this Agreement or the Ground Lease. If this Agreement expires or terminates without a lease, any remaining overpayment (after application to amounts owed under this Agreement) will be returned to Optionee within ninety (90) days.

(iv) Port will use good faith efforts to minimize Port's Building Permit Costs in light of DBI's review.

(c) Port will have the right to terminate or suspend any work for Optionee under this Agreement upon Optionee's failure to pay amounts due and owing hereunder, and continuing until Optionee makes payment in full to Port. Optionee's obligation to reimburse Port for Port's Building Permit Costs incurred during the Term of the Agreement will survive the expiration or termination of this Agreement.

(d) The Parties acknowledge and agree that: (a) under California Government Code section 87103.6, Optionee's payments of Port's Building Permit Costs are not a "source of income" within the meaning of the California Political Reform Act; (b) Port reserves the full and sole discretion and authority to determine which consultants, contractors, or employees to hire or assign to work on Port's behalf on the Project, to direct and evaluate their work and to establish the amount of compensation paid; (c) Optionee will have no control over which Port account is used to pay for its consultants, contractors, or employees; (d) Optionee will have no right to withhold payment of or recover from Port any portion of Port's Building Permit Cost that have become due and payable under this Agreement (regardless of whether or not a lease and/or other transaction document is executed); and (f) Optionee's obligation to pay Port's Building Permit Costs that have become due and payable will survive termination or expiration of this Agreement, and Port may offset any outstanding amounts due and payable (including amounts

due and payable to Port under Section 7.2 (Port's Remedies) following a Optionee Event of Default) against such amounts before Port is obligated to refund any unused balance to Optionee.

4.10. Taxes and Assessments.

(a) For any period before Close of Escrow, Optionee is responsible for the payment of any ad valorem taxes (including possessory interest and special taxes) assessed by reason of this Agreement or Optionee's entry upon the Property under any other agreement or otherwise. Ad valorem taxes and assessments levied, assessed, or imposed for any period on or after Close of Escrow, including possessory interest and special taxes, are the sole responsibility of Optionee, as provided in the Ground Lease.

(b) Optionee recognizes and understands that this Agreement may create a possessory interest subject to property taxation and that Optionee may be subject to the payment of property taxes levied on such interest. Administrative Code Sections 23.38 and 23.39 (or any successor statute) require that the City report certain information relating to this Agreement, and any renewals of this Agreement, to the County Assessor within sixty (60) days after any such transaction, and that Optionee report certain information relating to any assignment under this Agreement to the County Assessor within sixty (60) days after such assignment transaction. Optionee agrees to provide such information as may be requested by Port to enable Port to comply with this requirement.

5. CONDITIONS TO PORT'S OBLIGATION TO CLOSE ESCROW.

5.1. Port's Conditions Precedent. The following are conditions precedent to Port's obligation to Close Escrow:

(a) Port has received a timely Option Notice and all the conditions precedent for such notice (as described in Section 2) have been satisfied or waived by Port;

(b) Port staff has approved the Construction Documents as contemplated under this Agreement including the Required Elements and received acceptable evidence that the initial site building permit and addenda needed to commence construction are ready to be issued (including a "permit ready letter" for such site building permit and addenda) pending Ground Lease execution and recordation of the Lease Memorandum;

(c) Optionee has incorporated any changes to the Project required by State Lands, Port or City in connection with their Regulatory Approvals or necessary to obtain such Regulatory Approvals and has obtained all required Regulatory Approvals necessary to commence construction of the Initial Improvements and they are final, binding and non-appealable (the Parties agree that a building permit is covered under Section 5.1(b));

(d) Port has approved Optionee's final: Scope of Development, Schedule of Performance and Development Budget (including the Financing Plan) as may have been revised since the Effective Date;

(e) Port staff or applicable City agency has approved other submissions required for Ground Lease execution, such as a Local Hiring Plan approved by the City's Office of Economic and Workforce Development and the "Nondiscrimination in Contracts and Benefits" form approved by the CMD;

(f) No changes in federal, state, or local Laws have occurred that would prevent the performance of the Parties' obligations as contemplated in the Ground Lease or have an adverse effect on the Project as contemplated in the Transaction Documents or on Port;

(g) Port staff has approved Optionee's Management Plan which details Optionee's long-term management plans and which will be attached and incorporated into the Ground Lease;

(h) Port staff has approved Optionee's leasing plan for the non-residential components of the Project which details the leasing schedule;

(i) If Optionee elects to finance the construction of any part of the Initial Improvements with a private entity leasehold lender, then such financing will close simultaneously with the Close of Escrow (excluding any financing for commercial improvements beyond the cold shell of such improvements, and excluding any financing of Affordable Housing Program Funds from the Federal Home Loan Bank); the Port's fee interest in the Property shall not be encumbered by any financing document;

(j) Optionee has deposited into Escrow the Ground Lease, other necessary Transaction Documents and the Lease Memorandum duly executed by Optionee required to be executed by Optionee prior to or concurrently with Close of Escrow;

(k) Optionee has provided proof of insurance as required under Section 21 of the Ground Lease;

(l) Optionee has paid or deposited into Escrow funds necessary for payment to the City of all development exaction fees that are required to be paid prior to commencement of Construction of the Initial Improvements;

(m) Optionee has deposited into Escrow a duly executed and authorized performance bond or other satisfactory construction security as required under Section 13.1(h) of the Ground Lease;

(n) Port staff has reasonably approved evidence of a guaranteed maximum price contract for Construction of the Initial Improvements consistent with the Port-approved Construction Documents for the purpose of determining consistency with the Development Budget, Scope of Development, and consistency with the terms of this Agreement and Form Ground Lease;

(o) Port staff has approved Optionee's integrated pest management plan;

(p) Optionee has performed all obligations under this Agreement required to be performed on its part before exercising the Option, no Optionee Event of Default or uncured Optionee Event of Default exists;

(q) All of Optionee's and its partners executing this Agreement representations and warranties made in Section 12 were true and correct in all aspects when made and are true and correct in all aspects as of the date of the Option Notice. At the Close of Escrow, Optionee, and each of its partners, will deliver to Port a certificate to confirm the accuracy of such representations and warranties in all aspects substantially in the form of *Exhibit G*;

(r) The WDAC has reviewed and provided recommendations, if any, and the Planning Department and the Port Commission as required under Planning Code Section 240 have reviewed and approved the design of the Initial Improvements, and such approvals are final, binding and non-appealable;

(s) Optionee has deposited into Escrow such evidence of authority to enter into the Ground Lease, and any other Transaction Documents as Port and the Title Company may reasonably require to be executed by Optionee prior to or concurrently with Close of Escrow (including certificates of good standing, officer's certificates, resolutions, and certificates of incumbency);

(t) The Title Company is prepared to issue to Port the title insurance policy required by Section 6.3 to be delivered to Port; and

(u) The Port Commission's authorization and approval, by resolution, of the Development MOU, this Agreement, the Form Ground Lease, and any other Transaction

Document that requires such approval, and the Board of Supervisors' authorization and approval, by resolution, of the Development MOU, the Form Ground Lease and any other Transaction Document that requires such approval to be executed by Port, have been completed and have become and remain effective, and such approvals shall be finally granted.

5.2. Satisfaction of Port's Conditions. The conditions precedent set forth in Section 5.1 are intended solely for the benefit of Port. If any such condition precedent is not satisfied on or before the Close of Escrow, the Executive Director, or, if the Executive Director determines that waiver of the condition precedent materially affects the rights, obligations, or expectations of Port, the Port Commission by resolution, has the right in its sole discretion to (i) waive in writing the condition precedent in question and proceed with Delivery of the Ground Lease, or (ii) terminate this Agreement and exercise its rights and remedies hereunder.

5.3. Conditions to Optionee's Obligation to Close Escrow. The following are conditions precedent to Optionee's obligation to Close Escrow:

(a) Optionee has delivered the Option Notice and all the conditions precedent for delivering the Option Notice (as described in Section 2) have been satisfied by Optionee or waived by Port;

(b) Port has performed all obligations under this Agreement that is required to perform before the Close of Escrow and no uncured Port Event of Default exists;

(c) Except for rights of Port reserved under the Ground Lease or as otherwise allowed as Permitted Title Exceptions or by Optionee in writing prior to Close of Escrow, Port is prepared to Deliver the Premises free of all tenants and occupants as of the Close of Escrow;

(d) Port staff has approved the Construction Documents as contemplated under this Agreement including the Required Elements and the initial site building permit and addenda needed to commence construction are ready to be issued pending Ground Lease execution and recordation of the Lease Memorandum;

(e) Optionee has incorporated any changes to the Project required by State Lands, Port or City in connection with their Regulatory Approvals or necessary to obtain such Regulatory Approvals and has obtained all required Regulatory Approvals necessary to commence construction of the Initial Improvements and they are final, binding and non-appealable (the Parties agree that a building permit is covered under Section 5.1(b));

(f) Port has approved evidence of adequate financing for the Construction of the Initial Improvements in accordance with Section 2(c); and Optionee has obtained the approvals contemplated in Section 5.1.

(g) If Optionee elects to finance any part of the Initial Improvements with a private leasehold lender, then such financing will close simultaneously with the Close of Escrow;

(h) Port has deposited into Escrow the Ground Lease, any other Transaction Documents to be executed by Port and the Memorandum duly executed by Port;

(i) The WDAC has reviewed and provided recommendations, if any, and the Planning Department and the Port Commission as required under Planning Code Section 240 have reviewed and approved the design of the Initial Improvements, and such approvals are final, binding and non-appealable;

(j) The Title Company is prepared to issue to Optionee, the title insurance policy required by Section 6.4 to be delivered to Optionee;

(k) No changes in federal, state, or local Laws have occurred that would prevent the performance of the Parties' obligations as contemplated in the Ground Lease or have an adverse effect on the Project as contemplated in the Transaction Documents or on Optionee;

(l) There has been no material change to the Property since the Optionee's execution of this Agreement; and.

(m) The Port Commission's authorization and approval, by resolution, of this Agreement, the Development MOU, the Form Ground Lease, and any other Transaction Document that requires such approval, and the Board of Supervisors' authorization and approval, by resolution, of the Development Agreement, Form Ground Lease and any other Transaction Document that requires such approval to be executed by Port, have been completed and have become and remain effective, and such approvals shall be finally granted.

5.4. Satisfaction of Optionee's Conditions Precedent. The conditions precedent set forth in Section 5.3 are intended solely for the benefit of Optionee. If any such condition precedent is not satisfied on or before the Close of Escrow, Optionee has the right in its sole discretion to waive in writing the condition precedent in question and proceed with the Close of Escrow and acceptance of the Property or to terminate this Agreement.¹¹

6. CLOSE OF ESCROW.

6.1. Escrow. Optionee shall open an escrow for the delivery of the Property through the Ground Lease ("Escrow") with Old Republic Title Company or another local title company chosen by Optionee ("Title Company"). Optionee shall open the Escrow not later than the date specified in the Schedule of Performance. Each Party shall prepare escrow instructions as are necessary and consistent with this Agreement. Port shall accept or provide comments on Optionee's escrow instructions within seven (7) days after receipt. Optionee's escrow instructions shall, among other things, provide that the Title Company will record a Lease Memorandum substantially in the form attached hereto as *Exhibit I*, as well as any other documents which are to be recorded upon Close of Escrow as part of the Project.

6.2. Close of Escrow. After receipt of the Option Notice, Port shall execute and acknowledge, as necessary, and deposit into Escrow with the Title Company the following: (1) the Ground Lease; (2) the Lease Memorandum in recordable form; (3) a copy of the resolution of the Port Commission authorizing and approving this Agreement and the Form Ground Lease; and (4) a copy of the resolution of the Board of Supervisors authorizing and approving the Form Ground Lease. On or before the Close of Escrow, Optionee shall execute and acknowledge (or cause to be executed and acknowledged), as necessary, and deposit into Escrow with the Title Company the following: (1) the Ground Lease; (2) the Lease Memorandum in recordable form; (4) such resolutions of Optionee and its constituent members authorizing the execution and delivery of the Ground Lease and any related agreements, and any other evidence of authority as Port or the Title Company may reasonably require; and (5) all costs of escrow. Upon the Close of Escrow, the Title Company shall record in the Official Records the Lease Memorandum, and any other documents reasonably required to be recorded.

(a) Expenses. All expenses, fees or costs incurred in connection with the close of Escrow, including but not limited to transfer taxes, conveyance taxes, recording charges (if any), and costs of title insurance shall be borne by the Optionee.

(b) Proration of Taxes. Real property taxes on the Property shall be prorated as of the date of Close of Escrow of the Ground Lease.

6.3. Condition of Title.

(a) Permitted Title Exceptions. Except for the items reserved in the Ground Lease or underground utility lines (including for water, power, and sewer) existing as of the Effective Date of this Agreement (collectively, "**Permitted Title Exceptions**"), and such other matters as Optionee will cause or suffer to arise, Port will Deliver to Optionee the Property under and subject to the provisions of the Ground Lease for the term specified in the Ground Lease, free and clear of possession by others and liens, assessments, and taxes.

(b) **Title Defect.** If at the time scheduled for Close of Escrow, other than as set forth in Section 6.3(a), any (i) possession by others, (ii) rights of possession other than those of Optionee or Port as reserved under the Ground Lease, or (iii) lien, encumbrance, assessment, tax or other matter which is not a Permitted Title Exception, encumbers the Property ("**Title Defect**"), Port will have up to thirty (30) days from the date scheduled for Close of Escrow to remove the Title Defect (the "**Title Defect Cure Period**"). In such event, Close of Escrow will be extended to the earlier of seven (7) business days after the Title Defect is removed or the end of the Title Defect Cure Period. If the Title Defect can be removed by bonding and Port has not bonded within the Title Defect Cure Period, Optionee may cause a bond to be issued. If Optionee causes a bond to be issued Port, at its option, will reimburse Optionee for the cost of such bond within thirty (30) days of demand therefor or offset such amounts against any rent due under the Ground Lease.

(c) **Optionee's Remedies With Respect to Uncured Title Defect.** If after expiration of the Title Defect Cure Period, a Title Defect still exists at the time scheduled for Close of Escrow, Optionee may by written notice to Port either terminate this Agreement or accept Delivery of the Property. If Optionee accepts Delivery, the Title Defect will be deemed waived by Optionee and shall be considered a Permitted Title Exception. If Optionee does not accept Delivery and fails to terminate this Agreement within seven (7) days after expiration of the Title Cure Period, Port may terminate this Agreement upon three (3) days written notice to Optionee. If this Agreement is terminated under this Section 6.3(b), Optionee will have no further remedies against, or other obligations to Port with respect to such termination (other than those that survive expiration or earlier termination of this Agreement). In the event that Optionee does not accept Delivery and fails to terminate this Agreement within seven (7) days after the expiration of the Title Defect Cure Period and Port elects not to terminate this Agreement as set forth in this Section, then this Agreement will continue in full force and effect and any Title Defect will be deemed waived by Optionee.

6.4. Title Insurance to be Issued at the Close of Escrow.

(a) The escrow instructions will provide that concurrently with Close of Escrow, the Title Company will issue and deliver:

(i) To Optionee, an A.L.T.A. extended coverage title insurance policy issued by the Title Company, with such coinsurance or reinsurance and direct access agreements as Optionee may request reasonably, in an amount designated by Optionee which is satisfactory to the Title Company, insuring that the leasehold estate in the Property is vested in Optionee subject only to the Permitted Title Exceptions, and with such C.L.T.A. form endorsements as may be requested reasonably by Optionee, all at the sole cost and expense of Optionee; and

(ii) To Port, an A.L.T.A. extended coverage title insurance policy issued by Title Company in an amount specified by Port and satisfactory to the Title Company, insuring Port's fee interest in the Property subject to the Public Trust, the Ground Lease and the other Permitted Title Exceptions which are applicable to the fee, and with such C.L.T.A. endorsements as Port may reasonably request, all at the sole cost and expense of Optionee, provided Port pays any incremental cost for such policy (including endorsements) in excess of the cost of the title policy and endorsements issued to Optionee.

(b) Optionee is responsible for securing any and all surveys and engineering studies at its sole cost and expense, as needed for the title insurance required under this Agreement or as otherwise required to consummate the transactions contemplated by this Agreement. Optionee, at no cost to Port, must provide Port with complete and accurate copies of all such final surveys (which surveys must be certified to Port in a form reasonably acceptable to Port) and engineering studies.

(c) **Construction Endorsement.** In the event that the title insurance policy described in Section 6.4(a)(ii) is issued to Port, and in the event that Optionee obtains an

endorsement to its title insurance policy insuring Optionee that the Initial Improvements have been completed free and clear of all mechanics' and materialmen's liens, Optionee will also obtain such an endorsement for Port with respect to Port's title insurance policy, all at the sole cost and expense of Optionee.

6.5. Restrictions on Encumbering Port's Reversionary Interest. Under no circumstance whatsoever shall Optionee place or suffer to be placed any lien or encumbrance on Port's fee interest in the Property in connection with any financing permitted hereunder, or otherwise. Optionee may not enter into agreements granting licenses, easements or access rights over the Property if the same would be binding on Port's reversionary interest in the Property, or obtain changes in applicable land use laws or conditional use authorizations or other permits for any uses not provided for hereunder, in each instance without Port's prior written consent, which consent may be withheld in Port's sole discretion.

As further detailed in the Ground Lease, project financing from institutional lenders, governmental entities, nonprofits and other lenders may be secured by Tenant's Leasehold Estate or a Subleasehold Estate (as those terms are defined in the Lease) and Port will consent to reasonable provisions in lease riders and/or affordability covenants/restrictions required to receive public financing if such riders and covenants (including tax credits, and state grants or loans) are approved by MOHCD, provided that such riders and covenants are materially consistent with this Lease, Port's authority as trustee under the Burton Act and the favorable Consistency Determination made by the Port Commission and State Lands in the Resolutions referenced in *Recitals P* and *R*, or required to be made hereafter, and do not increase Port's liability as reasonably determined by Port.

7. DEFAULTS; REMEDIES.

7.1. Optionee Events of Default. Each of the following constitutes a "Optionee Event of Default":

(a) Optionee fails to pay any amount required to be paid under this Agreement when due and such failure continues for fifteen (15) business days following written notice from Port to Optionee;

(b) Optionee fails to comply with the Schedule of Performance as such schedule may be extended or stayed by Port; or

(c) Optionee fails to Close Escrow and/or does not accept Delivery of the Ground Lease within the times set forth in this Agreement, provided that all pre-Delivery conditions to Optionee's obligation to Close Escrow and/or accept Delivery have been satisfied, and such failure continues for a period of twenty (20) days after written notice from Port;

(d) Optionee files a petition for relief, or an order for relief is entered against Optionee, in any case under applicable bankruptcy or insolvency law, or any comparable law that is now or hereafter may be in effect, whether for liquidation or reorganization, which proceedings if filed against Optionee are not dismissed or stayed within one hundred twenty (120) days; or a writ of execution is levied on this Agreement which is not released within one hundred twenty (120) days, or a receiver, trustee or custodian is appointed to take custody of all or any material part of the property of Optionee, which appointment is not dismissed within one hundred twenty (120) days;

(e) Optionee makes a general assignment for the benefit of its creditors;

(f) Optionee makes a Transfer or Significant Change in violation of Section 13.1 without Port's consent; or

(g) Optionee fails to comply with any other provision of this Agreement, if not cured within thirty (30) days after Port's notice to Optionee, or, in the case of a default not

susceptible of cure within thirty (30) days, Optionee fails promptly to commence to cure such default and thereafter to prosecute diligently such cure to completion within a reasonable time.

7.2. Port's Remedies. Upon the occurrence of a Optionee Event of Default, Port has the remedies set forth below:

(a) Termination. Port may terminate this Agreement upon thirty (30) days' written notice to Optionee.

(b) Specific Performance. Port may institute an action for specific performance.

(c) The remedies provided for in this Agreement are in addition to and not in limitation of other remedies including those provided at Law or in equity.

(d) Notwithstanding any other provision of this Agreement, in the event of an uncured Optionee default, the Parties agree that Port, as Port's sole and exclusive monetary remedy for damages, is entitled to an amount of Eighty Five Thousand Dollars (\$85,000) as liquidated damages, increased by three percent (3%) on each anniversary of the Effective Date of this Agreement. The terms and conditions of this Section 7.2(c) shall survive the expiration of earlier termination of this Agreement.

THE PARTIES AGREE THAT THE SUM OF EIGHTY FIVE THOUSAND DOLLARS (\$85,000) IS A REASONABLE SUM CONSIDERING THE CIRCUMSTANCES EXISTING ON THE EFFECTIVE DATE OF THIS AGREEMENT, INCLUDING THE RELATIONSHIP OF THE SUM TO THE RANGE OF HARM TO PORT THAT REASONABLY COULD BE ANTICIPATED AND THE EXPECTATION THAT PROOF OF ACTUAL DAMAGES COULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. IN PLACING THEIR INITIALS BELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF EACH OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION AT THE TIME THIS AGREEMENT WAS MADE.

Optionee's Initials

Port's Initials

7.3. Port Events of Default. Each of the following constitutes a "Port Event of Default":

(a) Port's failure to deliver the Ground Lease when the conditions to Close of Escrow in Port's favor have been satisfied, or waived by Port and where such failure is in violation of this Agreement, and continues for a period of twenty (20) days from the date of written notice from Optionee shall constitute a "Port Event of Default".

(b) Port's failure to perform any other obligation required by this Agreement after receipt of written notice of the specific failure by Optionee and a reasonable time to cure but not less than thirty (30) days after the date of Optionee's written notice or, in the case of a default not susceptible of cure within thirty (30) days, Port fails promptly to commence to cure such default and thereafter to prosecute diligently such cure to completion within a reasonable time.

7.4. Optionee's Remedies. Upon the occurrence of a Port Event of Default, Optionee has the remedies set forth below:

(a) Termination. Optionee may terminate this Agreement upon thirty (30) days' written notice to Port.

(b) Specific Performance. Optionee may institute an action for specific performance.

(c) Port will not be liable to Optionee for monetary damages caused by any Port Event of Default.

7.5. Survival. The provisions of this Section will survive the expiration or earlier termination of this Agreement.

8. AS IS CONDITION OF THE PROPERTY; RELEASE; INDEMNIFICATION.

The provisions of this Section 8 will survive the expiration or earlier termination of this Agreement.

8.1. As Is. Port will not prepare the Property for any purpose whatsoever, except to Deliver the Property free of tenants and other occupants unless otherwise agreed to by Optionee in writing prior to Close of Escrow. Subject to the provisions of this Section, Optionee agrees to accept the Property in its "AS IS WITH ALL FAULTS" condition on the date of Close of Escrow.

8.2. Independent Investigation by Optionee. Optionee acknowledges that it has been afforded a full opportunity to inspect Port's records relating to conditions of the Property. Port makes no representation or warranty as to the accuracy or completeness of any matters contained in such records. Optionee is not relying on any such information. All information contained in such records is subject to the limitations set forth in Section 8.3. Optionee represents and warrants to Port that Optionee has performed a diligent and thorough inspection and investigation of the Property, either independently or through its own experts including (i) the quality, nature, adequacy and physical condition of the Property including the structural elements, foundation, and all other physical and functional aspects of the Property; (ii) the quality, nature, adequacy, and physical, geotechnical and environmental condition of the Property, including the soil and any groundwater (including Hazardous Materials conditions (including the presence of asbestos or lead) with regard to the building, soils and any groundwater); (iii) the suitability of the Property for the Initial Improvements and Optionee's planned use of the Property; (iv) the zoning, land use regulations, historic preservation laws, and other Laws governing use of or construction on the Property; (v) matters regarding conditions at the Property disclosed in the Form of Ground Lease including without limitation The Seawall Earthquake Vulnerability Study of the Northern Waterfront Seawall, San Francisco, California July 2016 ; and (vi) all other matters of material significance affecting the Property and its development.

8.3. Disclaimer of Representations and Warranties.

DISCLAIMER OF REPRESENTATIONS AND WARRANTIES. OPTIONEE AGREES THAT THE PROPERTY IS BEING DELIVERED BY PORT AND ACCEPTED BY OPTIONEE IN ITS AS IS WITH ALL FAULTS CONDITION. OPTIONEE REPRESENTS AND WARRANTS TO PORT THAT OPTIONEE HAS RECEIVED AND REVIEWED PORT'S RECORDS. OPTIONEE SPECIFICALLY ACKNOWLEDGES AND AGREES THAT NEITHER THE CITY, INCLUDING PORT, NOR ANY OF THE OTHER INDEMNIFIED PARTIES, HAS MADE, AND THERE IS HEREBY DISCLAIMED, ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND, WITH RESPECT TO THE CONDITION IN, ON, UNDER, OR PERTAINING TO THE PROPERTY, THE SUITABILITY OR FITNESS OF THE PROPERTY OR APPURTENANCES TO THE PROPERTY FOR THE DEVELOPMENT, USE OR OPERATION OF THE INITIAL IMPROVEMENTS, ANY COMPLIANCE WITH LAWS OR APPLICABLE LAND USE OR ZONING REGULATIONS, ANY MATTER AFFECTING THE USE, VALUE, OCCUPANCY OR ENJOYMENT OF THE PROPERTY, THE ACCURACY OF PORT'S RECORDS, OR ANY OTHER MATTER WHATSOEVER PERTAINING TO THE PROPERTY OR THE PROPOSED PROJECT.

Optionee's Initials

8.4. Release. As a material condition to Port's agreement to enter into this Agreement, as part of Optionee's agreement to accept the Property in its "As Is With All Faults" condition, Optionee, on behalf of itself and its successors and assigns, is deemed to waive any right to recover from, and forever release, acquit and discharge, Port and the Indemnified Parties from any and all Losses, whether direct or indirect, known or unknown, foreseen or unforeseen, that Optionee may now have or that may arise on account of or in any way be connected with (i) the physical, geotechnical or environmental condition in, on, under, above, or about the Property (including soil and groundwater conditions), including any Hazardous Materials in, on, under, above or about the Property, (ii) the suitability of the Property for Construction of the Initial Improvements, (iii) any applicable Laws, including Environmental Laws or Laws pertaining to rehabilitation or historic preservation of historic resources, (iv) damages by death of or injury to any Person, or to property of any kind whatsoever and to whomever belonging, and (v) goodwill, or business opportunities arising or lost at any time and from any cause, in, on, under, or about the Property, including all claims arising from the joint, concurrent, active or passive negligence of any of Indemnified Parties, but the foregoing waivers or releases of claims do not extend to Losses to the extent caused by the sole negligence or willful misconduct of the Indemnified Parties.

Further, Port would not be willing to enter into this Agreement without the agreement of Optionee, on behalf of itself and its successors and assigns, to waive any right to recover from, and forever release, acquit and discharge, Port and the Indemnified Parties from any and all consequential, incidental or punitive damages, and Optionee expressly assumes the risk with respect thereto. Accordingly, without limiting any Indemnification obligations of Optionee or other waivers contained in this Agreement and as a material part of the consideration of this Agreement, Optionee fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against the Indemnified Parties for consequential, incidental and punitive damages (including, without limitation, lost profits) and covenants not to sue the Indemnified Parties for such damages arising out of this Agreement regardless of the cause, and whether or not due to the negligence of the Indemnified Parties.

Optionee understands and expressly accepts and assumes the risk that any facts concerning the claims released, waived and discharged in this Agreement might be found later to be other than or different from the facts now believed to be true, and agrees that the releases, waivers, and discharges in this Agreement will remain effective. Therefore, with respect to the claims released, waived and discharged in this Agreement, Optionee waives any rights or benefits provided by Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Optionee's Initials

Optionee agrees that the releases, waivers, and discharges given in and/or contemplated by this Section 8.4 includes all known and unknown, disclosed and undisclosed, and anticipated and

unanticipated claims regarding (i) all or any of the physical, geotechnical, and environmental condition in, on, under, above, or about the Property (including soil and groundwater conditions), including any Hazardous Materials in, on, under, above or about the Property, (ii) the suitability of the Property for Construction of the Initial Improvements, (iii) applicable Laws, including Environmental Laws or Laws pertaining to rehabilitation or historic preservation of historic resources, (iv) damages by death of or injury to any Person or to property of any kind whatsoever and to whomever belonging, (v) goodwill, or business opportunities arising or lost at any time and from any cause, (vi) goodwill, or business opportunities arising or lost at any time and from any cause, in, on, under, or about the Property, including all claims arising from the joint, concurrent, active or passive negligence of any of Indemnified Parties, and (vii) consequential, incidental or punitive damages. Accordingly, Optionee hereby waives the benefits of Civil Code Section 1542, or under any other statute or common law principle of similar effect, in connection with the releases contained in this Section.

8.5. General Indemnification.

Without limiting any Indemnity contained in any other agreement between the Parties, Optionee will Indemnify the Indemnified Parties from and against any and all Losses incurred in connection with or arising directly or indirectly, in whole or in part, (i) out of City's agreement to the terms and conditions of this Agreement; (ii) out of any injuries or death of any person or damage of any property occurring in, on or about the Property which arise solely as a result of Optionee's or its agents' or invitees' acts or omissions; or (iii) any failure by Optionee or its Agents or Invitees, as applicable, in the observation or performance of any of the terms, covenants or conditions of this Agreement. Optionee's Indemnification obligations are enforceable regardless of the active or passive negligence of the Indemnified Parties, and regardless of whether liability without fault is imposed or sought to be imposed on the Indemnified Parties. Optionee agrees to immediately defend the Indemnified Parties against any claims that are actually or potentially within the scope of the Indemnity provisions of this Agreement even if such claims may be groundless, fraudulent or false. The Indemnified Party against whom any claim is made which may be within the scope of the Indemnity provisions of this Agreement shall provide notice to Optionee of such claim within a reasonable time after learning of such claim, and thereafter shall cooperate with Optionee in the defense of such claim. Optionee's obligation to defend shall arise at the time such claim is tendered to Optionee by the Indemnified Parties and shall continue at all times thereafter until finally resolved; provided, however, any failure to provide such notice shall not affect Optionee's obligations under any such Indemnity provisions except to the extent Optionee is materially prejudiced by such failure. **Exclusion.** Optionee will not be required to Indemnify the Indemnified Parties if such Losses are caused solely and directly by the gross negligence or willful misconduct of any of the Indemnified Parties.

Optionee's Indemnification obligations set forth in this Agreement and Optionee's releases, waivers, and discharges made in this Agreement will survive the expiration or earlier termination of this Agreement as to any acts or omissions occurring prior to such date, provided that after Close of Escrow, Optionee's Indemnification obligations under this Agreement will be subsumed in the Indemnification obligations of Optionee under the Ground Lease.

9. FORCE MAJEURE.

(a) **Effect of Force Majeure.** For the purpose of this Agreement, neither Optionee, Port, nor any successor in interest (the "**Delayed Party**," as applicable) will be considered in breach of or default in any obligation or satisfaction of a condition to an obligation of the other Party in the event of Force Majeure, and the time fixed for performance of any such obligation or satisfaction of conditions shall be extended by a period of time equal to the duration of the Force Majeure event; provided, however, within thirty (30) days after the beginning of any such Force Majeure event, the Delayed Party shall have first notified the other Party of the cause

or causes of such delay and claimed an extension for the reasonably estimated period of the enforced delay.

(b) Definition of Force Majeure. “**Force Majeure**” means events that cause delays in the Delayed Party’s performance of its obligations under this Agreement, or in the satisfaction of a condition to the other Party’s performance under this Agreement, due to causes beyond the Delayed Party’s control and not caused by the acts or omissions of the Delayed Party (excluding, in any case, a Delayed Party’s performance of the payment of money required under the terms of this Agreement), including: acts of nature or of the public enemy; war; invasion; insurrection; riots; any general moratorium in the issuance of governmental or regulatory permits applicable to the Property or the Initial Improvements (but in the absence of such a moratorium, acts of the government relating to issuance of building permits or other Regulatory Approvals are governed by Section 9(d)); fires; floods; tidal waves; epidemics; quarantine restrictions; freight embargoes; earthquakes; unusually severe weather (but only if such unusually severe weather causes actual delays); delays of contractors or subcontractors due to any of the foregoing causes; strikes and substantial interruption of work because of labor disputes (excluding strikes and labor disputes directly related to any contracts between Optionee and its contractors or work performed on behalf of Optionee); inability to obtain materials or reasonably acceptable substitute materials (provided that Optionee has ordered such materials on a timely basis and Optionee is not otherwise at fault for such inability to obtain materials); or any Litigation Force Majeure (provided that the Delayed Party proceeds with due diligence to defend or commence, as applicable, such action or proceeding or take other appropriate measures to resolve any dispute that is the subject of such action or proceeding). The following are excluded from the definition of Force Majeure: (1) Optionee’s failure to secure anticipated financing for the Initial Improvements unless caused by a direct result of some other event of Force Majeure; (2) sea level rise; and (3) any event that does not cause an actual delay.

(c) Definition of Litigation Force Majeure. “**Litigation Force Majeure**” means any action or proceeding before any court, tribunal, or other judicial, adjudicative or legislative decision-making body, including any administrative appeal, brought by a third party that challenges, (a) the validity of any action taken by the City or State Lands in connection with the Project or any findings upon which any action is predicated, or (b) the failure of any Regulatory Agency to impose conditions to a Regulatory Approval including building permits or the validity of any other Regulatory Approval required in connection with the Project.

Notwithstanding anything to the contrary contained in this Agreement, Litigation Force Majeure excludes any action or proceeding brought by an Affiliate of Optionee, any of Optionee’s members or their Affiliates, any consultant of Optionee, or any other third party assisted by Optionee, directly or indirectly, in such action or proceeding. Performance by a Party hereunder shall be deemed delayed or made impossible by virtue of Litigation Force Majeure during the pendency thereof, and until a judgment, order, or other decision resolving such matter in favor of the Party whose performance is delayed has become final and unappealable.

The Parties will each proceed with due diligence and shall cooperate with one another to defend the action or proceeding or take other measures to resolve the dispute that is the subject of such action or proceeding.

(d) Permit Force Majeure. If the Parties are diligently proceeding to obtain necessary Regulatory Approvals for the Project as required hereunder, Force Majeure includes such Party’s inability to obtain Regulatory Approvals in a timely manner. With respect to such event of Force Majeure, time for Close of Escrow will be tolled for a period not to exceed an aggregate period of nine (9) months for delays caused in issuing such permits or other Regulatory Approvals that result in delaying the Close of Escrow.

(e) Limitations on Force Majeure. Under no circumstances shall the delay attributable to an event of Force Majeure or Litigation Force Majeure extend beyond twenty-four (24) months after the start of the event of Force Majeure or Litigation Force Majeure.

10. PROJECT MATERIALS.

Optionee acknowledges its obligations in connection with the Loan Agreement to deliver and/or otherwise assign to MOHCD its rights to any and all copies of studies, applications, reports, permits, plans, architectural drawings, test results, and similar work product regarding the physical condition of the Property, and any existing Construction Documents ("Project Materials") should the Project not be completed. Optionee agrees that Port has the same rights as MOHCD to such documents and that Port may enforce its rights to the same extent and subject to the same conditions as MOHCD, but Port will request the Project Materials only if MOHCD does not request them. Neither Optionee nor any other party providing the Project materials to Port makes any representation or warranty, express or implied, as to the accuracy or completeness of any information contained in the Project Materials, and none of such parties shall have any responsibility or liability for the content and accuracy of such documents or disclosures. The provisions of this Section 10 will survive the expiration or earlier termination of this Agreement.

11. DAMAGE OR DESTRUCTION.

11.1. After Close of Escrow. If at any time after the Close of Escrow, a fire or other casualty damages or destroys the Property or any portion thereof, the Ground Lease will govern the obligations of the Parties.

11.2. Before Close of Escrow.

(a) If prior to Close of Escrow, the Property suffers any damage from fire or other casualty that would add less than One Hundred Thousand Dollars (\$100,000) to the Development Budget, Optionee agrees that it will consummate the Close of Escrow in accordance with this Agreement. The Schedule of Performance will be adjusted, as necessary, to reflect any additional work necessitated by the fire or other casualty.

(b) If prior to Close of Escrow, the Property suffers any damage from fire or other casualty that would add One Hundred Thousand Dollars (\$100,000) or more to the Development Budget, then Optionee may elect to terminate this Agreement, by written notice to the other Party delivered not less than one hundred twenty (120) days following the event that caused such damage. If Optionee fails to terminate this Agreement within the 120-day period, the Parties will consummate the Close of Escrow and this Agreement will remain in effect. Optionee (or any permitted assignee) will not be entitled to any additional rent credit, abatement or allowance under the Ground Lease as a result of such casualty. The Schedule of Performance will be adjusted, as necessary, to reflect any additional work necessitated by the fire or other casualty.

(c) Following a termination pursuant to this Section 11.2, neither Party will have any further right or obligation hereunder other than those that survive the expiration or earlier termination of this Agreement.

12. REPRESENTATIONS AND WARRANTIES OF OPTIONEE. Optionee represents and warrants as follows as of the Effective Date and as of the date of the Close of Escrow:

(a) Valid Existence; Good Standing. Optionee is a California limited partnership duly organized and validly existing and is in good standing under the laws of the State of California. Optionee has all requisite power and authority to conduct its business as presently conducted. Optionee's managing general partner is a California limited liability company duly organized and validly existing and is in good standing under the laws of the State of California. Optionee's managing general partner has all requisite power and authority to conduct its business as presently conducted. Optionee's administrative general partner is a California limited liability company duly organized and validly existing and is in good standing under the laws of the State of California. Optionee's administrative general partner has all requisite power and authority to conduct its business as presently conducted.

(b) Authority. Optionee has all requisite power and authority to execute and deliver this Agreement, the Lease and any other Transaction Documents to which Optionee is a party and to carry out and perform all of the terms and covenants of the Transaction Documents.

(c) No Limitation on Ability to Perform. Neither Optionee's, articles of formation, limited partnership agreement, nor any of its general partners' formation documents or other agreement or Law in any way prohibits, limits or otherwise affects the right or power of Optionee executing this Agreement, to enter into and perform all of the terms and covenants of the Transaction Documents. Neither Optionee nor any of its general partners, is a party to or bound by any contract, agreement, indenture, trust agreement, note, obligation or other instrument that could prohibit, limit or otherwise affect the same. Other than the Regulatory Approvals, no consent, authorization or approval of, or other action by, and no notice to or filing with, any governmental authority, regulatory body or any other Person is required for the due execution, delivery and performance by Optionee of the Transaction Documents or any of the terms and covenants contained therein. There are no pending or threatened lawsuits or proceedings or undischarged judgments affecting Optionee or any of its general partners before any court, governmental agency, or arbitrator that might materially and adversely affect the enforceability of the Transaction Documents to which Optionee and Port are parties or the business, operations, assets or condition of Optionee or any of its general partners executing this Agreement.

(d) Valid Execution. The execution and delivery of the Transaction Documents by Optionee has been duly and validly authorized by all necessary action. The Transaction Documents will be a legal, valid and binding obligation of Optionee, enforceable against Optionee in accordance with their terms once executed.

(e) Defaults. The execution, delivery and performance of the Transaction Documents by Optionee (i) do not and will not violate or result in a violation of, contravene or conflict with, or constitute a default under (A) any agreement, document or instrument to which Optionee or each of its general partners or by which Optionee's or any of its general partners' assets may be bound or affected, (B) any Law, or (C) the certificate of partnership of Optionee's limited partnership agreement or any of its general partners' formation documents, and (ii) do not and will not result in the creation or imposition of any lien or other encumbrance upon the assets of Optionee or any of its general partners, except as otherwise contemplated in this Agreement or the Optionee's loan documents with the City relating to the Project.

(f) Meeting Financial Obligations. There is no material adverse change in Optionee's or any of its partners executing this Agreement financial condition and Optionee, and each of its general partners is meeting its current liabilities as they mature; no federal or state tax liens have been filed against it; and neither Optionee nor any of its general partners, is in default or claimed default under any agreement for borrowed money.

The representations and warranties in this Section shall survive any expiration or earlier termination of this Agreement.

13. TRANSFER; SUBDIVISION; SUBLEASE.

13.1. *Transfer.*

(a) Permitted Transfers. Without the prior written consent of the Port, Optionee may assign its rights and obligations under this Agreement to: (i) any limited liability company in which John Stewart Company or its Affiliate and BRIDGE Housing Corporation are the managing members or partners; or (ii) a limited partnership in which John Stewart Company or its Affiliate and BRIDGE Housing Corporation or its affiliate are the general partners, but in either case, only if Optionee gives Port: (i) prior written notice at least twenty (20) business days before the effective date of the Transfer; and (ii) copies of all documentation evidencing John Stewart Company's relationship with its Affiliate and a copy of the transfer agreement within five (5) days after the actual effective date of the Transfer (a "**Permitted Transfer**"). Port will

have the right to object to a Permitted Transfer on the grounds that the Transfer does not comply with the requirements of this Section 13.1(a).

(b) **Other Transfers.** Except for a Permitted Transfer, Optionee may not Transfer any of its rights under this Agreement or permit a Significant Change to occur, without in each instance obtaining the prior written approval of Port, which approval shall be at the Port's sole discretion.

(c) Any Transfer or Significant Change made in violation of this Section 13.1 is an Optionee Event of Default from and after the time of Transfer or Significant Change, without necessity of Port's giving of notice or passage of time. Consent to any one Transfer or Significant Change will not be a waiver of Port's right to require such consent for each and every Transfer or Significant Change.

13.2. Subdivision; Sublease. With ninety (90) days' prior written notice to Port, Optionee may elect to subdivide the Property into two or more (air space) parcels for purposes of legally dividing the real property (a "Subdivision"). Optionee shall be solely responsible for all required approvals and costs of such Subdivision. As further described in the Ground Lease, Optionee may sublease any subdivided parcel to the entities listed in Section 13.1(a) under the conditions described or, subject to Port's consent in its reasonable discretion, to any other Party. In the event that the Optionee subleases all or a portion of the Property, the Port will provide a nondisturbance agreement in the form agreed by the Parties.

13.3. No Release of Optionee's Obligations. Without Port's written consent in its sole discretion, no Subdivision, Transfer or Significant Change will relieve Optionee or any other Party from any obligations under the Transaction Documents, but any permitted sublessee, assignee or transferee will have the rights of Optionee under this Agreement and may fulfill the obligations of Optionee hereunder on behalf of Optionee.

14. NOTICES.

All notices or other communications made pursuant to this Agreement shall be in writing and shall be deemed properly delivered, given or served to the Parties at the following addresses when (i) mailed by certified mail, postage prepaid, return receipt requested; (ii) sent by express delivery service, charges prepaid with a delivery receipt; or (iii) personally delivered when a delivery receipt is obtained:

Port:

Director, Real Estate & Development
Port of San Francisco
Pier 1
San Francisco, CA 94111

Atten: SWL 322-1 Development Project Manager
Telephone: (415) 274-0400
Facsimile: (415) 274-0495

With a copy to:

Port General Counsel
Port of San Francisco
Pier 1
San Francisco, CA 94111

With a copy to: Mayor's Office of Housing and Community
Development
One Van Ness Avenue, Fifth Floor,
San Francisco, CA 94103
Attn: Director
Telephone: (415) 701-5515
Facsimile: (415) 701-5501

Optionee: 88 Broadway Family LP, a California Limited
Partnership
c/o BRIDGE Housing Corporation
600 California Street, Suite 900
San Francisco, CA 94108
Telephone: 415-989-1111 x7075
Facsimile: 415-498-4898

With a copy to:
JSCO 88 Broadway Family LLC
c/o John Stewart Company
1388 Sutter Street
11th Floor
San Francisco, California, 94109
Attn: Jack Gardner

All notices so delivered, mailed or sent shall be deemed received as of the date shown on the delivery receipt as the date of delivery, the date delivery was refused or the date the notice was returned as undeliverable. Either Party may change its address for the purposes of this paragraph by giving prior written notice of the change to the other Party in the manner provided in this Section. Any notice required under this Agreement that is sent by a Party shall be sent to, or contemporaneously copied to, all of the other Party.

15. GENERAL PROVISIONS.

15.1. *Conflict of Interest.* No member, official or employee of the City, including its Port, may have any personal interest, direct or indirect, in this Agreement nor shall any such member, official or employee participate in any decision relating to this Agreement which affects her or his personal interest or the interests of any corporation, partnership or association in which she or he is interested directly or indirectly.

15.2. *Inspection of Books and Records.* Port, including its Agents, has the right at all reasonable times and from time to time to inspect the books and records of Optionee in a location within San Francisco during regular business hours pertaining to Optionee's compliance with its obligations under this Agreement, provided that Port shall, to the maximum extent allowed by Law, keep confidential any such information which Optionee reasonably and in good faith determines is proprietary and clearly and conspicuously so designates.

15.3. *Time of Performance.*

(a) Expiration. All performance dates (including cure dates) expire at 5:00 p.m., San Francisco, California time, on the performance or cure date.

(b) Weekends and Holidays. A performance date that falls on a Saturday, Sunday or City holiday is deemed extended to the next business day.

(c) Days for Performance. All periods for performance specified in this Agreement in terms of days shall be calendar days, and not business days, unless otherwise expressly provided in this Agreement.

(d) Time of the Essence. Time is of the essence with respect to each required completion date in the Schedule of Performance.

15.4. Interpretation of Agreement.

(a) Exhibits. Whenever an “**Exhibit**” is referenced, it means an exhibit or attachment to this Agreement unless otherwise specifically identified. All such Exhibits are incorporated in this Agreement by reference.

(b) Captions. Whenever a section or paragraph is referenced, it refers to this Agreement unless otherwise specifically identified. The captions preceding the sections of this Agreement and in the table of contents have been inserted for convenience of reference only. Such captions shall not define or limit the scope or intent of any provision of this Agreement.

(c) Words of Inclusion. The use of the term “**including**”, “**include**”, “**such as**” or words of similar import when following any general term, statement or matter shall not be construed to limit such term, statement or matter to the specific items or matters, whether or not language of non-limitation is used with reference thereto. Rather, such terms shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter.

(d) No Presumption Against Drafter. This Agreement has been negotiated at arm’s length and between Persons sophisticated and knowledgeable in the matters dealt with herein. In addition, experienced and knowledgeable legal counsel has represented each Party. Accordingly, this Agreement shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the Party responsible for drafting any part of this Agreement (including California Civil Code Section 1654).

(e) Costs and Expenses. The Party on which any obligation is imposed in this Agreement shall be solely responsible for paying all costs and expenses incurred in the performance of such obligation, unless the provision imposing such obligation specifically provides to the contrary.

(f) Agreement References. Wherever reference is made to any provision, term or matter “**in this Agreement**,” “**herein**” or “**hereof**” or words of similar import, the reference shall be deemed to refer to any and all provisions of this Agreement reasonably related thereto in the context of such reference, unless such reference refers solely to a specific numbered or lettered section or paragraph of this Agreement or any specific subdivision of this Agreement.

15.5. Successors and Assigns. This Agreement is binding upon and will inure to the benefit of the successors and assigns of Port and Optionee, subject to the limitations on assignment set forth in Section 13. Where the term “**Optionee**,” or “**Port**” is used in this Agreement, it means and includes their respective successors and assigns. Whenever this Agreement specifies Port as a party or the holder of the right or obligation to give approvals or consents, if Port or a comparable public body which has succeeded to Port’s rights and obligations no longer exists, then the City (or the State, if applicable) will be deemed to be the successor and assign of Port for purposes of this Agreement.

15.6. No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of Port and Optionee and their successors and assigns. No other Person shall have or acquire any right or action based upon any provisions of this Agreement.

15.7. Real Estate Commissions. Optionee and Port each represents that it engaged no broker, agent or finder in connection with this transaction.

15.8. Counterparts. This Agreement may be executed in counterparts, each of which is deemed to be an original, and all such counterparts constitute one and the same instrument.

15.9. Entire Agreement. Except for the Negotiation Agreement, this Agreement, including the Form Ground Lease, constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the terms and conditions mentioned in or incidental to this Agreement. No parol evidence of any prior draft of this Agreement, or of any other agreement shall be permitted to contradict or vary the terms of this Agreement.

15.10. Amendment. Neither this Agreement nor any of its terms may be terminated, amended or modified except by a written instrument executed by the Parties.

15.11. Governing Law. The Laws of the State of California shall govern the interpretation and enforcement of this Agreement. As part of the consideration for Port's entering into this Agreement, Optionee agrees that all actions or proceedings arising directly or indirectly under this Agreement may, at the sole option of Port, be litigated in courts having sites within the State of California.

15.12. Extensions by Port. Upon the request of Optionee except as otherwise specifically addressed in this Agreement, Port, acting through its Executive Director, may, by written instrument, extend the time for Optionee's performance of any term, covenant or condition of this Agreement or permit the curing of any default upon such terms and conditions as it determines appropriate, including the time within which Optionee shall agree to such terms or conditions, provided, however, that any such extension or permissive curing of any particular default will not operate to release any of Optionee's obligations nor constitute a waiver of Port's rights with respect to any other term, covenant or condition of this Agreement or any other default in, or breach of, this Agreement or otherwise effect the time of the essence provisions with respect to the extended date or the other dates for performance under this Agreement.

15.13. Further Assurances. The Parties agree to execute and acknowledge such other and further documents and take such other reasonable actions as may be necessary or reasonably required to effectuate the terms of this Agreement. Port's Executive Director is authorized to execute on behalf of Port any closing or similar documents and any contracts, agreements, memoranda or similar documents with State, regional or local entities or other Persons that are necessary or proper to achieve the purposes and objectives of this Agreement and do not materially increase the obligations of Port under this Agreement, if the Executive Director determines, in consultation with the City Attorney, that the document is necessary or proper and in Port's best interests. The Executive Director's signature on any such document shall conclusively evidence such a determination by him or her.

15.14. Attorneys' Fees. If either Party fails to perform any of its respective obligations under this Agreement or if any dispute arises between the Parties hereto concerning the meaning or interpretation of any provision of this Agreement, then the defaulting Party or the Party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other Party on account of such default or in enforcing or establishing its rights under this Agreement, including Attorneys' Fees and Costs. Any such Attorneys' Fees and Costs incurred by either Party in enforcing a judgment in its favor under this Agreement shall be recoverable separately from and in addition to any other amount included in such judgment, and such Attorneys' Fees and Costs obligation is intended to be severable from the other provisions of this Agreement and to survive and not be merged into any such judgment. For purposes of this Agreement, the reasonable fees of attorneys of the Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the City Attorney's Office.

15.15. Relationship of Parties. The subject matter of this Agreement is a private development with neither Party acting as the agent of the other Party in any respect. None of the provisions in this Agreement shall be deemed to render Port a partner in Optionee's business, or joint venturer or member in any joint enterprise with Optionee.

15.16. Severability. If any provision of this Agreement, or its application to any Person or circumstance, is held invalid by any court, the invalidity or inapplicability of such provision shall not affect any other provision of this Agreement or the application of such provision to any other Person or circumstance, and the remaining portions of this Agreement shall continue in full force and effect, unless enforcement of this Agreement as so modified by and in response to such invalidation would be grossly inequitable under all of the circumstances, or would frustrate the fundamental purposes of this Agreement.

15.17. No Waiver. No waiver made by either Party with respect to the performance, or manner or time of performance, or any obligation of the other Party or any condition to its own obligation under this Agreement will be considered a waiver with respect to the particular obligation of the other Party or condition to its own obligation beyond those expressly waived to the extent of such waiver, or a waiver in any respect in regard to any other rights of the Party making the waiver or any other obligations of the other Party.

15.18. Binding Effect. This Agreement and its terms and conditions shall bind upon and inure to the benefit of the Parties to this Agreement and their respective successors and permitted assigns. By approving this Agreement, the Port Commission approves the Form Ground Lease with the substantive terms contained therein without the need for additional action by the Port Commission; provided, if there are any material changes to the Form Ground Lease that are to the detriment of the Port, as determined by the Port's Executive Director after consultation with the City Attorney, then such material changes will be subject to Port Commission approval before the Ground Lease becomes effective. If, as a result of any Regulatory Approvals, any material changes to the Form Ground Lease are made to the detriment of the Optionee or Port, as determined in their respective sole discretion, then that Party may terminate this Agreement by providing written notice to the other Party prior to Close of Escrow.

15.19. Non-Liability of Officials, Employees and Agents. Notwithstanding anything to the contrary in this Agreement, no elective or appointive board, commission, member, officer, employee, partner, shareholder, director or agent of City or Optionee will be personally liable to the other Party, its successors and assigns, in the event of any default or breach or for any amount which may become due to either Party, its successors and assigns, or for any obligation of a Party under this Agreement.

15.20. Process for Port Approvals. Unless this Agreement otherwise expressly provides, with respect to the Port's obligations to approve the items set forth below and any amendments thereto, Port's approval shall not be unreasonably withheld or delayed. Except as otherwise noted below, within ten (10) business days following submission of the applicable item or proposed revision thereof by Optionee to Port, Port shall approve or disapprove such submission. If Port disapproves such a submission, Port shall specify the reason for such disapproval. Optionee shall then have ten (10) business days to resubmit the applicable item to Port and the process for review and approval shall continue until such item is approved. Failure of the Port to respond within the time periods set forth in this Section 15.19 shall mean Optionee's request is deemed approved by the Port.

- (a) Financing Plan and Development Budget pursuant to Section 2(b) and Section 5.1(c);
- (b) Commitments and evidence of financing pursuant to Section 2(c);
- (c) Scope of Development or Schedule of Performance pursuant to Section 2(d);

- (d) leasing plan pursuant to Section 5.1(g);
- (e) Management Plan – thirty (30) day review;
- (f) pest management plan pursuant to Section 5.1(n) and
- (g) construction contract pursuant to Section 5.1(m).

16. CITY REQUIREMENTS.

Optionee has reviewed, understands, and is ready, willing, and able to comply with the terms and conditions of Section 35 of the Form Ground Lease to the extent applicable, which summarizes special City requirements as of the Effective Date. Optionee acknowledges that City requirements in effect when the Ground Lease or other Transaction Documents are executed will be incorporated into such documents as applicable, and will apply to all contractors, subcontractors, subtenants, and any other Optionee parties, as applicable. City requirements of general applicability will apply to the Project even if not included in the Transaction Documents. Optionee is obligated to become familiar with all applicable requirements and to comply with them fully as they are amended from time to time. City ordinances are currently available on the web at www.sfgov.org.

In addition, the following apply during the Term of this Agreement:

16.1. *Non-Discrimination in City Contracts and Benefits Ordinance.*

(a) **Covenant Not to Discriminate.** In the performance of this Agreement, Optionee covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), weight, height, association with members of classes protected under Chapter 12B or 12C of the Administrative Code or in retaliation for opposition to any practices forbidden under Chapter 12B or 12C of the Administrative Code against any employee of Optionee or any City and County employee working with Optionee, any applicant for employment with Optionee, or any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Optionee in the City and County of San Francisco.

(b) **Subleases and Other Contracts.** Optionee shall include in all Subleases and other contracts relating to the Property a non-discrimination clause applicable to such Subtenant or other contractor in substantially the form of Section 16.1(a). In addition, Optionee shall incorporate by reference in all Subleases and other contracts the provisions of Sections 12B.2 (a), 12B.2 (c)-(k) and 12C.3 of the Administrative Code and shall require all subtenants and other contractors to comply with such provisions.

(c) **Non-Discrimination in Benefits.** Optionee represents that it does not as of the date of this Agreement and will not during the Term, in any of its operations in San Francisco or where the work is being performed for the City, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits (collectively "Core Benefits") as well as any benefits other than the Core Benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local Law authorizing such registration, subject to the conditions set forth in Section 12B.2 of the Administrative Code.

(d) **CMD Form.** On or prior to the Ground Lease Commencement Date, Tenant shall execute and deliver to Port the "Nondiscrimination in Contracts and Benefits" form approved by the CMD.

(e) Penalties. Optionee understands that pursuant to Section 12B.2(h) of the Administrative Code, a penalty of \$50.00 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Optionee and/or deducted from any payments due Optionee.

16.2. *Sunshine Ordinance.* Optionee understands and agrees that under City's Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the State Public Records Law (Gov. Code Section 6250 et seq.), this Agreement and any and all records, information, and materials submitted to City hereunder public records subject to public disclosure. Optionee hereby acknowledges that the Port may disclose any records, information and materials submitted to the Port in connection with this Agreement.

16.3. *Prohibition Against Making Contributions to City.* Through its execution of this Agreement, Optionee acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require the approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to (1) the City elective officer, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Optionee acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Optionee further acknowledges that the prohibition on contributions applies to each Optionee; each member of Optionee's board of directors, and Optionee's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than twenty percent (20%) in Optionee; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Optionee. Additionally, Optionee acknowledges that Optionee must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Optionee further agrees to provide to City the names of each person, entity or committee described above.

16.4. *Conflicts of Interest.* Through its execution of this Agreement, Optionee acknowledges that it is familiar with the provisions of Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provision, and agrees that if Optionee becomes aware of any such fact during the term of this Agreement, Optionee shall immediately notify the City.

16.5. *Tropical Hardwood and Virgin Redwood Ban.* The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code.

17. DEFINITIONS.

"Affiliate" means: (i) a person that Controls or is Controlled by the first entity, or is Controlled by the same person that Controls the first entity; or (ii) if Optionee is a natural person, any designated successor by trust, will, or court order following the first entity's death or incapacity.

"Bi-Weekly Meeting" is defined in Section 4.4(k).

"Burton Act" means the provisions of Chapter 1333 of the Statutes of 1968 of the California Legislature, as amended, providing for the transfer to the City from the State, subject

to specified terms, conditions and reservations, of the control and management of the certain tide and submerged lands comprising the Harbor of San Francisco.

“Close of Escrow” is defined in Section 3.2.

“Close of Escrow Deadline” is defined in Section 3.1.

“CMD” means the Contract Monitoring Division of the City’s General Services Agency

“Consistency Determination” is defined in Section 2(e).

“Construction” means all new construction, replacement, rehabilitation, and demolition occurring on the Property, or where applicable, off-site, pursuant to this Agreement and the Ground Lease. “Construct” will have a correlative meaning.

“Construction Documents” is defined in Section 4.4(c).

“Control” means the direct or indirect ownership of: (a) fifty percent (50%) or more of each class of equity interests in the entity; or (b) fifty percent (50%) or more of each class of interests that have the right to nominate, vote for, or otherwise select the members of the governing body that directs or causes the direction of substantially all of the management and policies of the entity or otherwise has the right to direct or cause the direction of substantially all of the management and policies of the entity.

“Deliver” or “Delivery” means execution and delivery through Escrow by Port to Optionee, of a leasehold estate in the Property.

“Development Budget” means, as part of the Financing Plan, the budget for the Initial Improvements based on the Final Construction Documents. The Development Budget will show a balance of sources and uses of funds that include the total development cost for Construction of the Initial Improvements, including line items for Pre-Development Costs, permits, fees, exactions, architectural and engineering costs, hard costs, other soft costs, financing costs for the Project, and insurance and bonding costs, along with the sources of funds. The Development Budget will be substantially in the form of the anticipated Development Budget attached hereto as *Exhibit F* which has been approved by Port.

“Effective Date” is defined in Section 18.

“Environmental Law” means any Laws relating to Hazardous Materials (including its handling, release, or remediation) or to human health and safety, industrial hygiene, or environmental conditions in the environment, including structures, soil, air, bay water, and groundwater, and any environmental mitigation measure adopted under Environmental Laws affecting any portion of the Property.

“Expiration Date” is defined Section 3.1.

“Exterior Improvements” means any improvements, furnishings, fixtures, or equipment located in the exterior areas of the Property (whether public access or not and including the roof) and/or located in the public access areas of the buildings, which may include mechanical equipment, photovoltaic panels, satellite dishes, antennae and other communication equipment, public art, bollards, flower baskets, benches, tables, chairs, umbrellas, heaters, railings, gates, trash receptacles, cleats, signs, kiosks, flagpoles, canopies, awnings, landscaping, planter boxes, light poles, lighting fixtures, fountains, ticket booths, bicycle racks, plaques, markers, tents, models, other street furniture, and paving or other surface treatments.

“favorable Consistency Determination” means that all findings, approvals or other determinations required by the State Legislation and any other statutes governing the use of SWL 322-1 have been made by the Port Commission and State Lands and they have determined that the permitted uses, consideration to the Port, and other pertinent provisions of this Agreement and the Ground Lease are (1) consistent with the State Legislation and other governing statutes, and (2) do not require the Port to acquire additional land or make a deposit to the Kapiloff Land

Bank Fund pursuant to Section 5 of Assembly Bill 2649, as amended or any other statute governing the use of Port lands.

"Final Mitigated Negative Declaration" or **"FMND"** means the Final Mitigated Negative Declaration issued by the Planning Department on March 9, 2018.

"Financing Plan" means the proposed sources and uses of funds demonstrating a financially feasible project including evidence of Optionee's ability to meet any debt service obligation(s) attendant thereto.

"Hazardous Materials" means any substance, waste, or material that is now or in the future designated by any Regulatory Agency to be capable of posing a present or potential risk of injury to human health or safety, the environment, or property. This definition includes anything designated or defined in any Environmental Law as hazardous, hazardous substance, hazardous waste, toxic, pollutant, or contaminant; any asbestos, asbestos containing materials, presumed asbestos containing material, whether or not part of the structure of any existing improvements on the Property, any improvements to be constructed on the Property by or on behalf of Optionee, or occurring in nature; and other naturally-occurring substances such as petroleum, including crude oil or any fraction, and natural gas or natural gas liquids.

"Indemnified Parties" means City, including all of its boards, commissions, departments, agencies and other subdivisions, including Port, all of the Agents of the City, and their respective heirs, legal representatives, successors and assigns, and each of them.

"Indemnify" means indemnify, protect, defend and hold harmless. **"Indemnification"** and **"Indemnity"** have correlative meanings.

"Initial Improvements" is defined in Recital G and includes all physical construction on the Property (and off-site where so designated in the Scope of Development) and all buildings, structures, fixtures and other improvements erected, built, renovated, rehabilitated, restored, placed, installed or constructed upon or within the Property, as further described in the Scope of Development and elsewhere in this Agreement.

"Invitees" when used with respect to Optionee means the customers, patrons, invitees, guests, members, licensees, assignees and subtenants of the Optionee under this Agreement and the customers, patrons, invitees, guests, members, licensees, assignees and sub-tenants of subtenants.

"Laws" means all present and future applicable laws, ordinances, rules, regulations, permits, codes, authorizations, orders and requirements, whether or not foreseen or unforeseen, or in the contemplation of the Parties, which may affect or be applicable to the Property or any part of the Property (including use of the Property and the buildings and improvements on or affixed to the Property), including all consents or approvals (including Regulatory Approvals) required to be obtained from or issued by, and all rules and regulations of, and all building and zoning laws (including the Waterfront Plan) of, all federal, state, county and municipal governments, the departments, bureaus, agencies or commissions thereof, authorities, board of officers, any national or local board of fire underwriters, or any other body or bodies exercising similar functions, having or acquiring jurisdiction of the Property or any part thereof, the use thereof and of the buildings and improvements thereon; and similarly the phrase **"Law"** shall be construed to mean the same as the above in the singular as well as the plural.

"Lease Memorandum" means the memorandum of the Ground Lease, suitable for recordation in the Official Records and in the form of *Exhibit I*.

"Loss" or "Losses" when used with reference to any Indemnity means any and all claims, demands, losses, liabilities, damages (including foreseeable and unforeseeable consequential damages), liens, obligations, interest, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses (including reasonable Attorneys' Fees and Costs,

and consultants' fees and costs) of whatever kind or nature, known or unknown, contingent or otherwise.

"MMRP" is defined in Section 4.4(c).

"Official Records" means the official records of the City and County of San Francisco.

"Option Notice" is defined in Section 3.2.

"Payment Advance" is defined in Section 4.9(a).

"Port Statement" is defined in Section 4.9(a).

"Permitted Title Exceptions" is defined in Section 6.3(a) and includes the items set forth in *Exhibit J*.

"Port's Building Permit Costs" means all reasonable costs that Port incurs for services of architects, engineers, building inspectors, and other professional consultants (including City staff and other experts within the City that are paid by Port), construction management services, and legal services (including costs for the City Attorney's Office and outside counsel fees and costs) in connection with the issuance of the building permits for the Initial Improvements. Port's Building Permit Costs include time spent by Port engineering staff (including City staff paid by Port) and engineering consultant costs. Port's Building Permit Costs also include costs related to monitoring Optionee's compliance with the Mitigation Monitoring and Reporting Program; costs of the review of any Construction Documents, architectural design or schematic drawings, plans and specifications; and costs associated with any event of Litigation Force Majeure.

"Project Requirements" means the following: (i) green building requirements, (ii) all applicable Laws, including the Port Building Code, required Regulatory Approvals, the Waterfront Land Use Plan, Environmental Laws, disabled access Laws, Laws regulating construction on the Property, (iii) the Mitigation Measures and Improvements Measures in the MMRP; and (iv) the Equal Opportunity Program.

"Public Trust" means the public trust for commerce, navigation and fisheries, including the statutory trust imposed by the Burton Act.

"Regulatory Agency" and "Regulatory Agencies" means any local, regional, state or federal governmental agency or political subdivision having jurisdiction over the Property, including the United States Environmental Protection Agency, the California Environmental Protection Agency, RWQCB, the Army Corps of Engineers, SFPUC, and Port's Chief Harbor Engineer.

"Regulatory Approval" means any authorization, approval, endorsement, amendment of any existing plans (including the Waterfront Plan), or permit required by any Regulatory Agency to construct or operate the Project including without limitation, building permits issued by Port in its regulatory capacity. Regulatory Approval includes the Consistency Determination, except that the Consistency Determination will be sought by Port.

"Required Element" is defined in Section 4.4(h)(i).

"RWQCB" means the State of California Regional Water Quality Control Board.

"Schematic Design" generally means: (a) perspective drawings sufficient to illustrate the Initial Improvements; (b) a site plan at appropriate scale showing relationships of the Initial Improvements and their respective uses, designating public access areas, open spaces, walkways, loading areas, streets, parking, and adjacent uses--adjacent existing and proposed streets, arcades and structures also should be shown; (c) building plans, floor plans and elevations at appropriate scale and in detail sufficient to describe the Initial Improvements, the general architectural character, and the location and size of uses; and (d) building sections showing all typical cross sections at appropriate scale and height relationships of those areas noted above. Schematic Design for the Initial Improvements include the Schematic Design dated [] attached as *Exhibit C* which has been approved by the Port Commission.

"Scope of Development" means the narrative document attached hereto as *Exhibit B* describing the Initial Improvements which has been approved by Port.

"SFPUC" means the San Francisco Public Utilities Commission.

"Significant Change" means any cumulative or aggregate sale, assignment, encumbrance, or other transfer of any percentage of general partnership interests in Optionee except as may be provided in the Optionee's loan documents with MOHCD. Significant Changes are subject to Port's consent in its sole discretion under Section 13.1(a).

"Title Company" is defined in Section 6.1.

"Title Defect" is defined in Section 6.3(a).

"Title Defect Cure Period" is defined in Section 6.3(a).

"Transaction Documents" means this Option Agreement including the Form of Ground Lease as well as other related agreements and documents to which the Developer and Port are parties.

"Transfer" means any of the following events or proposed events, whether voluntary, involuntary, or by operation of Law: (a) any sale, assignment, or other transfer any of Optionee's rights under this Agreement; (b) any Person other than Optionee claims a right under this Agreement; (c) if Optionee is a corporation, limited liability company, partnership or similar entity and is not traded on a nationally recognized security exchange, any change in Control of Optionee (including without limitation a dissolution, merger, consolidation, transfer or sale); or (d) any interest of any assignee, or other Transferee of Optionee's interest in this Agreement is sold, assigned, encumbered, or otherwise Transferred.

"WDAC" means the Waterfront Design Advisory Committee authorized under Planning Code Section 240, whose members are appointed by the City and Port, and that is advisory to the Port Commission and to the City's Planning Commission.

"Waterfront Plan" means the Port of San Francisco Waterfront Land Use Plan, including the Waterfront Design and Access Element, for the approximately 7-1/2 miles of waterfront property under Port jurisdiction.

18. EFFECTIVE DATE.

The Effective Date of this Agreement is the last date of execution by the Parties as shown below.

[Signatures appear on following pages]

IN WITNESS WHEREOF, Optionee and the Port have executed this Agreement as of the date first written above.

PORT: **CITY AND COUNTY OF SAN FRANCISCO,**
a municipal corporation, operating by and through the
SAN FRANCISCO PORT COMMISSION

By: _____
Michael J. Martin
Deputy Director, Real Estate and Development

Date: _____

[Signatures Continue on Next Page]

OPTIONEE: **88 BROADWAY FAMILY LP,**
 a California limited partnership

By: 88 Broadway Family BRIDGE LLC,
 a California limited liability company,
 its managing general partner

By: MCB Family Housing, Inc.,
 a California nonprofit public benefit corporation,
 its sole member and manager

By: _____
 Rebecca Hlebasko, Vice President

Date: _____

By: JSCo 88 Broadway Family LLC,
 a California limited liability company,
 its administrative general partner

By: John Stewart Company,
 a California corporation,
 its sole member and manager

By: _____
 Jack D. Gardner, President

Date: _____

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

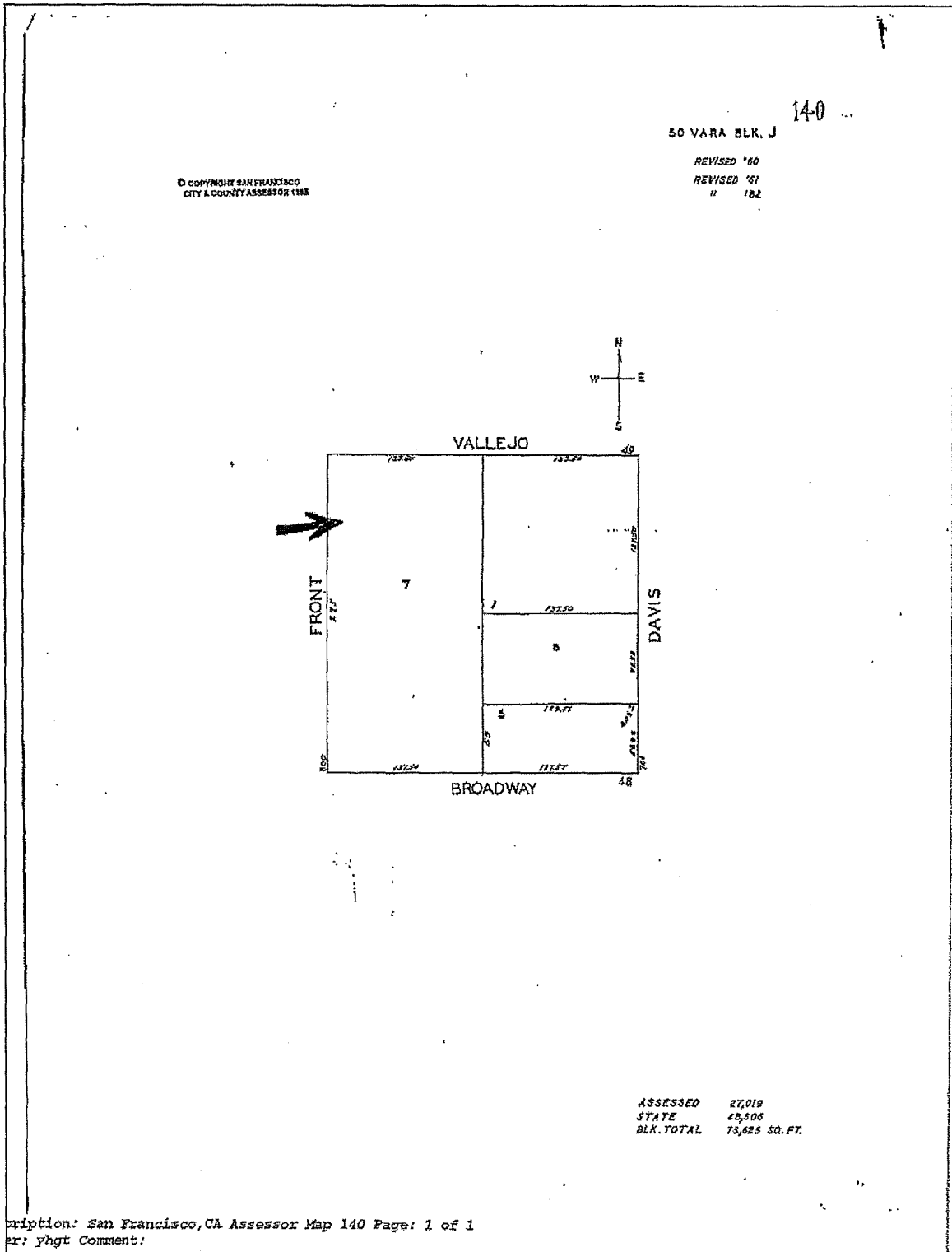
By: _____
Name: Rona H. Sandler
 Deputy City Attorney

Agreement Prepared By: Ricky Tijani _____ (initial)

Port Commission Resolution No.

EXHIBIT A

PROPERTY MAP



PROPERTY LEGAL DESCRIPTION

[SUBJECT TO REVIEW BY PORT SURVEYOR]

The land referred to in this Agreement is situated in the County of San Francisco, City of San Francisco, State of California, and is described as follows:

Beginning at the point of intersection of the Northerly line of Broadway with the Easterly line of Front Street; thence Northerly, along said Easterly line of Front Street, 275.0 feet to the point of intersection of said Easterly line with the Southerly line of Vallejo Street; thence Easterly, along said Southerly line of 137.5 feet to a point; thence Southerly at right angles from said Southerly line and parallel with said Easterly line of Front Street, 275.0 feet to a point in the Northerly line of Broadway; thence Westerly along said Northerly line of 137.5 feet to the point of beginning.

EXCEPTING THEREFROM: "Excepts and reserves to the State of California all subsurface mineral deposits including oil and gas deposits, together with the right of ingress and egress on the properties conveyed to the City for exploration, drilling and excavation of such mineral, oil and gas deposits. Minerals covered in this reservation shall be deemed to include all of the minerals enumerated in Public Resources Code Section 6407. Nothing contained herein, however, shall preclude the City in its operation of the Harbor from moving or removing earth, including sand, gravel and other deposits for purposes of dredging, filling, excavating, bulkheading or any other ordinary port maintenance, construction or reconstruction without charge to the City therefor. The right of ingress and egress in the reservation shall be exercised in such manner and to such extent as not to unreasonably interfere with the property for the purposes for which it has been transferred under the Act." as reserved in the Agreement recorded January 30, 1969, Book B308 page 686 of Official Records.

APN: 007; Block 0140

EXHIBIT B

PROJECT DESCRIPTION/SCOPE OF DEVELOPMENT

88 Broadway is located on Port-owned land that is on the west half of the block bounded by Broadway to the south, Vallejo to the north, Front to the west and Davis to the east.

88 Broadway is an approximately 125-unit family building serving low-income and middle-income families, with Area Median Income (AMI) levels between 30-120%, and may also include 31 Project Based Vouchers for HOPE SF relocatees. The 125 family units will include a mix of 16 junior one-bedrooms, 37 one-bedrooms, 48 two-bedrooms, and 24 three-bedrooms totaling approximately 137,100 gross square feet (gsf) of residential dwelling space. 88 Broadway will include active ground floor uses that will include an approximately 4,500 square foot community-serving retail space, as well as an approximately 4,200 square foot proposed child care center on the ground floor of 88 Broadway totaling approximately 8,700 gsf of nonresidential space. Additionally 88 Broadway will provide a publicly accessible north/south midblock passageway connecting Vallejo and Broadway Streets, as well as publicly accessible pedestrian path to 88 Broadway, accessible from Davis Street.

PROJECT SITE PLAN

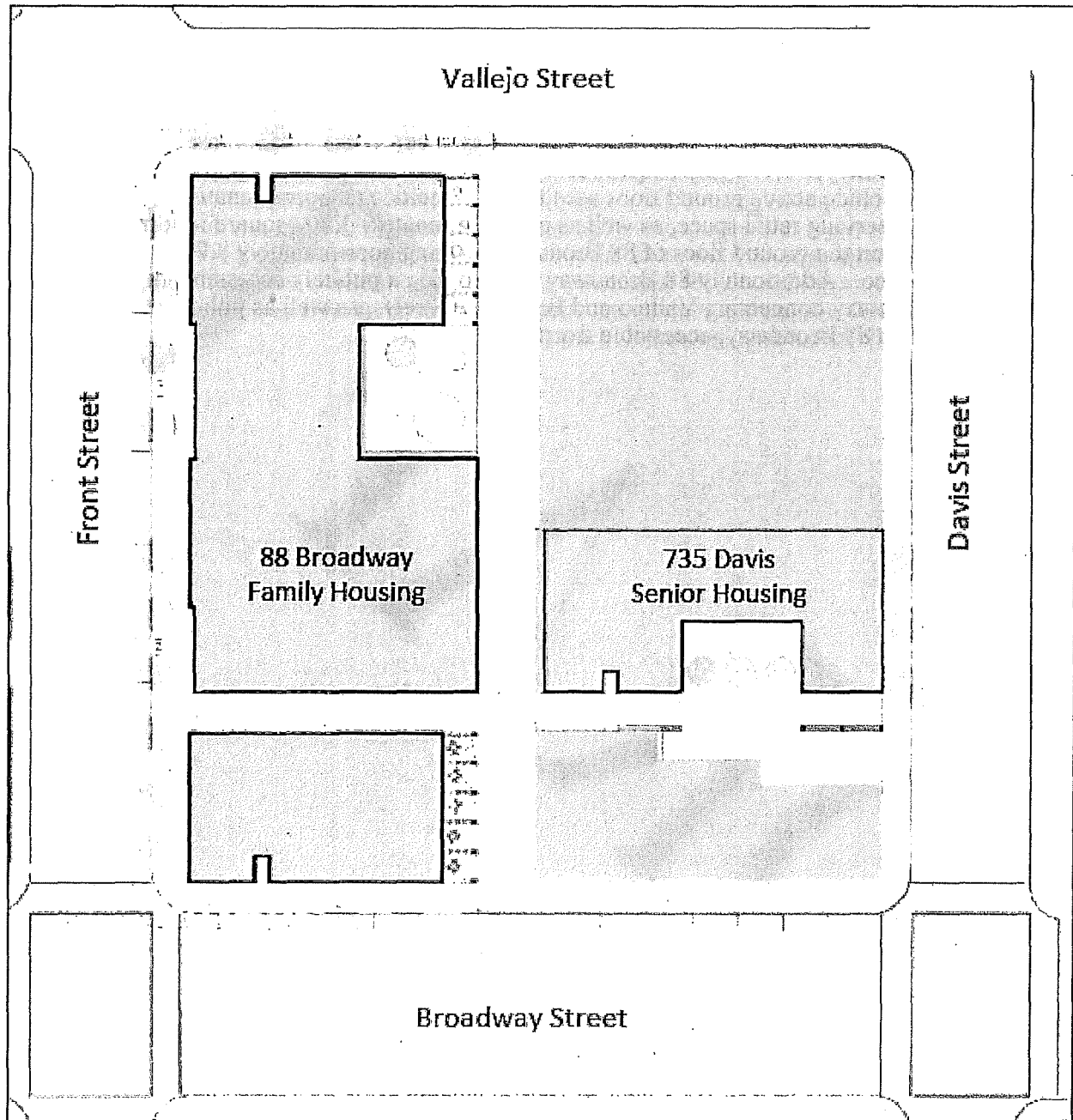


EXHIBIT C

SCHEMATIC DESIGN

[Attachment on following page]

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EXHIBIT D
FORM OF GROUND LEASE

[Attachment on following page]

[PAGE INTENTIONALLY LEFT BLANK]

EXHIBIT E

SCHEDULE OF PERFORMANCE

[Attachment on following page]

[PAGE INTENTIONALLY LEFT BLANK]

EXHIBIT F**ANTICIPATED DEVELOPMENT BUDGET****SOURCES AND USES SUMMARY**

Permanent Sources	Amount	Terms	Status
MOH	\$37,164,974	55 yrs @ 3.00%	Not Committed
Perm Loan	\$19,733,464	35 yrs @ 5.75%	Not Committed
AHSC	\$0	55 yrs @ 3.00%	Not Committed
AHP	\$1,000,000	N/A	Not Committed
Tax Credit Equity	\$29,027,937	\$.97 per credit	Not Committed
Commercial Condo Financing	\$2,052,890	20 yrs @ 7.00%	Not Committed
GP Equity	\$500,000	N/A	
Deferred Developer Fee	\$1,250,000		
Total	\$90,729,265		

Uses	Amount	Per Unit	Per SF
Acquisition	\$0	\$0	\$0
Hard Costs	\$72,587,731	\$580,702	\$497
Soft Costs	\$13,944,025	\$111,552	\$95
Developer Fee + Syndication	\$4,197,509	\$33,580	\$29
Contingencies for Hard and Soft Costs			
Total	\$90,729,265	\$725,834	\$621

DEVELOPMENT BUDGET

General Development Costs	72,412,731
Architecture & Engineering	3,859,803
Legal	396,847
Marketing	197,450
Appraisal/Market Study	26,500
Title/Audit/Cost Certification	120,000
FF&E	175,000
Permits/Fees	1,922,546
Soft Cost Contingency & Reserves	1,275,577
Carrying Charges & Financing	962,281
Construction Financing Loan Interest/Fees	3,875,895
Bond Cost of Issuance & Perm Loan Fees	423,707
Syndication Costs & Developer Fees	4,197,509
Commercial Development Costs	883,419
TOTAL DEVELOPMENT BUDGET	90,729,265

EXHIBIT G

REAFFIRMATION OF REPRESENTATIONS AND WARRANTIES

Pursuant to Sections 2(g) and 5.1(p) of the Option Agreement between the **CITY AND COUNTY OF SAN FRANCISCO**, operating by and through the **SAN FRANCISCO PORT COMMISSION** ("Port") and [_____] , a [_____] ("Optionee Party"), dated [_____] ("Option Agreement"), Optionee reaffirms to Port that the representations and warranties made by Optionee Party and set forth in Section 12 of the Option Agreement were true and accurate as of the effective date of the Option Agreement and further represents and warrants to Port as of the date below, all of the following:

[Placeholder to Restate R/W]

All capitalized items not defined herein have the meanings give to them in the Option Agreement.

IN WITNESS WHEREOF, the undersigned has executed this Reaffirmation of Representations and Warranties as of the date of the Option Notice/Close of Escrow: [_____] , 20XX].

[INSERT OPTIONEE PARTY]

By: _____
Name: _____
Title: _____



EXHIBIT H

EXPIRATION DATE MEMORANDUM

Landlord: **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation,
operating by and through the **SAN FRANCISCO PORT**
COMMISSION

Licensee: 88 Broadway Family LP

License Number: License 16358,
License Date: February 6, 2018 for
License Area: SWL 322-1

The Commencement Date of the License is March 29, 2018 and the Expiration Date is hereby established as the Expiration Date of that certain Option Agreement dated April 15, 2018 for reference purposes only between Port and Licensee.

PORT:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, operating by and through
the
SAN FRANCISCO PORT COMMISSION

By: _____
Michael J. Martin
Deputy Director
Real Estate and Development

Date Signed: _____

Licensee:

88 BROADWAY FAMILY LP,
a California limited partnership

By: 88 Broadway Family BRIDGE LLC,
a California limited liability company,
its managing general partner

By: MCB Family Housing, Inc.,
a California nonprofit public
benefit corporation,
its sole member and manager

By: _____
Rebecca Hlebasko, Vice President

Date: _____

By: JSCo 88 Broadway Family LLC,
a California limited liability company,
its administrative general partner

By: John Stewart Company,
a California corporation,
its sole member and manager

By: _____
Jack D. Gardner, President

EXHIBIT I

LEASE MEMORANDUM

<p>This document is exempt from payment of a recording fee pursuant to California Government Code Section 27383</p> <p>RECORDING REQUESTED BY, AND WHEN RECORDED, MAIL TO:</p>	<p>FOR RECORDER'S USE ONLY</p>
--	--------------------------------

[APN: Lot 007, Block 0140]

MEMORANDUM OF GROUND LEASE

THIS MEMORANDUM OF GROUND LEASE (this "Memorandum") dated for reference purposes as of _____, is by and between the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation (the "City"), operating by and through the **SAN FRANCISCO PORT COMMISSION** (the "Port"), and 88 Broadway Family LP, a California limited partnership (the "Tenant").

1. Agreement. Port and Tenant have entered into a Ground Lease dated as of _____ (the "**Ground Lease**"), under which (a) Port agrees to lease to Tenant the Premises described in Exhibit A attached hereto (the "**Site**"), (as may be altered in accordance with the terms of the Ground Lease, the "**Premises**"). Except as otherwise defined in this Memorandum, capitalized terms shall have the meanings given them in the Ground Lease.
2. Term. The initial term of the Ground Lease is fifty-seven (57) years unless the Ground Lease is earlier terminated in accordance with the provisions of the Ground Lease. The initial term may be further extended for eighteen (18) years subject to the provisions of the Ground Lease.
3. Notice. The Parties have executed and recorded this Memorandum to give notice of the Ground Lease and their respective rights and obligations under the Ground Lease to all third parties. The Ground Lease is incorporated by reference in its entirety in this Memorandum. In the event of any conflict or inconsistency between this Memorandum and the Ground Lease, the Ground Lease shall control.
4. Counterparts. This Memorandum may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

[Remainder of this page left intentionally blank]

IN WITNESS WHEREOF the Parties hereto have caused this Memorandum of Lease Disposition and Development Agreement to be executed by their duly appointed representatives as of the date first above written.

PORT: CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, operating by and through the
SAN FRANCISCO PORT COMMISSION

By: _____
Michael J. Martin
Deputy Director, Real Estate and Development

Date Signed: _____

OPTIONEE: **88 BROADWAY FAMILY LP,**
a California limited partnership

By: 88 Broadway Family BRIDGE LLC,
a California limited liability company,
its managing general partner

By: MCB Family Housing, Inc.,
a California nonprofit public benefit corporation,
its sole member and manager

By: _____
Rebecca Hlebasko, Vice President

Date: _____

By: JSCo 88 Broadway Family LLC,
a California limited liability company,
its administrative general partner

By: John Stewart Company,
a California corporation,
its sole member and manager

By: _____
Jack D. Gardner, President

Date: _____

CERTIFICATE OF ACKNOWLEDGMENT

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On _____ before me, _____ personally
(insert name and title of the officer)
appeared _____

_____ ,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.
WITNESS my hand and official seal.

Signature

(Seal)

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EXHIBIT J**PERMITTED TITLE EXCEPTIONS**

No.	Record Date	Instrument No.	Description	Action Required
1	N/A	N/A	Taxes 2017-2018, not yet due or payable	N/A
2	N/A	N/A	Taxes 2016-2017, no tax due	N/A
3	N/A	N/A	Supplemental taxes	N/A
4	12/7/2009	Book 1 of Maps of Assess. & Comm. Fac. Distr., Page 33	Map identifying boundaries of Special Tax District No. 2009-1	N/A
5	N/A	N/A	Conditions, restrictions and limitations contained in legislative grants and by law pertaining to the land.	N/A
6	1/30/1969	Reel B308; Image 686	Agreement relating to transfer of property	N/A

-----MEMORANDUM OF UNDERSTANDING
BETWEEN THE
CITY AND COUNTY OF SAN FRANCISCO, OPERATING BY AND THROUGH THE
PORT COMMISSION
AND THE
CITY AND COUNTY OF SAN FRANCISCO, OPERATING BY AND THROUGH THE
MAYOR'S OFFICE OF HOUSING AND COMMUNITY DEVELOPMENT

For SWL 322-1

This Memorandum of Understanding ("this MOU" or "Development MOU") is dated for reference purposes as of _____, 2018 by and between Port of San Francisco ("Port") and the San Francisco Mayor's Office of Housing and Community Development ("MOHCD"). Port and MOHCD are collectively referred to herein as the ("Parties").

RECITALS

A. Port is an agency of the City of the City and County of San Francisco exercising its functions and powers over property under its jurisdiction and organized and existing under the Burton Act and the City's Charter. The Port of San Francisco Waterfront Land Use Plan, including the Waterfront Design and Access Element ("WLUP") is Port's adopted land use document for property within Port jurisdiction, which provides the policy foundation for waterfront development and improvement projects.

B. Seawall Lot 322-1, also known as "88 Broadway" (the "Site"), is a paved, flat, rectangular land parcel of approximately 37,810 square feet in area with frontages on Broadway, Front and Vallejo Streets and is located in the Northeast Waterfront area. The Site is currently being used for surface parking generating about \$465,065 in annual revenues to Port. A map of the Site is attached hereto as *Exhibit A* (the "Site Map"). Most of Port property, including the Site, consists of tidelands and submerged lands that are subject to the common law public trust doctrine and the Burton Act and related transfer agreement ("Public Trust") under which the State of California (the "State") transferred most of the San Francisco waterfront to the City in 1969. The Public Trust restrictions generally prohibit housing uses on Port lands.

C. MOHCD is the City department responsible for the City's production and management of affordable housing by leveraging certain City funds.

D. Port and MOHCD have been working together to seek and implement the provisions of state legislation codified by Senate Bill 815 (Chapter 660) (2007); Assembly Bill 2649 (Chapter 757) (2012); Assembly Bill 2797 (Chapter 529) (2016) and Assembly Bill 1423 (Chapter xxx (2018) as may be amended ("State Legislation") that authorizes lifting Public Trust use restrictions from the Site to allow development of affordable housing for up to 75 years.

E. In March 2014, the Port Commission adopted Resolution No. 14-16 authorizing a Memorandum of Understanding with MOHCD (the "Predevelopment MOU") which sets forth the respective roles and responsibilities of the Parties in selecting a developer and completing all required tasks to lease the Site for affordable housing and ancillary uses. The Predevelopment MOU was intended to cover the period prior to lease commencement, estimated at the time to be about three years. The predevelopment phase has lasted longer than anticipated partially due to the extensive community outreach needed to gain support for the development being proposed, and the Predevelopment MOU, which had an original term of three (3) years with a twelve (12) month extension, expired on April 29, 2018. The Parties have continued to work cooperatively

with the developer, as discussed below, to fulfill the purposes of the Predevelopment MOU and will formally document the extension of the Predevelopment MOU under this MOU.

F. The San Francisco City and County Board of Supervisors (the “Board”) adopted Ordinance No. 232-12 providing a way for Port to receive fair market value if it enters into below-market leases with MOHCD for the seawall lots identified as no longer useful for trust purposes. It authorizes, among other things, Port and MOHCD to enter into a memorandum of understanding providing for Port to receive Jobs Housing Linkage Program (“JHLP”) credits equal to the difference in the value of a Port below-market lease to MOHCD and the fair market value of the leased land. It also authorized Port and MOHCD to establish a system for tracking JHLP credits awarded Port to use to offset JHLP obligations of future private developments on Port non-trust lands and a process to follow in determining if a particular seawall lot is suitable for affordable housing. The Parties have since decided that the JHLP fees generated at the Port’s master planned development projects at Mission Rock and the Pier 70 Waterfront Site were best utilized for those projects’ respective affordable housing programs and have instead agreed on a cash payment as described in this MOU.

G. From April 2014 to the present, the Parties have completed the following: (i) with Port’s pre-approval as to the process and selected developer, MOHCD competitively solicited a developer and selected a developer-team led by Bridge Housing (“**BRIDGE**”) and the John Stewart Company (“**JSCo**”) that formed 88 Broadway Family LP (the “**Developer**” or “**Tenant**”) to develop the proposed development project; (ii) Developer submitted its proposed scope of development, (iii) the Port’s determination to exclude the public parking garage from the development due to financial infeasibility (iv) MOHCD provided a predevelopment loan to the Developer; (v) Port, MOHCD and Developer entered into a “**Negotiation Agreement**” setting forth the process to negotiate and execute an option agreement and ground lease and have negotiated a final option agreement (“**Option Agreement**”) and form of ground lease (“**Form Ground Lease**” or, when referring to a final effective ground lease, “**Ground Lease**”)); and (vi) the Developer is completing the remaining predevelopment tasks including, urban design, financing and entitlements and other steps needed in order to execute and exercise its option under the Option Agreement and close escrow on the Ground Lease.

H. The proposed development of the Site includes the construction of between 125 and 130 affordable rental family housing units, ground level spaces for retail, commercial, or other ancillary uses, and two mid-block open spaces (the “**Family Project**” or “**88 Broadway Project**”) as depicted in the Conceptual Project Schematics attached hereto as *Exhibit B*. In response to the community’s desire for seniors to benefit from the development as well, MOHCD sought and received City’s consent to add the adjacent City property located at 735 Davis Street to the proposed development to provide up to 50 to 55 senior housing units (the “**Senior Project**”). The Family Project and the Senior Project are combined for environmental review, but, as the Senior Project is not within Port jurisdiction, it is not subject to the provisions of this MOU. The Ground Lease has a term of fifty-seven (57) years with one eighteen (18) year extension option (a 75-year maximum term but no later than December 31, 2105 is allowed by the State Legislation).

I. Based on the foregoing, the Parties now desire to enter into this MOU which will be in effect during the Ground Lease term and which includes the following key terms: (i) extension of the Predevelopment MOU to continue and complete its remaining tasks to be completed; (ii) how and when MOHCD will pay the Port of the Site’s fair market value (iii) the Parties’ respective roles and responsibilities in working together to administer and enforce the Ground Lease; (iv) MOHCD’s compliance monitoring of affordable housing covenants and restrictions and the right to cure Developer’s defaults under the Ground Lease to preserve the affordable housing; and (v) other obligations of the Parties including planning for future uses after the expiration of the Ground Lease.

J. The Parties are aware that the Site is subject to the Public Trust and that the Port Commission and State Lands Commission ("SLC") must make certain findings required by, and otherwise determine the Project is consistent with the State Legislation, and any other applicable statutes governing the Port's granted lands and that Port cannot enter into the Ground Lease absent such findings. The Parties are collaborating to obtain favorable trust consistency determination that the proposed development, its permitted land uses, consideration to the Port, and other pertinent provisions of the Ground Lease are consistent with the State Legislation and applicable statutes governing the use of the Site.

K. The Ground Lease has a term of fifty-seven (57) years with one eighteen (18) year extension option (a 75-year maximum term but with expiration no later than December 31, 2105 is allowed by the State Legislation). In addition to the payment by MOHCD described in this MOU, under the Ground Lease, Developer will be required to make lease payments representing a share of any cash flow generated by commercial activities such as restaurant subleases or sale or financing of the project as described in the Ground Lease as follows: (i) annual base rent of \$20,000; (ii) participation in net sales or refinancing proceeds; (iii) 30% of net annual revenue from a restaurant or retail operation; and (iv) 50% of the net revenue from all other nonresidential subleases.

L. The Planning Department reviewed the Family Project and the Senior Project as a single project under the California Environmental Quality Act ("CEQA") and issued a Preliminary Mitigated Negative Declaration (2017-007850ENV) on October 25, 2017. The Mitigated Negative Declaration became final on March 9, 2018.

M. On May 3, 2018, the Director of the SF Planning Department adopted the Final Mitigated Negative Declaration and authorized the Family Project and the Senior Project pursuant to its authorization under SF Planning Code Section 315 and found that, on balance, the Project is consistent with the City's General Plan.

N. On [____], 2018, by Resolution No. XX-XX, the Port Commission adopted the Final Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program, and, among other things, approved this MOU, the Option Agreement and Form of Ground Lease, the schematic design drawings for the Project, made findings that the Family Project is consistent with the State Legislation and authorized the Executive Director to seek necessary approvals from the Board of Supervisors and SLC.

O. On [____], 2018, by Resolution No. XX-XX, the Board of Supervisors approved this MOU and Form of Ground Lease, adopted the Port Commission's trust findings and the Mitigation Monitoring and Reporting Program, and authorized the Executive Director to seek necessary approvals from SLC.

P. On [____], 2018, as required by State Legislation, State Lands lifted the Public Trust restrictions and approved the Form of Ground Lease and the provisions of this MOU that relate to payment of fair market value to Port.

NOW, THEREFORE, the Parties agree and commit to the following principles, actions, and responsibilities:

- 1. RECITALS.** The foregoing recitals are true and correct and are incorporated herein by this reference as if fully set forth herein.
- 2. TERM.** This MOU shall be effective upon execution of the Parties and will expire on upon expiration or earlier termination of the Ground Lease ("Term"). If the Developer's option

is not exercised or the proposed ground lease is not executed by Port and the Developer, then this MOU will not become operative and will be null and void.

3. PAYMENT PROVISIONS.

Port's compensation for the Ground Lease shall be a combination of (a) MOHCD's payment to Port of the Site's Fair Market Value and (b) the payments by Developer as provided in the Ground Lease.

(a) The Site's Fair Market Value.

(i) MOHCD shall pay the fair market value ("**Fair Market Value**") for the property determined by an appraisal commissioned by the City's Director of Real Estate ("**RED**") dated June 29, 2018 indicating an appraised value of Fourteen Million Nine Hundred Ninety Thousand Dollars (\$14,900,000) ("**88 Broadway Appraisal Report**"). The 88 Broadway Appraisal Report was conducted by RED according to instructions that comply with the SLC's "Appraisal Guidelines" and were drafted by RED, reviewed by SLC staff and approved by the Parties ("Appraisal Instructions"). If SLC reviews and approves the 88 Broadway Appraisal Report, the indicated value in that report will be the Fair Market Value. The Fair Market Value will be documented and countersigned by the parties and attached to this MOU as Exhibit D. So long as the closing occurs within nine (9) months of the date of the 88 Broadway Appraisal Report described above, it shall be deemed reflective of economic conditions current at the time of the Ground Lease closing. If closing of the Ground Lease occurs later than nine (9) months after the date of the 88 Broadway Appraisal Report, the parties will request that RED conduct another appraisal using the Appraisal Instructions to determine the Fair Market Value, which shall also be subject to SLC approval. Port will pay the cost of all appraisals.

(ii) MOHCD will pay the Fair Market Value to the Port from any source of funds available to MOHCD. The parties anticipate that payment to the Port shall occur upon MOHCD's receipt of inclusionary housing fees assessed on Parcel K North at Pier 70, or through other inclusionary housing fees or other fees received by MOHCD from the Hoedown Yard or other Port-controlled properties and not specifically allocated to on-site affordable housing at Pier 70; provided, however, that if such sources do not become available it shall not excuse MOHCD from paying the Fair Market Value to the Port. MOHCD will pay Port the FMV upon MOHCD's receipt of inclusionary housing or other fees assessed on Parcel K North, the Hoedown Yard or other Port-controlled properties. The Parties anticipate this period to be between February 2019 and February 2022.

(iii) If MOHCD does not pay Port the full Fair Market Value as of the date of Ground Lease closing, interest will accrue on the unpaid amounts at a rate of 1.5% simple interest per annum during the first two (2) years and at a rate of 3% per annum thereafter until the date of payment in full.

(iv) MOHCD understands and acknowledges that the Developer is obligated to pay the Port the rent summarized in Recital K and set forth in the Ground Lease and will account for such provisions in its agreements with Developer as appropriate.

(b) **Port Covenants.** In exchange for (i) MOHCD's payment of the fair market value of the property to Port and (ii) rental payments by Developer consisting of a share of any cash flow generated by commercial activities such as restaurant subleases or sale or financing as summarized in Recital x and set forth in the Ground Lease, the Port will impose restrictions limiting the Site to affordable housing uses for the term of the Ground Lease.

4. ROLES AND RESPONSIBILITIES.

4.1. *Predevelopment MOU.*

The Predevelopment MOU is hereby retroactively extended until the Commencement Date of this MOU as defined in Section 2.1. On the Commencement Date of this MOU, the Predevelopment MOU will terminate and be replaced by this MOU.

The Predevelopment Development MOU (which addresses the entitlement process during the period before Developer exercises its option under the Option Agreement) and the Development MOU (which primarily addresses the Ground Lease payment and Ground Lease term) will be effective concurrently for a period of time until the Ground Lease commences. The parties will work collaboratively and take all actions reasonably necessary or appropriate to enable the Developer to meet the prerequisites to exercising the option and closing escrow including drafting and approving all necessary documents to be incorporated into the transaction documents as mutually acceptable. The parties will work together to interpret the provisions of the Predevelopment MOU and this MOU in a consistent manner in order to best implement the Project. Any conflicts between the terms of the two MOUs will be resolved using the dispute resolution process described in Section 6.5.

4.2. Ground Lease Long Term Management and Enforcement. MOHCD will consent to the Ground Lease in writing and will assist in Port in administration and enforcement of the Ground Lease with respect to the provisions relating to affordable housing and related matters. The Parties shall have the roles and responsibilities set forth in Section 3 of the Ground Lease and shall work collaboratively and in a timely manner to carry out those rights and duties using the following guiding principles:

(a) Any action by MOHCD to provide administrative or managerial assistance to Port or to cure any tenant default on behalf of Tenant shall be at MOHCD's sole cost and expense and without cost or liability to Port.

(b) Each Party must provide the other with reasonable prior written notice of its entry onto the Residential Portion of the Project for inspection related to compliance with the Ground Lease and/or the loan agreements. MOHCD may provide such notice by email to the assigned Port real property manager, and Port may provide such notice by email to the assigned MOHCD asset manager.

(c) Each Party will provide the other with reasonable advance notice of and a copy of all significant correspondence with Tenant and any Lenders, including without limitation, a Port notice of default.

(d) The Parties will meet and confer after receipt of each Capital Needs Assessment ("CNA") (every five years) submitted by Tenant and determine any actions needed to address or mitigate identified risks to the Improvements because of sea level rise or flooding. Port will facilitate discussion with the Port's Chief Harbor Engineer regarding potential risks of flooding or issues with sea level rise.

(e) The Parties agree that MOHCD is acting in an advisory role under the Ground Lease and this MOU and that it cannot commit Port or waive or limit Port's rights and remedies as a landlord under the Ground Lease. No action by MOHCD shall be binding upon Port with respect to Tenant, its successor and assigns or any provision of the Ground Lease. Nothing in the Ground Lease or this MOU is intended to grant MOHCD the rights or responsibilities of a lessor. The Parties agree that, notwithstanding anything to the contrary in the Ground Lease, this MOU or any other document or agreement signed by either of the Parties, Port shall be ultimately responsible for all administration and enforcement of the Ground Lease including without limitation, determining an Event of Default, noticing and accepting a cure, exercising remedies, providing consent to mortgages, subleases and transfers and exercising all other rights, duties and responsibilities of a lessor.

(f) The Parties agree that MOHCD has full and sole authority with respect to any loan agreement with the Tenant, its successors and assigns and Port cannot waive or limit MOHCD's rights and remedies as a lender. No action by Port shall be binding upon MOHCD

with respect to MOHCD's loan agreements or any provision thereof. The Parties agree that, notwithstanding anything to the contrary in the Ground Lease, this MOU or any other document or agreement signed by either of the Parties, MOHCD shall be ultimately responsible for all administration and enforcement of its loan agreements including without limitation, determining a default, noticing and accepting a cure, exercising remedies, providing consent and all other rights, duties and responsibilities of a lender.

(g) Port will reimburse MOHCD, less any administrative costs of Port, the amount Port receives from Tenant of any: (a) increased Base Rent resulting from a completed foreclosure action as contemplated in Section 33.9(vi) of the Lease, and (b) amounts resulting from MOHCD's payment to cure a Tenant default.

(h) During the Term of the Ground Lease (as "Term" is defined in the Ground Lease), each Party agrees to be responsible for all costs associated with claims, damages, liabilities or losses which arise as a result of its own or its agents' or invitees' acts or omissions in connection with the Ground Lease or this MOU including its entry on the Site including without limitation out of any injuries or death of any person or damage of any property occurring in, on, or about the Site or failure to comply with the terms of this MOU. The forgoing obligation of each Party shall survive the expiration or termination of this MOU. In addition, each Party will ensure that the other is indemnified to the same extent that each Party is indemnified by its vendors, contractors or agents conducting any activities on the Site.

4.3. *Specific Obligations of the Ground Lease.*

(a) MOHCD.

(i) MOHCD will review requests by Tenant for refinancing any debt, resyndication of tax credits, and/or rehabilitation of the Improvements, pre-approve lenders and assist Port in negotiating, reviewing and approving mortgages, and other financing related to the affordable housing.

(ii) MOHCD will assist Tenant with its applications to the California Tax Credit Allocation Committee ("TCAC") and the California Debt Limitation Allocation Committee for funding of the Project and provide necessary letters of support or other such required documents.

(iii) MOHCD will monitor, administer and enforce the terms of the Ground Lease relating to the residential component as follows:

(A) MOHCD will review and approve the affirmative marketing and tenant selection plan for ongoing leasing of the residential units.

(B) MOHCD will monitor Tenant's compliance with tenant eligibility, rent restrictions, and any other housing related requirements under the Tenant's funding sources.

(C) MOHCD will obtain annual monitoring reports of the residential component, including tenant income certifications.

(D) As needed, MOHCD will conduct on-site inspection of the residential component in coordination with Port. MOHCD will provide reasonable notice to the Tenant and to the residential tenants as required by law.

(E) MOHCD will enforce the affordable housing obligations or covenants under the Ground Lease and loan agreement in consultation with Port and make recommendations for Port enforcement actions. MOHCD will provide proper notification to Port of its administration and enforcement of any loan agreements, including notices relating to

performance, notice of a potential default, or notices received from the Tenant regarding potential transfer or change of management relating to any element of the Project.

(F) At its own expense, MOHCD will help resolve issues relating to affordable housing operation and management, including management performance and compliance with the applicable Good Neighbor Policies.

(G) At its discretion, MOHCD will cure any monetary or non-monetary default by Tenant under the Ground Lease, including the payment of taxes.

(H) Following the close of the low-income housing tax credit compliance period, and if the Tenant elects to reposition the Project or transfer any part of its interest in the Project that will impact its leasehold interest under the Ground Lease, MOHCD shall appraise the Port of such plan and advise the Port of what the impacts of the event would be.

(b) Port.

(i) Port will consent to Transfers, Loans, execute TCAC riders and take other actions to support lease financing consistent with the Lease, good business practices and its Public Trust obligations.

(ii) Port will monitor, administer and enforce the terms of the Ground Lease. Port will provide proper notification to MOHCD of its administration and enforcement of the Ground Lease, including notices relating to performance, notice of a potential default, or notices received from the Tenant regarding potential transfer or change of management relating to any element of the Project.

(iii) Port will accept MOHCD's adequate cure of any monetary or non-monetary default by Tenant.

(iv) Port will address any compliance related matters with the SLC and provide MOHCD with proper notification of any compliance issues with the Public Trust restrictions or state legislation.

5. EXPIRATION OF STATE LEGISLATION.

The Parties acknowledge that under current State law, the authorization to use the Site for nontrust uses such as affordable housing will expire on January 1, 2106 at which time all structures on the Site must be repurposed, modified or removed and the Public Trust restrictions will once again apply and that an extension can only be provided by an act of the Legislature. MOHCD may choose to pursue such legislation in consultation with Port. The Parties will meet and confer to discuss such legislation by no later than five (5) years prior to the expiration of the Ground Lease.

6. JOINT OBLIGATIONS.

6.1. Requirements of Port and MOHCD. Each Party will ensure that all applicable City, MOHCD, and Port requirements regarding contracts and contract procurements, leasing, and provisions of services shall be made applicable on case-by-case basis to the Tenant and its assigns, representatives, and agents.

6.2. Staff Time and Costs. Each Party will pay the costs of its own staff time and the costs of any consultants, including attorneys. The Parties acknowledge that the loan agreements, Option Agreement and the Ground Lease may provide for reimbursement of certain costs by Developer.

6.3. Community Outreach. The Parties recognize the importance of citizen input throughout the Term. To promote community participation and to ensure openness and transparency, the Parties will consult with Northeast Waterfront Advisory Group ("NEWAG") and other neighborhood groups in the implementation of the Project.

6.4. Subdivision. At the request of the Tenant, Port and MOHCD will assist the Tenant with a subdivision of the Site to facilitate financing and operation of the Commercial Component.

6.5. Dispute Resolution. In the case of a dispute between the Parties, the appropriate project managers from the Port and MOHCD shall in good faith meet with each other to resolve the contested issues. If the project managers from the Parties are unable to resolve the dispute, the matter shall be forwarded to the Deputy Director, Housing of MOHCD and Deputy Director, Real Estate and Development of Port, as applicable (or other their designated staff) to meet in good faith with each other to resolve the contested issues.

7. NOTICES.

Any notice given under this MOU from MOHCD to Port or vice versa, must be in writing delivered in person or by commercial courier, with postage prepaid, to the mailing addresses below. All notices under this MOU will be deemed given, received, made or communicated on the date personal receipt actually occurs. Any mailing address or telephone or facsimile number may be changed at any time by giving written notice of the change in the manner provided above at least 10 days before the effective date of the change. For the convenience of the Parties, copies of notices may also be given by email to the individuals in the positions listed below, but email notice will not be binding on either Party.

Port: Deputy Director, Real Estate and Development
Port of San Francisco
Pier 1
San Francisco, CA 94111
Attn: SWL 322-1 Development Project Manager
Telephone: (415) 274-0400
Facsimile: (415) 274-0495

With a copy to Port's General Counsel

MOHCD: Mayor's Office of Housing and Community Development
One South Van Ness Avenue, Fifth Floor,
San Francisco, CA 94103
Attn: Director
Telephone: (415) 701-5515
Facsimile: (415) 701-5501

8. THIRD PARTY BENEFICIARIES.

There are no intended third party beneficiaries of this MOU, including but not limited to the Tenant.

9. MISCELLANEOUS PROVISIONS.

9.1. Capitalized Terms. All capitalized terms used herein are defined in this MOU, the Option Agreement or the Ground Lease as the case may be and are incorporated into this MOU by this reference.

9.2. Amendments. Port and MOHCD reserve the right to amend this MOU by mutual consent, subject to Port Commission and Board of Supervisors' approval. This MOU constitutes the entire agreement of the Parties with respect to the matters discussed herein and no oral understandings or agreement not incorporated shall be binding on either Party. This MOU supersedes prior written materials used by the Parties in negotiating this MOU.

9.3. Severability. Except as otherwise specifically provided in this MOU, a judgment or court order invalidating any provision of this MOU, or its application to any person, will not affect any other provision of this MOU or its application to any other entity or person or circumstance, and the remaining portions of this MOU will continue in full force and effect, unless enforcement of this MOU as invalidated would be unreasonable or grossly inequitable under all of the circumstances or would frustrate the purposes of this MOU.

9.4. Time is of the Essence. Time is of the essence of each provision of this MOU, including actions to be taken timely as required under this MOU.

9.5. No Broker. Port will not pay a finder's or broker's fee in connection with this MOU or upon execution of any of the Transaction Documents.

10. LIST OF EXHIBITS.

The following Exhibits are attached and by this reference incorporated into this MOU as if fully set forth above:

- Exhibit A** Site Map
- Exhibit B** Conceptual Project Design Drawings
- Exhibit C** Appraisal Instructions
- Exhibit D** Fair Market Value

11. APPROVAL OF BOARD OF SUPERVISORS.

The Parties agree that this MOU will not become effective until the Board of Supervisors has, by resolution, approved it. Under Charter Section B7.320, the City shall appropriate funds sufficient to meet the payment obligation described in Section 3.

[REMAINDER OF PAGE LEFT BLANK]

IN WITNESS WHEREOF, the PARTIES hereto have executed this MOU as of the day, month, and year written below.

<p>CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation operating by and through the Mayor's Office of Housing and Community Development</p> <p>By: _____ Kate Hartley Director</p> <p>Date: _____</p> <p>Approved as to form: DENNIS J. HERRERA, City Attorney</p> <p>By: _____ Keith Nagayama Deputy City Attorney</p>	<p>CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation operating by and through the San Francisco Port Commission</p> <p>By: _____ Elaine Forbes Executive Director</p> <p>Date: _____</p> <p>Approved as to form: DENNIS J. HERRERA, City Attorney</p> <p>By: _____ Rona H. Sandler Deputy City Attorney</p>
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Authorized by Port Resolution No. 18-XX.
Authorized by Board of Supervisors Resolution No. 18-XX.

EXHIBIT A Site Map

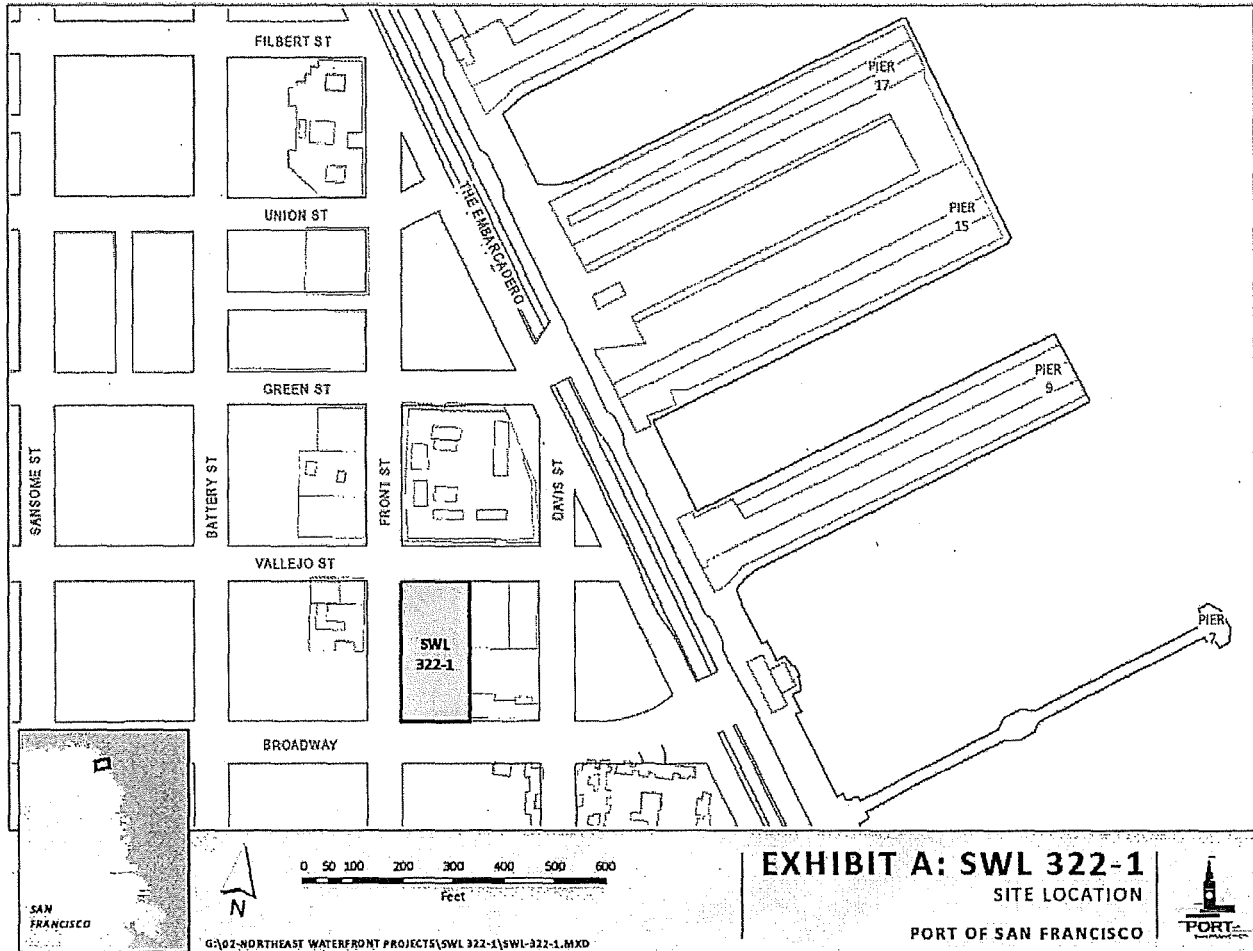


EXHIBIT B
Conceptual Project Design

EXHIBIT C
Appraisal Instructions

EXHIBIT D
Fair Market Value

OFFICE OF THE MAYOR
SAN FRANCISCO



MARK FARRELL
MAYOR

REPORT OF
BOARD OF SUPERVISORS
SAN FRANCISCO

2018 JUN 26 PM 2:23

BY MB

TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: Mayor Mark Farrell
RE: Port Ground Lease and Port/Mayor's Office of Housing and Community
Development Memorandum of Understanding – 88 Broadway Family, L.P.
– Seawall Lot 322-1
DATE: June 26, 2018

Attached for introduction to the Board of Supervisors is a resolution adopting the Mitigation Monitoring and Reporting Program under the California Environmental Quality Act for an affordable housing project at Seawall Lot 322-1 (the "Port Property" or the "Development") along with an affordable housing project on city-owned property at 735 Davis Street (collectively, the "Project"); affirming the Port Commission's Public Trust findings; adopting findings that the Project is consistent with the General Plan, and the eight priority policies of Planning Code, Section 101.1; and approving and authorizing the execution of 1) a Ground Lease for the Property with 88 Broadway Family, L.P. ("Lease") with annual base rent of \$20,000 for a term of 57 years with a 18-year extension option for the development and operation of 124 affordable rental housing units, one manager housing unit, and ancillary ground level uses, and 2) a Memorandum of Understanding between the Port and the Mayor's Office of Housing and Community Development for payment of fair market value for the Port Property and other interdepartmental coordination; and authorizing and directing the Executive Director of Port of San Francisco and the Director of the Mayor's Office of Housing and Community Development to execute documents and take necessary actions to implement this Resolution.

Should you have any questions, please contact Andres Power 554-5168.



SAN FRANCISCO PLANNING DEPARTMENT

General Plan Referral

Date: June 15, 2018
Case No. 2016-007850GPR
Block/Lot No: 6973/039

Project Sponsors: Claudia Gorham, Real Estate Division
San Francisco Real Estate Department
25 Van Ness Avenue, Suite 400
San Francisco, CA 94102

Faith Kirkpatrick
Mayor's Office of Housing and Community Development
1 South Van Ness Avenue, 5th Floor
San Francisco, CA 94103

Applicant: Same as Above

Staff Contact: Kimia Haddadan – (415) 575-9068
kimia.haddadan@sfgov.org

Recommendation: Finding the project, on balance, is in conformity with the
General Plan

Recommended
By: John Rahaim, Director of Planning

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

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

PROJECT DESCRIPTION

On May 3, 2018, the Planning Department (herein "the Department") received a request from the City and County of San Francisco Real Estate Division on behalf of the Mayor's Office of Housing and Community Development (MOHCD) to consider the following as for a General Plan Referral:

- Jurisdictional transfer of the 735 Davis parcel from SFPW to MOHCD;
- Ground Lease (99 years) between MOHCD and 735 Davis Senior, LP (the affordable housing developer) for 735 Davis Street;
- Issuance of revenue bonds to provide construction and permanent financing;
- Ground Lease (75 years) between Port and 88 Broadway Family, LP (the affordable housing developer) for 88 Broadway Street (SWL 322-1); and

GENERAL PLAN REFERRAL

2016-007850GPR

Jurisdictional Transfer of 735 Davis from

SF Public Works to MOHCD, Ground Lease, Bond Issuance, and Pedestrian Bulb-outs

- Pedestrian bulb-outs at 88 Broadway

In October 2016, the Planning Department received a request from the City and County of San Francisco Real Estate Division on behalf of the Mayor's Office of Housing and Community Development (MHOCD) to consider transferring the property at 735 Davis Street (Assessor's Parcel Number Block 0140, Lot 008) from San Francisco Public Works to MOHCD. General Plan Referral 2016-013970GPR, which cleared the transference of 735 Davis from DPW and MOHCD, was issued on November 23, 2016.

Bridge Housing is proposing to develop affordable housing on two parcels at 88 Broadway, currently owned by the Port, and 735 Davis Street, currently owned by SFPW. Two new 6-story buildings (65' tall - plus 1 O' for elevator and stair penthouses) are proposed. The 88 Broadway building consists of 125 units for low-income to moderate-income families; the 735 Davis building will be 53 units for low-income to moderate-income seniors. Both buildings include ground floor units and retail space (child care, restaurant, and cafe). There is a publicly accessible alley proposed on the 88 Broadway site that will unify the two buildings and provide public access through the site. The proposed project has received Certificate of Appropriateness from the Historic Commission of the Planning Department as the sites are located in the Northeast Historic Landmark District. Both the Port and MOHCD will be entering into long term (99 years for 735 Davis and 75 years for 88 Broadway) ground leases with the affordable housing developer for their respective parcels.

The proposed project also involves widening the existing sidewalk by establishing bulb-outs at the northwest corner of Vallejo and Front Streets, northeast corner of Broadway and Front streets, and at intersections of the midblock passage with both Broadway and Vallejo Streets (Block Lot numbers: 0140/007, 008, 001, 005). The bulb-out is proposed for pedestrian safety.

ENVIRONMENTAL REVIEW

The effects of the project were fully reviewed under the 88 Broadway & 735 Davis Street Project Final Mitigated Negative Declaration, which was issued by the San Francisco Planning Department on March 9, 2018.

GENERAL PLAN COMPLIANCE AND BASIS FOR RECOMMENDATION

As described below, the Project is consistent with the Eight Priority Policies of Planning Code Section 101.1 and is, on balance, **in-conformity** with the following Objectives and Policies of the General Plan:

Note: General Plan Objectives and Policies are in **bold font**; General Plan text is in regular font. Staff comments are in *italic font*.

Housing Element

OBJECTIVE 1

IDENTIFY AND MAKE AVAILABLE FOR DEVELOPMENT ADEQUATE SITES TO MEET THE CITY'S HOUSING NEEDS, ESPECIALLY PERMANENTLY AFFORDABLE HOUSING.

GENERAL PLAN REFERRAL

2016-007850GPR

Jurisdictional Transfer of 735 Davis from

SF Public Works to MOHCD, Ground Lease, Bond Issuance, and Pedestrian Bulb-outs

POLICY 1.3

Work proactively to identify and secure opportunity sites for permanently affordable housing.

The proposed project will allow two surface parking lots to be replaced with 178 new affordable housing units.

POLICY 1.8

Promote mixed use development, and include housing, particularly permanently affordable housing, in new commercial, institutional or other single use development projects.

The proposed project will allow for the construction of permanently affordable housing over ground floor retail space.

POLICY 1.10

Support new housing projects, especially affordable housing, where households can easily rely on public transportation, walking and bicycling for the majority of daily trips.

The proposed project is located in a transit-rich, walkable, and bike-friendly neighborhood served by multiple Muni lines.

OBJECTIVE 4

FOSTER A HOUSING STOCK THAT MEETS THE NEEDS OF ALL RESIDENTS ACROSS LIFECYCLES.

POLICY 4.4

Encourage sufficient and suitable rental housing opportunities, emphasizing permanently affordable rental units wherever possible.

The proposed project will allow a surface parking lot to be replaced with 178 new rental affordable housing units.

OBJECTIVE 8

BUILD PUBLIC AND PRIVATE SECTOR CAPACITY TO SUPPORT, FACILITATE, PROVIDE AND MAINTAIN AFFORDABLE HOUSING.

POLICY 8.1

Support the production and management of permanently affordable housing.

The proposed project will allow for the production of 178 permanently affordable housing units.

Urban Design Element

OBJECTIVE 4

Improvement Of The Neighborhood Environment To Increase Personal Safety, Comfort, Pride And Opportunity

POLICY 4.4

Design walkways and parking facilities to minimize danger to pedestrians.

GENERAL PLAN REFERRAL

2016-007850GPR

Jurisdictional Transfer of 735 Davis from

SF Public Works to MOHCD, Ground Lease, Bond Issuance, and Pedestrian Bulb-outs

The proposed project will reduce danger for pedestrians with widened sidewalks at the new bulb outs.

POLICY 4.13

Improve pedestrian areas by providing human scale and interest.

The proposed project will improve pedestrian safety with widened sidewalks at the new bulb outs.

Transportation Element

OBJECTIVE 1

Meet The Needs Of All Residents And Visitors For Safe, Convenient And Inexpensive Travel Within San Francisco And Between The City And Other Parts Of The Region While Maintaining The High Quality Living Environment Of The Bay Area.

POLICY 1.2

Ensure the safety and comfort of pedestrians throughout the city.

The proposed project will improve pedestrian safety and comfort with widened sidewalks at the new bulb outs.

OBJECTIVE 15

Encourage Alternatives To The Automobile And Reduced Traffic Levels On Residential Streets That Suffer From Excessive Traffic Through The Management Of Transportation Systems And Facilities

POLICY 15.1

Discourage excessive automobile traffic on residential streets by incorporating traffic-calming treatments.

The proposed project will calm traffic and improve pedestrian safety with widened sidewalks at the new bulb outs.

OBJECTIVE 19

Establish A Street Hierarchy System In Which The Function And Design Of Each Street Are Consistent With The Character And Use Of Adjacent Land.

POLICY 19.4

Discourage high-speed through traffic on local streets in residential areas through traffic "calming" measures that are designed not to disrupt transit service or bicycle movement, including: Sidewalk bulbs and widenings at intersections and street entrances; Lane off-sets (chicanes) and traffic bumps; Narrowed traffic lanes with trees, landscaping and seating areas; Colored and/or textured sidewalks and crosswalks; and Median and intersection islands.

The proposed project will discourage high-speed traffic with widened sidewalks at the new bulb outs.

Better Street Plan

GENERAL PLAN REFERRAL

2016-007850GPR

Jurisdictional Transfer of 735 Davis from

SF Public Works to MOHCD, Ground Lease, Bond Issuance, and Pedestrian Bulb-outs

The proposed sidewalk width changes in the project are supported by the Better Streets Plan which was found to be consistent with the General Plan and the Priority Policies of Planning Code Section 101.1 (b) in Planning Commission Resolution No. 18212 and Board of Supervisors Ordinance 310-10; and incorporates those findings herein by reference. Please refer to the Design Guidelines of the Better Streets Plan, located at <http://www.sfbetterstreets.org/design-guidelines>, for direction on design, furniture placement, and materials selection within the proposed sidewalk change.

Eight Priority Policies Findings

The subject project is found to be consistent with the Eight Priority Policies of Planning Code Section 101.1 in that:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced.
The proposed project will not negatively affect existing neighborhood-serving retail uses or opportunities for employment in or ownership of such businesses. The new development will, however, provide new affordable housing for residents who may support such businesses in the surrounding area and will also create new space for ground floor commercial uses.
2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods.
The proposed project would not displace any existing housing and would provide an additional 80-100 affordable housing units and will help preserve the cultural and economic diversity of the neighborhood.
3. That the City's supply of affordable housing be preserved and enhanced.
The proposed project will increase the stock of permanent affordable housing in the City.
4. That commuter traffic not impede Muni transit service or overburden our streets or neighborhood parking.
The proposed project will not result in commuter traffic impeding Muni's transit service, overburdening the streets or altering current neighborhood parking. The proposed affordable housing project will be transit-oriented given its location near BART and Muni, and will include no on-site parking.
5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for residential employment and ownership in these sectors be enhanced.
The proposed project would not affect the existing economic base in this area.
6. That the City achieves the greatest possible preparedness to protect against injury and loss of life in an earthquake.
The proposed project would not affect the City's preparedness to protect against injury and loss of life in an earthquake.
7. That landmarks and historic buildings be preserved.

GENERAL PLAN REFERRAL

2016-007850GPR

Jurisdictional Transfer of 735 Davis from

SF Public Works to MOHCD, Ground Lease, Bond Issuance, and Pedestrian Bulb-outs

The proposed project is an appropriate infill development within the historic district as per the Certificate of Appropriateness received. Construction of the proposed project could result in physical damage to adjacent historical resources; however, implementation of Mitigation Measure M-CR-2: Vibration Monitoring Program for Adjacent Historical Resources would ensure that construction vibration levels would be less than significant.

8. That our parks and open space and their access to sunlight and vistas be protected from development.

The proposed project will not affect City parks or open spaces, or their access to sunlight and vistas.

RECOMMENDATION:	Finding the Project, on balance, in-conformity with the General Plan
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cc: Claudia Gorham, Real Estate Division; Faith Kirkpatrick MOHCD

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SAN FRANCISCO PLANNING DEPARTMENT

Historic Preservation Commission Motion No. 0335 Certificate of Appropriateness

HEARING DATE: APRIL 4, 2018

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

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Case No.: 2016-007850COA
Project Address: 88 Broadway Street/ 735 Davis Street
Landmark District: Northeast Waterfront Landmark District
Zoning: C-2 (Community Business) Zoning District
65-X Height and Bulk District
Waterfront Special Use District No. 3
Block/Lot: 0140 / 007, 008
Applicant: Marie Debor, BRIDGE Housing
600 California Street, Suite 900
San Francisco, CA 94108
mdebor@bridgehousing.com
Staff Contact: Marcelle Boudreaux - (415) 575-9140
marcelle.boudreaux@sfgov.org
Reviewed By: Tim Frye - (415) 575-6822
tim.frye@sfgov.org

ADOPTING FINDINGS FOR A CERTIFICATE OF APPROPRIATENESS FOR PROPOSED WORK DETERMINED TO BE APPROPRIATE FOR AND CONSISTENT WITH THE PURPOSES OF ARTICLE 10, TO MEET THE STANDARDS OF APPENDIX D IN ARTICLE 10 OF THE PLANNING CODE AND TO MEET THE SECRETARY OF INTERIOR'S STANDARDS FOR REHABILITATION, FOR THE PROPERTY LOCATED ON LOTS 007 AND 008 IN ASSESSOR'S BLOCK 0140, WITHIN A C-2 (COMMERCIAL-BUSINESS) ZONING DISTRICT, A 65-X HEIGHT AND BULK DISTRICT AND WATERFRONT SPECIAL USE DISTRICT NO. 3.

PREAMBLE

WHEREAS, on January 4, 2017, Aaron Thornton, LMS Architects ("Applicant") filed an application on behalf of the Owner with the San Francisco Planning Department (hereinafter "Department") for a Certificate of Appropriateness for new construction of two buildings, on the subject property located on Lot 007 and Lot 008 in Assessor's Block 0140. The Project includes new construction of two six-story, mixed-use buildings (approximately 189,947 gross square feet) with up to 176 affordable dwelling units, two manager's units, ground floor commercial space (approximately 6,436 square feet), childcare space (approximately 4,306 square feet), community spaces and ground floor support space (approximately 12,038 square feet), 120 Class 1 bicycle parking spaces. 20 Class 2 bicycle parking spaces will be located along the curb. The Project includes a dwelling unit mix consisting of 24 three-bedroom units, 49 two-

bedroom units, 66 one-bedroom units, and 39 studio units. The Project includes 2,270 square feet of usable open space for the childcare and 10,230 sf of useable open space for the residents; and

On November 15, 2017, the Project Sponsor filed Building Permit Applications (BPA) No. 2017.1115.4095 & 2017.1115.4101 with the Department of Building Inspection (DBI).

WHEREAS, On October 25, 2017 the Draft Initial Study/Mitigated Negative Declaration (IS/MND) for the Project was prepared and published for public review; and

The Draft IS/MND was available for public comment until November 27, 2017; and

On November 27, 2017, an appeal of the Mitigated Negative Declaration was filed with the Department.

On March 8, 2018, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting on the Appeal of the Mitigated Negative Declaration, 2016-007850ENV.

On March 8, 2018, the Commission upheld the PMND and approved the issuance of the Final Mitigated Negative Declaration (FMND) and initial Study as prepared by the Planning Department in compliance with CEQA, the State CEQA Guidelines and Chapter 31.

On March 9, 2018, the Planning Department reviewed and considered the FMND and Initial Study and found that the contents of said report and the procedures through which the FMND and Initial Study were prepared, publicized, and reviewed complied with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.) (CEQA), Title 14 California Code of Regulations Sections 15000 et seq. (the "CEQA Guidelines") and Chapter 31 of the San Francisco Administrative Code ("Chapter 31"); and

The Planning Department found the FMND and Initial Study were adequate, accurate and objective, reflected the independent analysis and judgment of the Department of City Planning and the Planning Commission, [and that the summary of comments and responses contained no significant revisions to the Draft IS/MND,] and approved the FMND for the Project in compliance with CEQA, the CEQA Guidelines and Chapter 31.

Planning Department staff prepared a Mitigation Monitoring and Reporting program (MMRP), which was made available to the public and this Commission for this Commission's review and consideration and action.

The Planning Department is the custodian of records located at 1650 Mission Street, Fourth Floor, San Francisco, California, for Case No. 2016-007850COA;

WHEREAS, The Historic Preservation Commission (hereinafter "Commission") has reviewed and concurs with said determination.

WHEREAS, on April 4, 2018, the Commission conducted a duly noticed public hearing on Certificate of Appropriateness application no. 2016-007850COA ("Project").

WHEREAS, in reviewing the Application, the Commission has had available for its review and consideration case reports, plans, and other materials pertaining to the Project contained in the Department's case files, has reviewed and heard testimony and received materials from interested parties during the public hearing on the Project.

MOVED, that the Commission hereby **APPROVES WITH CONDITIONS** the Certificate of Appropriateness, in conformance with the architectural plans dated March 9, 2018 and labeled Exhibit A on file in the docket for Case No. 2016-007850COA based on the following findings:

CONDITIONS OF APPROVAL

1. **Final Materials.** The Project Sponsor shall continue to work with Planning Department on the building design, especially the elevations facing onto the mid block crossing. The final design, including but not limited to the final color, finishes, textures, glazing details and storefront display shall be reviewed and approved by the Planning Department prior to the issuance of architectural addenda.
2. **Signs.** The Project Sponsor shall submit an exterior signage plan to the Planning Department. The proposed signage plan shall be reviewed by the Planning Department as an Administrative Certificate of Appropriateness pursuant to delegation for such review outlined by the Historic Preservation Commission in Motion No. 0289, unless the scope exceeds parameters of said delegation.

FINDINGS

Having reviewed all the materials identified in the recitals above and having heard oral testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The above recitals are accurate and also constitute findings of the Commission.
2. Findings pursuant to Article 10:

The Commission has determined that the proposed work is compatible with the character-defining features of the Landmark District and meets the requirements of Appendix D of Article 10 of the Planning Code:

- In the Designating Ordinance for the Landmark District, the area of the parking lots was deemed Incompatible to the importance of the District;

- The project proposes construction of two new buildings which respect the character-defining features of and is generally in conformance with the Landmark District through scale, proportion, materials, detailing, color, texture and fenestration pattern;
- That the proposed project meets the following Secretary of the Interior's Standards for Rehabilitation:

Standard 9.

New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work will be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.

The proposed project would not destroy or damage any contributing elements within the Landmark District. The project is contemporary infill within a district that is reflective of and compatible with the surrounding and contributing buildings, as outlined in the description of the project's compliance with Article 10 of the Planning Code, such as scale, proportion, materials, detailing, color, texture and fenestration pattern. Therefore, the project complies with Rehabilitation Standard 9.

Standard 10.

New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

The proposed project is new construction on vacant surface parking lots, which are not character-defining features in the district. In the Designating Ordinance for this Landmark District, new infill construction on these vacant lots is identified. The project does not impact character-defining features of the district and if removed in the future the essential form and integrity of the district would be unimpaired. Therefore, the project complies with Rehabilitation Standard 10.

3. **General Plan Compliance.** The proposed Permit to Alter is, on balance, consistent with the following Objectives and Policies of the General Plan:

I. URBAN DESIGN ELEMENT

THE URBAN DESIGN ELEMENT CONCERNS THE PHYSICAL CHARACTER AND ORDER OF THE CITY, AND THE RELATIONSHIP BETWEEN PEOPLE AND THEIR ENVIRONMENT.

GOALS

The Urban Design Element is concerned both with development and with preservation. It is a concerted effort to recognize the positive attributes of the city, to enhance and conserve those attributes, and to improve the living environment where it is less than satisfactory. The Plan is a definition of quality, a definition based upon human needs.

OBJECTIVE 1

EMPHASIS OF THE CHARACTERISTIC PATTERN WHICH GIVES TO THE CITY AND ITS NEIGHBORHOODS AN IMAGE, A SENSE OF PURPOSE, AND A MEANS OF ORIENTATION.

POLICY 1.3

Recognize that buildings, when seen together, produce a total effect that characterizes the city and its districts.

OBJECTIVE 2

CONSERVATION OF RESOURCES WHICH PROVIDE A SENSE OF NATURE, CONTINUITY WITH THE PAST, AND FREEDOM FROM OVERCROWDING.

POLICY 2.4

Preserve notable landmarks and areas of historic, architectural or aesthetic value, and promote the preservation of other buildings and features that provide continuity with past development.

POLICY 2.5

Use care in remodeling of older buildings, in order to enhance rather than weaken the original character of such buildings.

POLICY 2.7

Recognize and protect outstanding and unique areas that contribute in an extraordinary degree to San Francisco's visual form and character.

The goal of a Certificate of Appropriateness is to provide additional oversight for buildings and districts that are architecturally or culturally significant to the City in order to protect the qualities that are associated with that significance.

The proposed project qualifies for a Certificate of Appropriateness and therefore furthers these policies and objectives by maintaining and preserving the character-defining features of the Northeast Waterfront Landmark District for the future enjoyment and education of San Francisco residents and visitors.

4. The proposed project is generally consistent with the eight General Plan priority policies set forth in Section 101.1 in that:

- A. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses be enhanced.

The proposal would remove an under-developed lot, and would enhance the neighborhood by providing a childcare facility and commercial space, as well as introducing new residents, who will patronize nearby neighborhood-serving retail uses.

- B. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods.

The Project site does not currently possess housing. The Project preserves the surrounding neighborhood character by providing for infill development that is compatible with the neighborhood character. The Project is supportive of the City's larger housing goals by providing for permanent affordable housing.

- C. That the City's supply of affordable housing be preserved and enhanced,

The Project provides 176 new permanently affordable housing units and two manager's units.

- D. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking.

The Project site is located within a third of a mile of several local transit lines including Muni lines E and F. In addition, the growing ferry and water taxi systems that are now using the Ferry Building and other locations along the Embarcadero, and the Embarcadero BART station, a major regional transit station, is five blocks from the Project site. The Project is supportive of the City's transit first policies and is not anticipated to impede Muni transit service.

- E. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced.

The Project does not include commercial office development and will not displace any service or industry establishment. Ownership of industrial or service sector businesses will not be affected by this Project.

- F. That the City achieves the greatest possible preparedness to protect against injury and loss of life in an earthquake.

The Project is designed and will be constructed to conform to the structural and seismic safety requirements of the City Building Code. This Project will not impact the property's ability to withstand an earthquake.

- G. That landmarks and historic buildings be preserved.

A landmark or historic building does not occupy the Project site. The proposed Project, which lies within the boundaries of the Northeast Waterfront Landmark District, is in conformance with Article 10 of the Planning Code and the Secretary of the Interior's Standards.

- H. That our parks and open space and their access to sunlight and vistas be protected from development.

The Project will have no negative impact on existing parks and open spaces or their access to sunlight and vistas. A shadow study was completed and concluded that the Project will not cast shadows on any property under the jurisdiction of, or designated for acquisition by, the Recreation and Park Commission.

5. For these reasons, the proposal overall, appears to meet *Secretary of Interior's Standards* and the provisions of Article 10 of the Planning Code regarding new construction within the Northeast Waterfront Landmark District.

DECISION

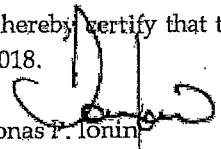
That based upon the Record, the submissions by the Applicant, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby **APPROVES WITH CONDITIONS** a **Certificate of Appropriateness** for the property located at Lot 007 and 008 in Assessor's Block 0140 for proposed work in conformance with the renderings and architectural sketches dated March 9, 2018 and labeled Exhibit A on file in the docket for Case No. 2016-007850COA.

APPEAL AND EFFECTIVE DATE OF MOTION: The Commission's decision on a Certificate of Appropriateness shall be final unless appealed within thirty (30) days after the date of this Motion No. 0335. Any appeal shall be made to the Board of Appeals, unless the proposed project requires Board of Supervisors approval or is appealed to the Board of Supervisors as a conditional use, in which case any appeal shall be made to the Board of Supervisors (see Charter Section 4.135). For further information, please contact the Board of Appeals in person at 1650 Mission Street, (Room 304) or call (415) 575-6880.

Duration of this Permit to Alter: This Certificate of Appropriateness is issued pursuant to Article 10 of the Planning Code and is valid for a period of three (3) years from the effective date of approval by the Historic Preservation Commission. The authorization and right vested by virtue of this action shall be deemed void and canceled if, within 3 years of the date of this Motion, a site permit or building permit for the Project has not been secured by Project Sponsor.

THIS IS NOT A PERMIT TO COMMENCE ANY WORK OR CHANGE OF OCCUPANCY UNLESS NO BUILDING PERMIT IS REQUIRED. PERMITS FROM THE DEPARTMENT OF BUILDING INSPECTION (and any other appropriate agencies) MUST BE SECURED BEFORE WORK IS STARTED OR OCCUPANCY IS CHANGED.

I hereby certify that the Historic Preservation Commission **ADOPTED** the foregoing Motion on April 4, 2018.


Jonas P. Ionin
Commission Secretary

AYES: Wolfram, Hyland, Black, Johnck, Johns, Matsuda, Pearlman

NAYS: None

ABSENT: None

ADOPTED: April 4, 2018



SAN FRANCISCO PLANNING DEPARTMENT

Mitigated Negative Declaration

Date: October 25, 2017; amended on February 27, 2018 (amendments to the Initial Study/Preliminary Mitigated Negative Declaration are shown as deletions in ~~strike through~~ and additions in double underline)

Case No.: 2016-007850ENV

Project Title: 88 Broadway & 735 Davis Street Project

Zoning: C-2 (Community Business) Use District
Waterfront 3, Special Use District
65-X Height and Bulk District

Block/Lot: 0140/007, 008

Lot Size: 48,620 square feet

Project Sponsor: Marie-Therese Debor, BRIDGE Housing
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Mdebor@bridgehousing.com
Margaret Miller, The John Stewart Company
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Lead Agency: San Francisco Planning Department

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PROJECT DESCRIPTION:

The 48,620-square-foot project site, at 88 Broadway and 735 Davis Street, is located on the block bound by Vallejo Street to the north, Davis Street to the east, Broadway to the south, and Front Street to the west in San Francisco's North Beach neighborhood. The two-parcel, T-shaped project site currently contains two surface parking lots which provide 180 public parking spaces.

The project sponsors, BRIDGE Housing and the John Stewart Company, propose to construct two new 6-story buildings, approximately 65 feet tall (with an additional 10 feet for the elevator and stair penthouses), and decreasing in height in proximity to Broadway Street and the waterfront. The 88 Broadway and 735 Davis Street Project (the proposed project) would contain 178 affordable family and senior housing units and approximately 6,500 square feet of commercial space, resulting in an approximately ~~191,300~~191,000-square-foot development. The first floor level would provide ground floor units, commercial space (retail space and a childcare facility), bike parking and common space and social services for residential use, as well as property management space. Floors two through six would consist primarily of residential dwelling units, shared laundry rooms, mechanical spaces, and common spaces for residential use. A variety of open spaces is proposed throughout at the roof and terrace levels. There are two mid-block passages proposed for the project site, and an approximately 4,300-square-foot childcare facility with outdoor space is proposed at ground level. The proposed project would result in an approximately ~~191,300~~191,000-square-foot development. Pedestrian bulb-outs are proposed on Front

Street and Broadway. No off-street parking is proposed. Approximately 120 class 1 bicycle parking spaces (i.e., bicycle lockers or spaces in a secure room) and 20 class 2 bicycle parking spaces (i.e., publicly accessible bicycle racks) are proposed. Additionally, the proposed project would include an emergency backup diesel generator and heating, ventilation, and air conditioning equipment (HVAC) equipment at both buildings.

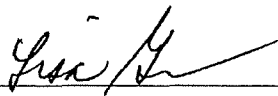
The proposed project would demolish the two existing surface parking lots and generate approximately 365 tons of asphalt demolition debris and 4,000 cubic yards of soil export. Construction on the 1.12-acre site is estimated to take approximately 19 months.

FINDING:

This project could not have a significant effect on the environment. This finding is based upon the criteria of the Guidelines of the State Secretary for Resources, Sections 15064 (Determining Significant Effect), 15065 (Mandatory Findings of Significance), and 15070 (Decision to prepare a Negative Declaration), and the following reasons as documented in the Initial Evaluation (Initial Study) for the project, which is attached.

Mitigation measures are included in this project to avoid potentially significant effects. See section F of this Mitigated Negative Declaration, pages 201 - 208.

In the independent judgment of the Planning Department, there is no substantial evidence that the project could have a significant effect on the environment.



Lisa Gibson
Environmental Review Officer

3/9/18

Date of Issuance of Final Mitigated
Negative Declaration

cc: Marie-Therese Debor, Project Sponsor
Margaret Miller, Project Sponsor
Distribution List

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Acronyms and Abbreviations

AB	Assembly Bill
ABAG	Association of Bay Area Governments
ACL	Absolute Cumulative Limits
ADA	Americans with Disabilities Act
ADRP	Archeological data recovery plan
AMP	Archeological monitoring program
ARB	California Air Resources Board
ARDTP	Archeological Research Design and Treatment Plan
ASTM	American Society for Testing and Materials
ATP	Archeological testing plan
BAAQMD	Bay Area Air Quality Management District
BART	Bay Area Rapid Transit
bgs	below ground surface
BWDP	Batch Wastewater Discharge Permit
CalEEMod	California Emissions Estimator Model
CALGreen	California Green Building Standards Code
CalOSHA	Division of Occupational Safety and Health
Caltrans	California Department of Transportation
CBC	California Building Code
CBIA	California Building Industry Association
CEQA	California Environmental Quality Act
CGS	California Geological Survey
CO	Carbon monoxide
COA	Certificate of Appropriateness
CSD	Combined sewer discharge
CV	Sensitive construction vibration location
dB	decibel
dBA	A-weighted decibels
DBI	San Francisco Department of Building Inspection
DPM	Diesel particulate matter
DTSC	Department of Toxic Substance Control
EO	Executive Order
ERO	Environmental Review Officer
ESA	Environmental Site Assessment
ESCP	Erosion and Sediment Control Plan
FARR	Final Archeological Resources Report
FTA	Federal Transit Administration
GHG	Greenhouse gas emissions
gpcd	gallons per capita per day

ACRONYMS AND ABBREVIATIONS

gpd	gallons per day
gsf	gross square feet
HVAC	Heating, Ventilation, and Air Conditioning
L ₉₀	Highest and lowest noise level that was exceeded 90 percent of the time
lbs	pounds
L _{dn}	Day-night average sound level
L _{eq}	Equivalent Sound Level
L _{eq} 1h	1-hour A-weighted equivalent sound level
L _{max}	Maximum sound level
LT	Long Term
LUST	Leaking Underground Storage Tank
L _v	Reference vibration level
mgd	million gallons of water per day
MLD	Most Likely Descendant
MRZ	Mineral Resource Zone
NAHC	California State Native American Heritage Commission
NESHAP	National Emissions Standards for Hazardous Air Pollutants
NO ₂	Nitrogen dioxide
NO _x	Oxides of Nitrogen
NPDES	National Pollutant Discharge Elimination System
NSR	New Source Review
NWIC	California Archeological Site Survey Northwest Information Center
O&M	Operations and maintenance
OPR	State Office of Planning and Research
PDA	Priority Development Area
PM	Particulate matter
PM ₁₀	PM composed of particulates that are 10 microns in diameter or less
PM _{2.5}	PM composed of particulates that are 2.5 microns in diameter or less
ppd	pounds per day
PPV	Peak particle velocity
PUD	Planned Unit Development
PWL	Sound power levels
QACL	Qualified Archeological Consultants List
Qaf	Artificial fill
ROG	Reactive organic gases
ROSE	San Francisco General Plan Recreation and Open Space Element
RWS	Regional water system
SB	Senate Bill
SCP	Stormwater Control Plan
SEWPCP	Southeast Water Pollution Control Plant
SFBAAB	San Francisco Bay Area Air Basin
SF-CHAMP	San Francisco Chained Activity Model Process

ACRONYMS AND ABBREVIATIONS

SFDPH	San Francisco Department of Public Health
SFFD	San Francisco Fire Department
SFMTA	San Francisco Municipal Transportation Agency
SFPUC	San Francisco Public Utilities Commission
SFRPD	San Francisco Recreation and Parks Department
SFUSD	San Francisco Unified School District
SHMA	California Seismic Hazards Mapping Act of 1990
SMP	Site mitigation plan
SO ₂	Sulfur dioxide
SPL	Sound pressure levels
ST	Short Term
SWRCB	State Water Resources Control Board
TAAS	Theoretically Available Annual Sunlight
TAC	Toxic air contaminants
TAZ	Traffic analysis zone
TBACT	Best Available Control Technology for Toxics
TCR	Tribal cultural resource
TDM	Travel Demand Management
TTLC	Total Threshold Limit Concentration
USEPA	United States Environmental Protection Agency
UWMP	Urban Water Management Plan
VdB	Vibration decibel level
VMT	Vehicle miles traveled
WSI	William-Sonoma Incorporated

ACRONYMS AND ABBREVIATIONS

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A. Project Description

The proposed project is located at 88 Broadway and 735 Davis Street. The proposed project would involve the demolition of two existing surface parking lots containing 180 public parking spaces and the construction of two new 65-foot-tall (with an additional 10 feet for the elevator and stair penthouses), 6-story, mixed-use residential buildings with up to 178 affordable dwelling units (125 family units and 53 senior units). The buildings would include approximately 6,500 square feet of commercial space (approximately 5,300 square feet in the family housing building and approximately 1,200 square feet in the senior housing building). An approximately 4,300-square-foot childcare facility for public use would also be included on the ground floor of the family housing building. This section includes a description of the existing conditions, project characteristics, and project approvals.

1. EXISTING CONDITIONS

PROJECT LOCATION AND SITE CHARACTERISTICS

The approximately 48,620-square-foot (1.12-acre), T-shaped project site is located at Assessor's Block 140, Lot 007 (88 Broadway) and Assessor's Block 140, Lot 008 (735 Davis Street). The project site is located on the block bounded by Vallejo Street to the north, Davis Street to the east, Broadway to the south, and Front Street to the west in the North Beach neighborhood (see Figure 1). The project site's two existing surface parking lots currently provide 180 public parking spaces. There are no physical structures or landscaping on the project site. The public parking lots are operated by SP Plus Parking (88 Broadway) and Aqua Parking (735 Davis Street). The project site shares the block with two other businesses: a 2-story office building that is home to the William-Sonoma Incorporated (WSI) corporate office on the northeast corner of the block (fronting Vallejo and Davis street) and a 2-story building that is home to Autodesk offices on the southeast corner of the block (fronting Davis Street and Broadway). The surrounding uses in the project site vicinity include television broadcasting offices to the north (KGO, KRON4, and ABC7), a public parking lot to the east (Seawall Lots 323/324 with proposed theater and hotel development),¹ a 4-story, mixed-use building to the south, and a public parking structure to the west.

¹ Seawall Lots 323/324, Case No. 2015-016326ENV, is undergoing separate environmental review.



Source: PlaceWorks, 2018.

88 BROADWAY & 735 DAVIS STREET PROJECT INITIAL STUDY

Case No: 2016-007850ENV

FIGURE 1
Project Site Location

LAND USE AND ZONING

The *San Francisco General Plan* (General Plan) land use designation for the project site is General Commercial. The General Plan also identifies the project site as being within the Base of Telegraph Hill Subarea of the *Northeast Waterfront Area Plan Area*. As shown on the Generalized Land Use Map for this Subarea, the types of General Plan land use designations in the project area include a mixture of General Commercial, Light Industrial/Public Trust, and High Density Residential. The *San Francisco Planning Code* (Planning Code) zoning for the project site is in the C-2 (Community Business) and 65-X Height and Bulk (65-foot maximum height, no bulk limit) zoning districts designations. The project site is also located within the Northeast Waterfront Landmark District, also known as the Northeast Waterfront Historic District, (a Planning Code Article 10 historic district²) and the Waterfront Special Use District No. 3. See section C, Compatibility with Existing Zoning and Plans, for further discussion of the proposed project and these land use designations.

SITE ACCESS AND TRANSIT

Access to the project site is provided via the four surrounding two-way streets: Vallejo Street to the north (east-to-west traffic flow), Davis Street to the east (south- to-north traffic flow), Broadway to the south (east-to-west traffic flow), and Front Street to the west (south- to-north traffic flow). Street parking is provided along all sides of the block the project site is located on, including one Americans with Disabilities Act (ADA) parking spot at the northwest corner of Front Street and Broadway, and four motorcycle parking spots at the southwest corner of Vallejo Street and Front Street. There is one commercial loading zone on Davis Street in front of the building at 753-777 Davis Street. Broadway is designated as a Class III bicycle route and Front Street is designated as a Class II bicycle lane.³ No bicycle routes are located on Vallejo or Davis Streets. The closest San Francisco Municipal Transportation Agency (SFMTA) Muni Metro station to the project site is the Embarcadero Station approximately 0.5 miles south, which is shared with the regional rail service operated by Bay Area Rapid Transit (BART). The closest BART station entrance to the project site is the Market Street entrance at the Embarcadero Station. The Embarcadero Station is a stop for all six Muni Metro underground lines (Lines N-Judah, L-Taraval, M-Ocean View, K-Owl, T-Owl, and J-Church), and four BART lines (Pittsburg/Bay Point to/from SFO/Millbrae, Dublin/Pleasanton to/from Daly City, Daly City to/from Fremont, and Richmond to/from Daly City/Millbrae). The project is located within 0.25 miles of four local Muni bus lines (Lines 1-California, 10-Townsend, 12-Folsom/Pacific, and 39-Coit); two express Muni bus lines (Lines 30X-Marina Express and 82X-Levi Plaza Express); three Muni cable car/trolley lines (Lines E-Embarcadero, F-Market & Wharves, and C-California Cable Car); and two regional bus lines (Golden Gate Transit and San Mateo County Transit District). The San Francisco Ferry Terminal is located approximately 0.5 miles south of the project site and the Caltrain Station is located approximately 2 miles south of the project site.

² Per *San Francisco Planning Code* Article 10 section 1004, a historic district is a Board of Supervisors-approved designated area containing a number of structures having a special character or special historical, architectural or aesthetic interest or value, and constituting a distinct section of the City, as a historic district.

³ Class III Bikeway (Bicycle Route): shared use with pedestrian or motor vehicle traffic. Class II Bikeway (Bicycle Lane): striped lane for one-way bike travel on a street or highway.

2. PROJECT CHARACTERISTICS⁴

The proposed project would involve demolition of the two existing surface parking lots and the construction of two new 6-story, mixed-use residential buildings for family and senior housing connected by open mid-block passageways as shown on Figure 2 and summarized in Table 1.

PROJECT BUILDING CHARACTERISTICS

The proposed family housing building would provide 125 affordable family units totaling approximately ~~98,900~~98,300 gross square feet (gsf) of residential dwelling space and approximately 47,100 gsf of non-residential space. Residents would have access to a common use community room on the ground floor, an open podium courtyard on the second floor, two open decks on the ~~fifth and sixth~~ floors, and a rooftop terrace and community garden. Non-residential uses that are available to the general public would include a childcare facility with an outdoor play area and a childcare arcade, and commercial space on the ground floor (see Figures 3 through 9).

The proposed senior housing building would provide 53 affordable housing units totaling approximately ~~28,100~~ gsf of residential dwelling space and approximately 17,200 gsf of non-residential space. Residents would have access to a community room, an open courtyard on the first floor, and a roof deck on the fifth floor. Non-residential uses would include commercial space on the ground floor (see Figures 3 through 9).

The proposed project would include solar panels and green roofs on the roof level (see Figure 9). In addition, the heating, ventilation, and air conditioning equipment, commonly referred to as "HVAC" systems and an emergency back-up diesel generator would be located on the rooftop of each building.

Project renderings for the proposed buildings show the proposed project would have a contemporary architectural style (see Figures 12 through 15 for informational purposes.)

The proposed project would also provide open space as shown on Figure 16. Additional descriptions on these project features are discussed in more detail below.

The proposed family housing building would be approximately 65 feet in height to the top of the roof (with an additional 10 feet for the elevator and stair penthouses) at the northwest corner (Front Street and Vallejo Street corner) and a portion of the building facing Front Street. The proposed family housing building would step down to 54 feet at portions of this building facing Front Street and at the corner of Front Street and Broadway, while ~~the adjacent senior housing structure would step down from a height of approximately 65 feet at the western façade to a height of approximately 45 feet at the Davis Street façade (see Figures 10 and 11).~~

⁴ Figures 2 through 16 that depict the proposed project have been updated for this FMND to reflect the proposed changes as described in this section.

A. PROJECT DESCRIPTION

TABLE 1 PRELIMINARY PROJECT BUILDING SUMMARY

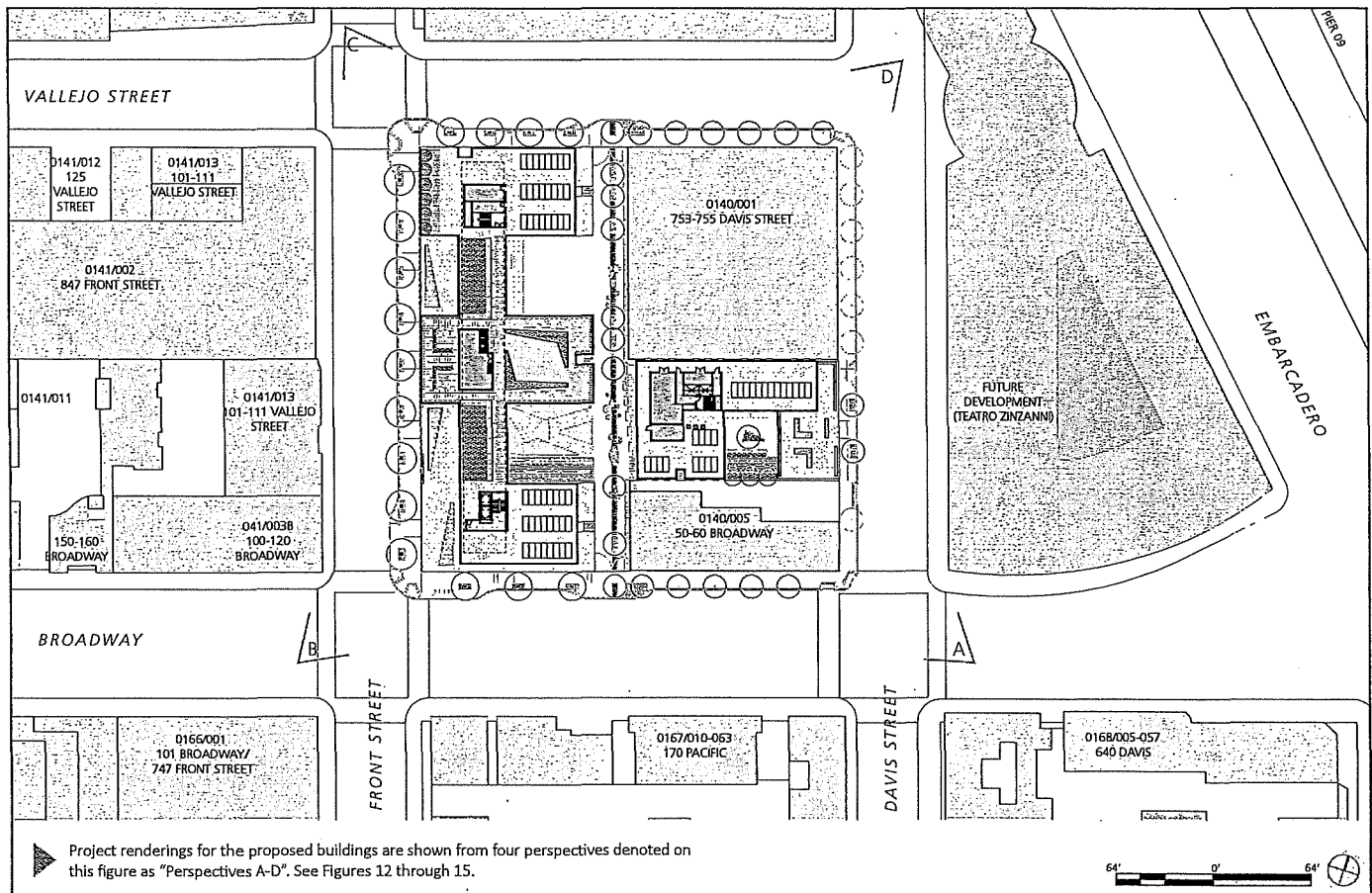
Residential			Non-residential Gross Square Feet					
Floor Level	Units	Gross Square Feet	Other ^a	Service ^b	Bike Parking	Circulation	Commercial	Childcare
Family Housing								
1	5	5,200	4,800	4,200	1,300	430	5,200	4,300
2	24	19,400	-	750	-	5,000	-	-
3	25	19,800	-	750	-	4,500	-	-
4	25	19,800	-	750	-	4,500	-	-
5	24 26	18,600 19,800	-	750	-	4,500	-	-
6	22 20	16,100 14,300	-	750	-	4,500	-	-
Subtotal	125	98,900 98,300	4,800	8,000	1,300	23,500	5,200	4,300
Total	125	98,900 98,300	47,100					
Senior Housing								
1	2	1,200	2,000	1,700	140	1,200	1,200	-
2	11	6,000	-	260	-	1,800	-	-
3	12	6,400	-	260	-	2,000	-	-
4	12	6,400	-	260	-	2,000	-	-
5	8	4,000	-	260	-	2,000	-	-
6	8	4,000	-	260	-	2,000	-	-
Subtotal	53	28,000	2,000	3,000	140	11,000	1,200	-
Total	53	28,000	17,200					
Combined Building Totals								
Use Total	178	127,000 126,400	6,800	11,000	1,400	34,400	6,400	4,300
Overall Total	178	127,000 126,400	64,300					

Notes: These are preliminary estimates used for environmental review purposes and are subject to minor and more precise changes as the project is finalized for the construction phase. These numbers have been rounded.

a. Other = Multi-purpose space/storage/file/property management offices/bathrooms/lobby/mailroom

b. Service = Laundry rooms/trash rooms/ mechanical rooms

Source: The John Stewart Company, Bridge Housing, Leddy Maytum Stacy Architects, Sheets A0.3 and A0.4, March 24, 2017, and February 26, 2018.

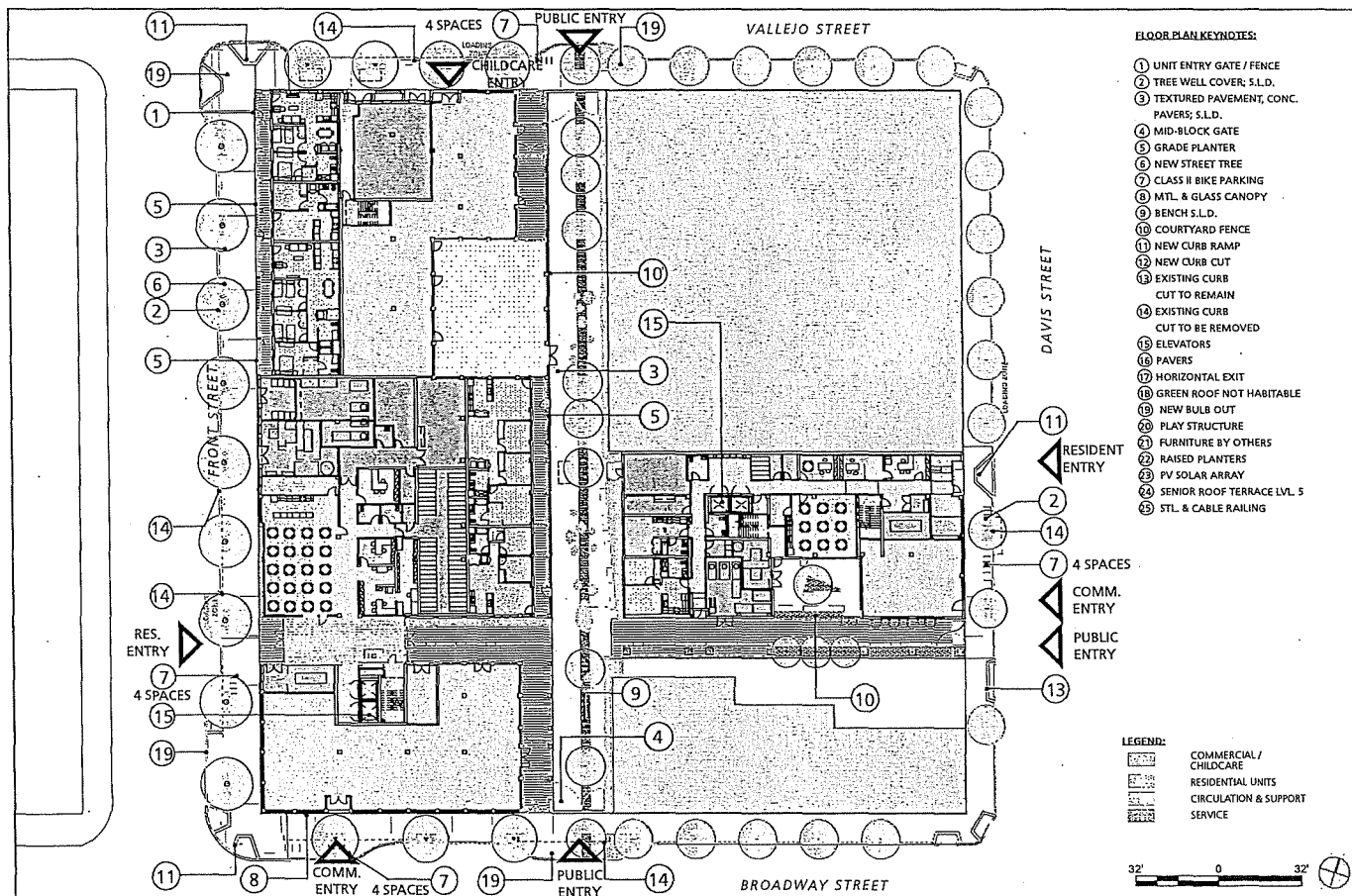


Source: The John Stewart Company, Bridge Housing, Leddy Maytum Stacy Architects, February 26th, 2018.

88 BROADWAY & 735 DAVIS STREET PROJECT INITIAL STUDY

Case No. 2016-007850ENV

FIGURE 2
Proposed Site Plan

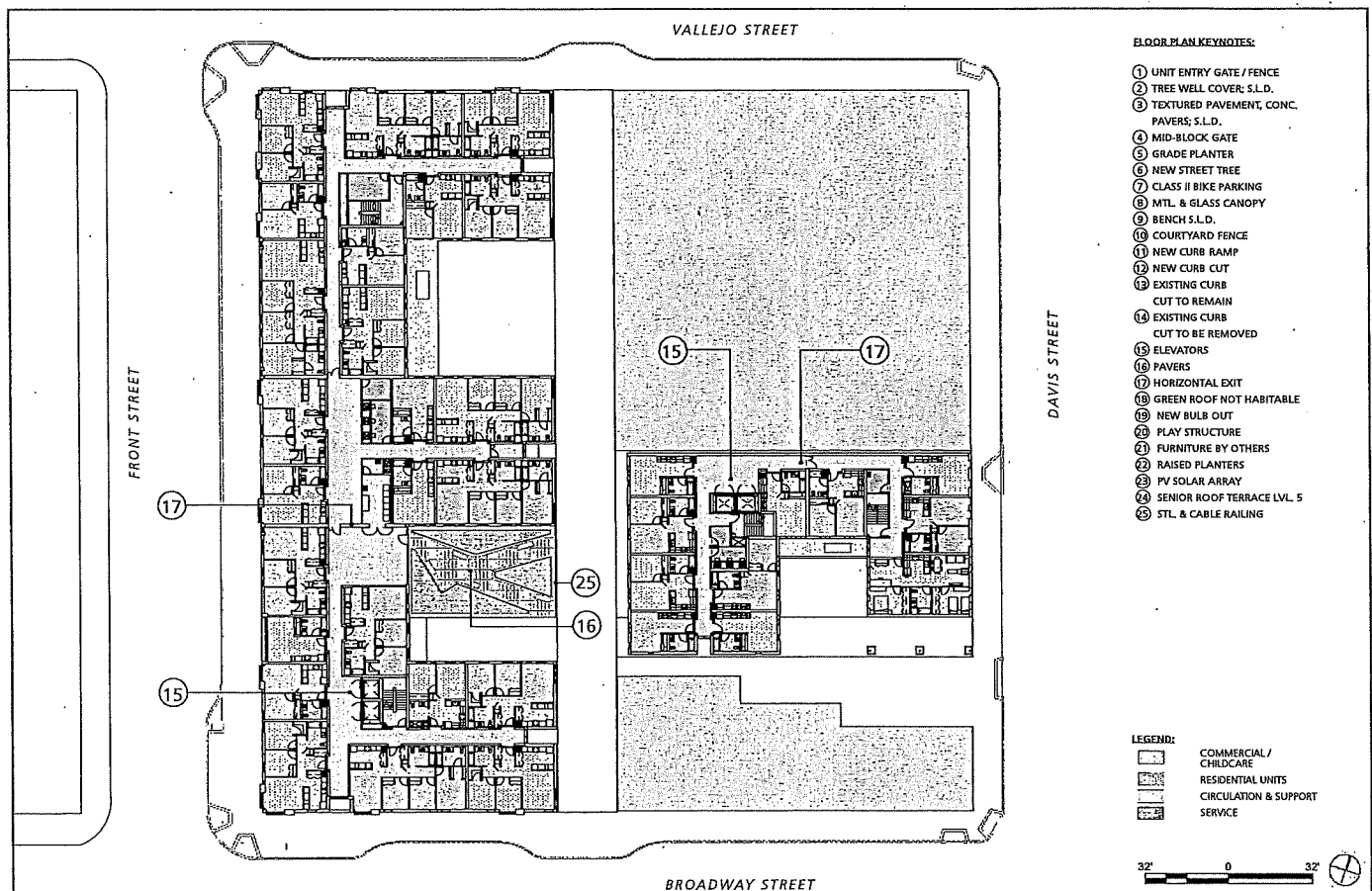


Source: The John Stewart Company, Bridge Housing, Leddy Maytum Stacy Architects, February 26th, 2018.

88 BROADWAY & 735 DAVIS STREET PROJECT INITIAL STUDY

Case No. 2016-007850ENV

FIGURE 3
Proposed Level 1 (Ground Floor) Plan

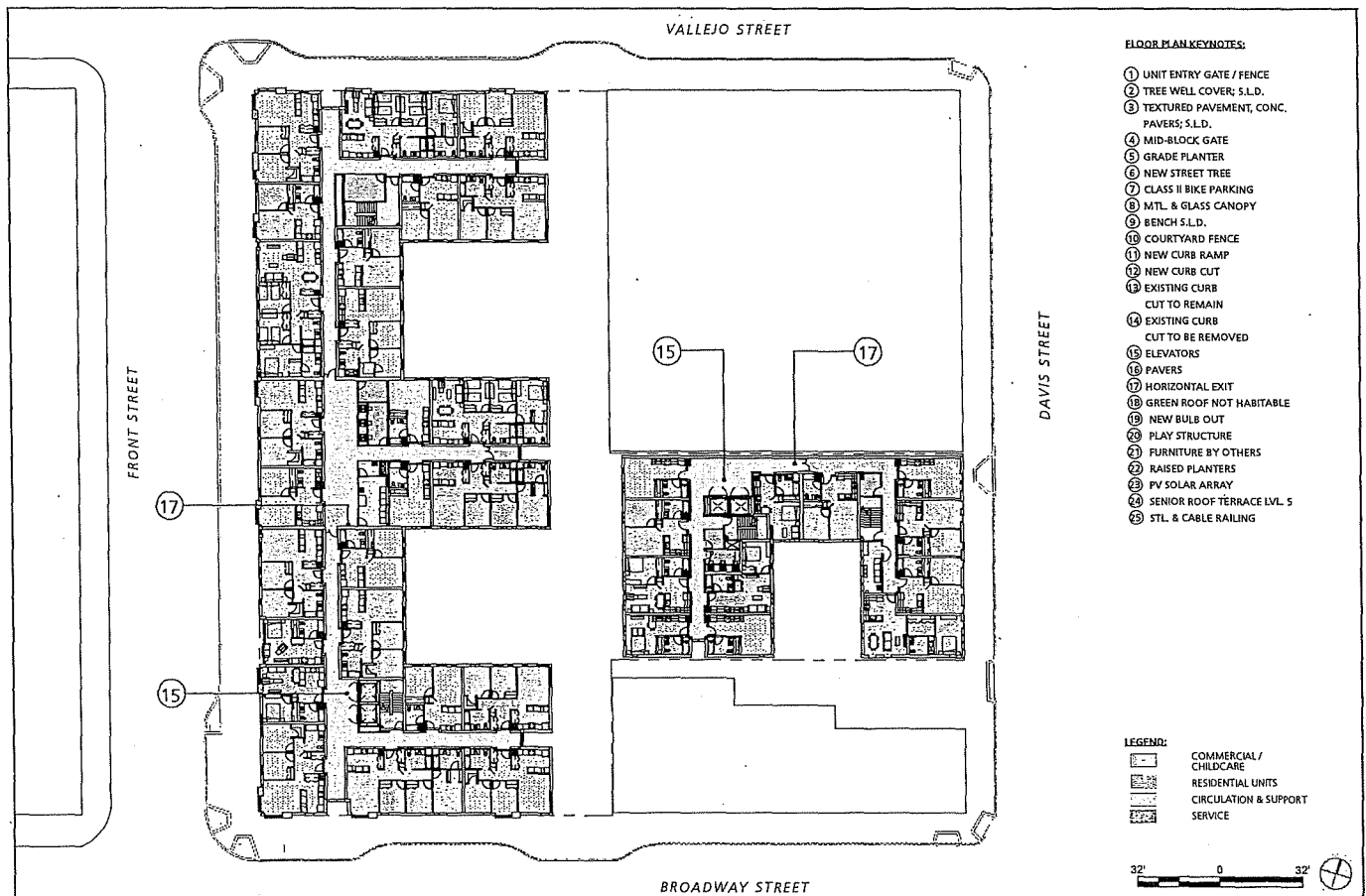


Source: The John Stewart Company, Bridge Housing, Leddy Maytum Stacy Architects, February 26th, 2018.

88 BROADWAY & 735 DAVIS STREET PROJECT INITIAL STUDY

Case No. 2016-007850ENV

FIGURE 4
Proposed Level 2 Plan

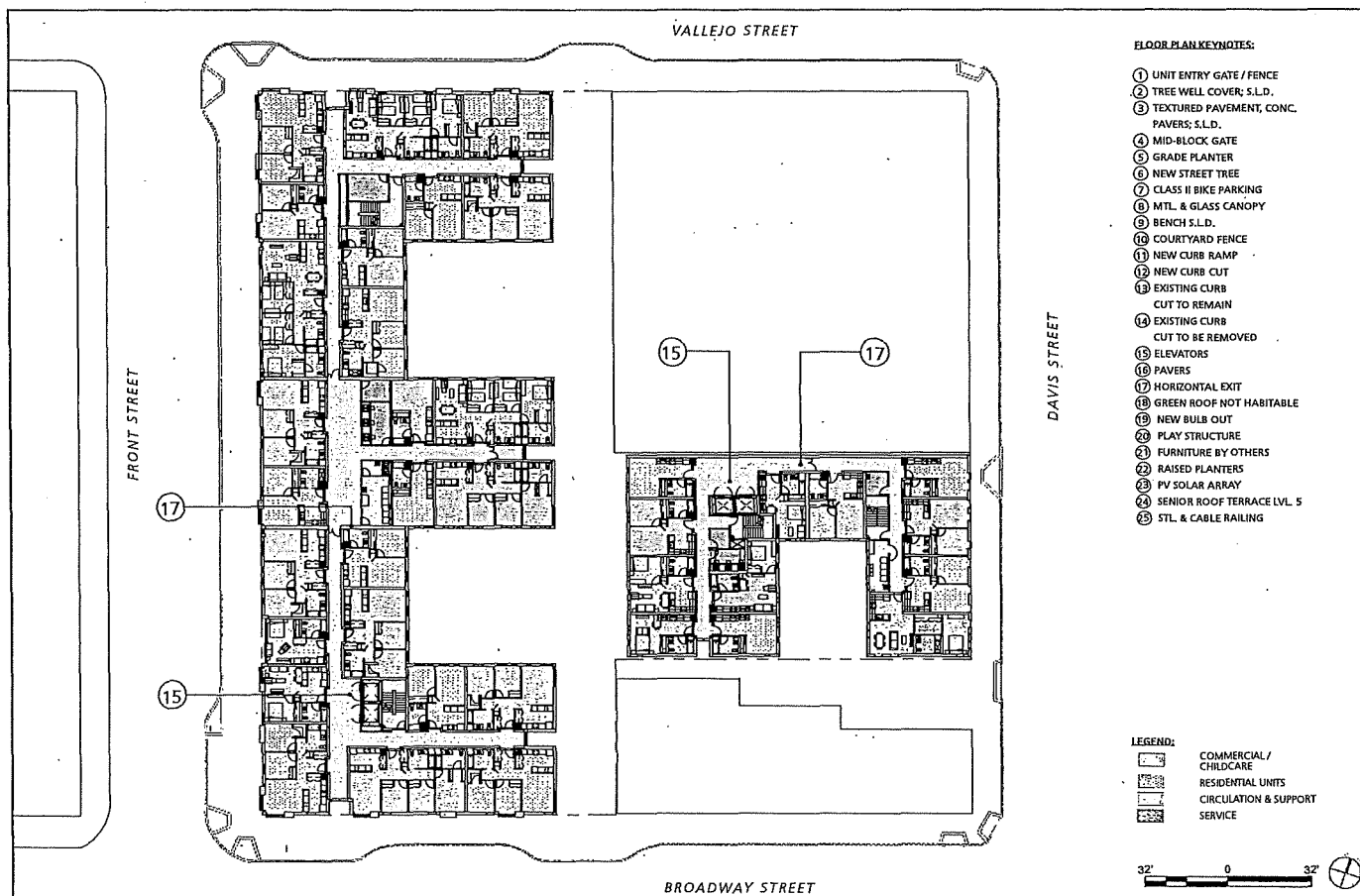


Source: The John Stewart Company, Bridge Housing, Leddy Maytum Stacy Architects, February 26th, 2018.

88 BROADWAY & 735 DAVIS STREET PROJECT INITIAL STUDY

Case No. 2016-007850ENV

FIGURE 5
Proposed Level 3 Plan

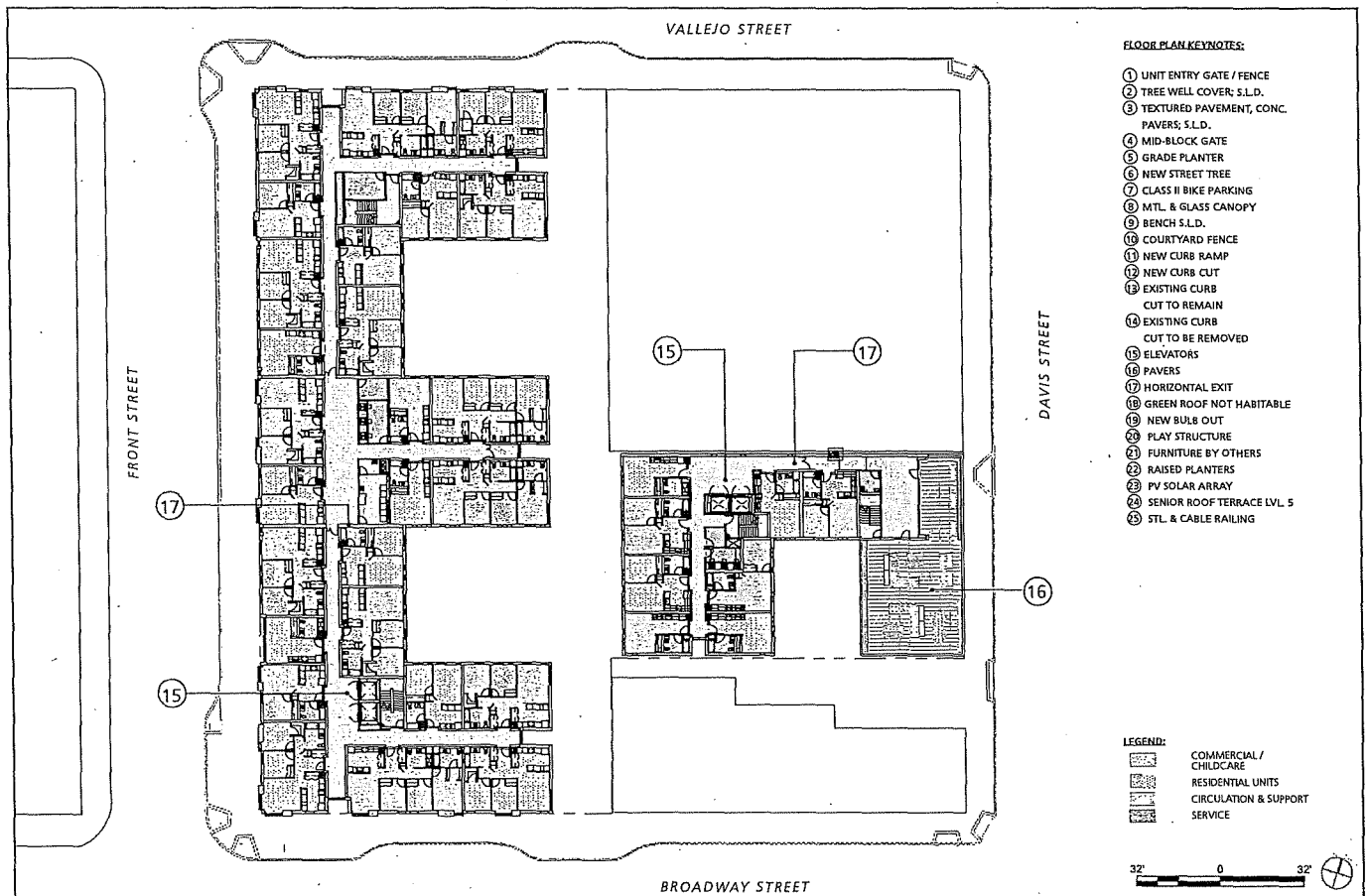


Source: The John Stewart Company, Bridge Housing, Leddy Maytum Stacy Architects, February 26th, 2018.

88 BROADWAY & 735 DAVIS STREET PROJECT INITIAL STUDY

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FIGURE 6
Proposed Level 4 Plan

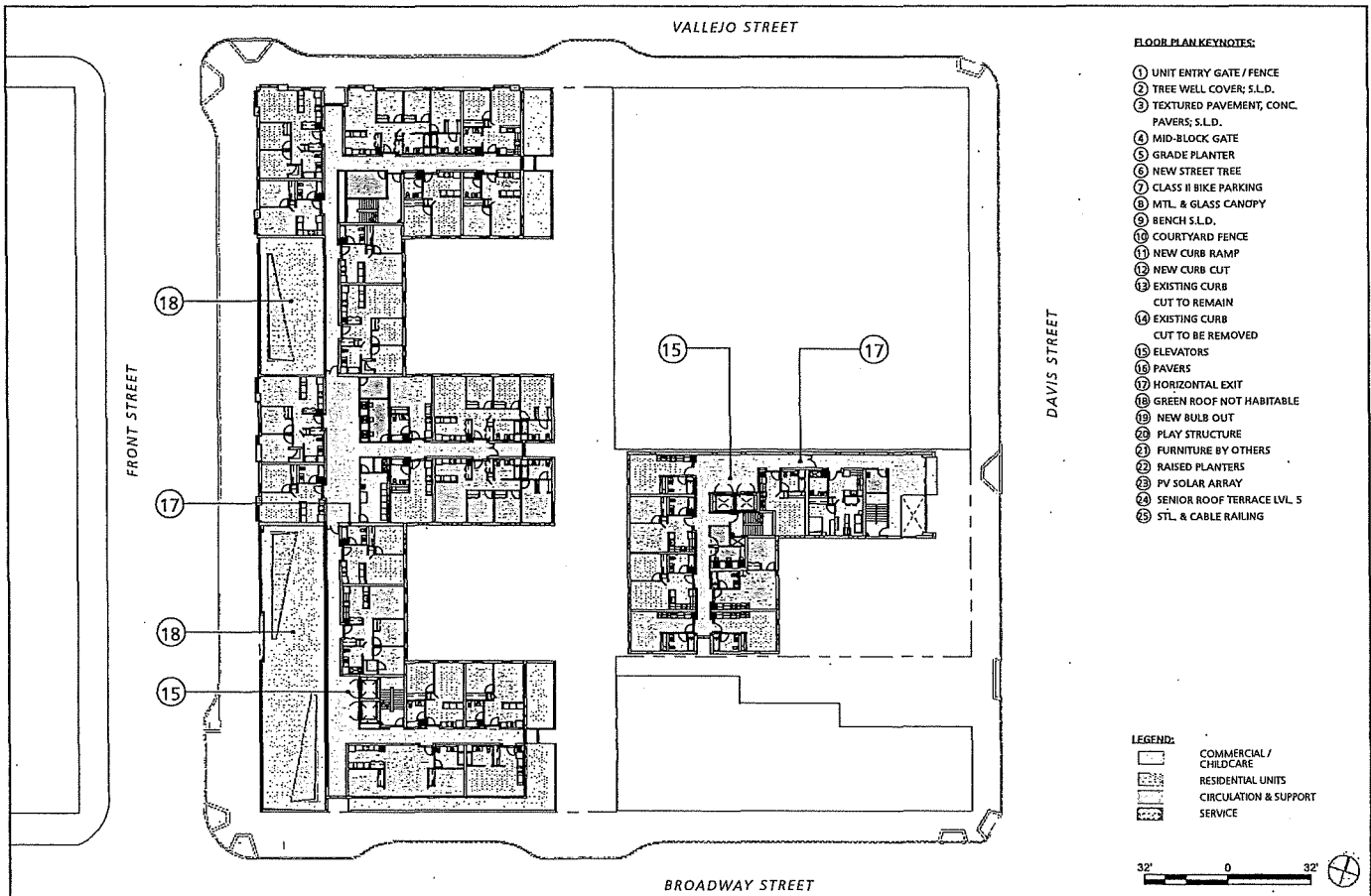


Source: The John Stewart Company, Bridge Housing, Leddy Maytum Stacy Architects, February 26th, 2018.

88 BROADWAY & 735 DAVIS STREET PROJECT INITIAL STUDY

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FIGURE 7
Proposed Level 5 Plan

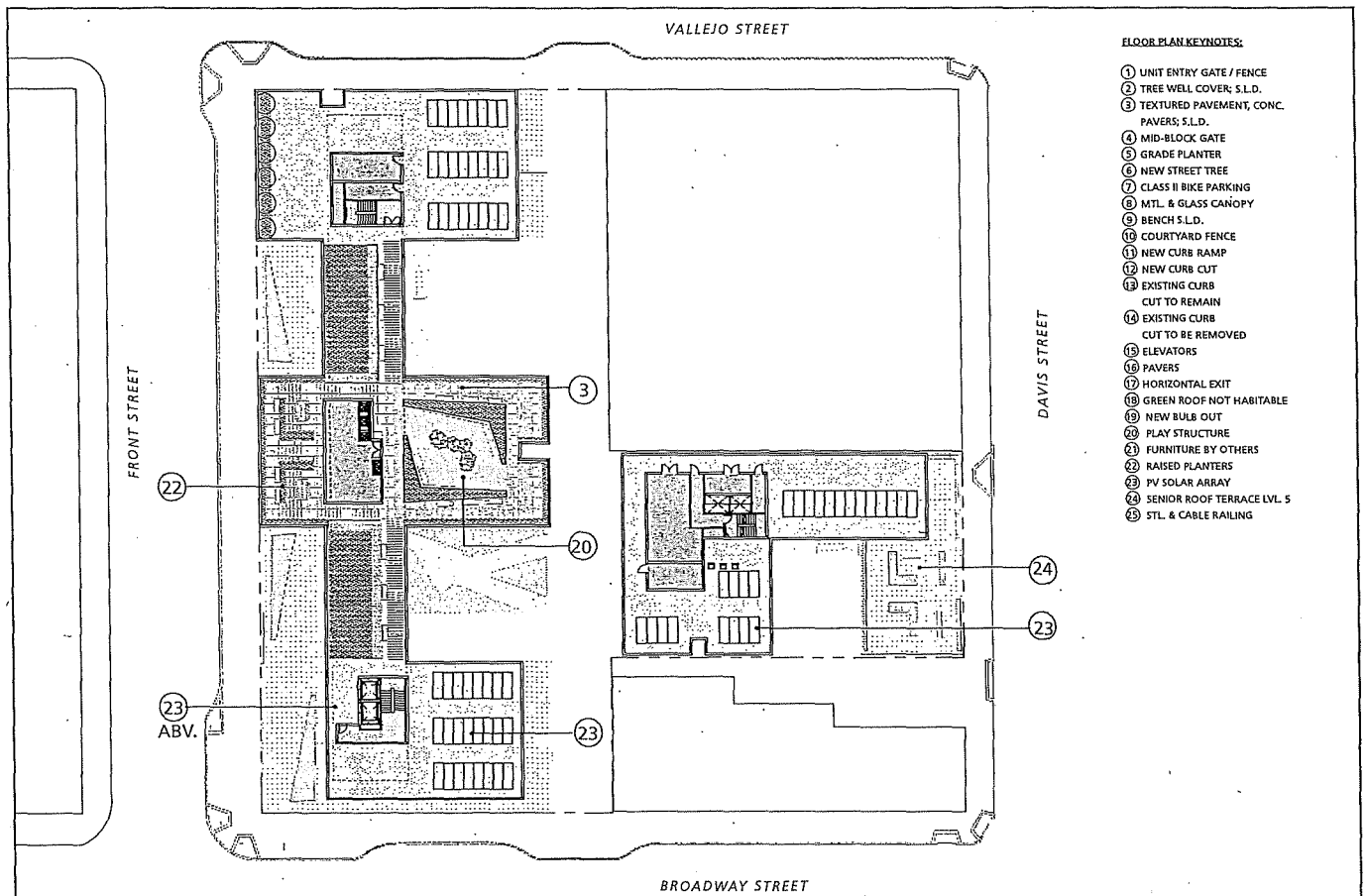


Source: The John Stewart Company, Bridge Housing, Leddy Maytum Stacy Architects, February 26th, 2018.

88 BROADWAY & 735 DAVIS STREET PROJECT INITIAL STUDY

Case No. 2016-007850ENV

FIGURE 8
Proposed Level 6 Plan

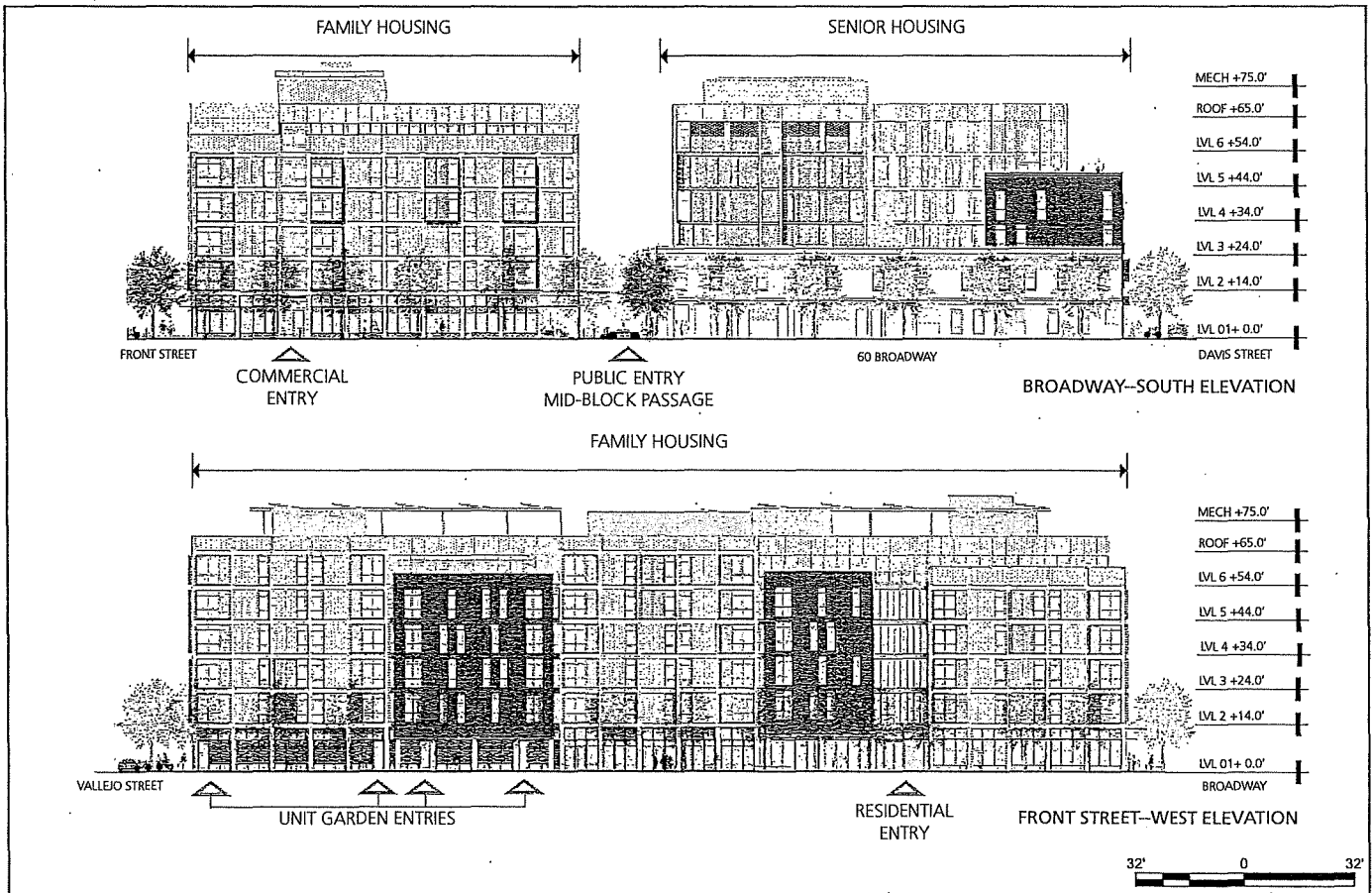


Source: The John Stewart Company, Bridge Housing, Leddy Maytum Stacy Architects, February 26th, 2018.

88 BROADWAY & 735 DAVIS STREET PROJECT INITIAL STUDY

Case No. 2016-007850ENV

FIGURE 9
Proposed Roof Plan

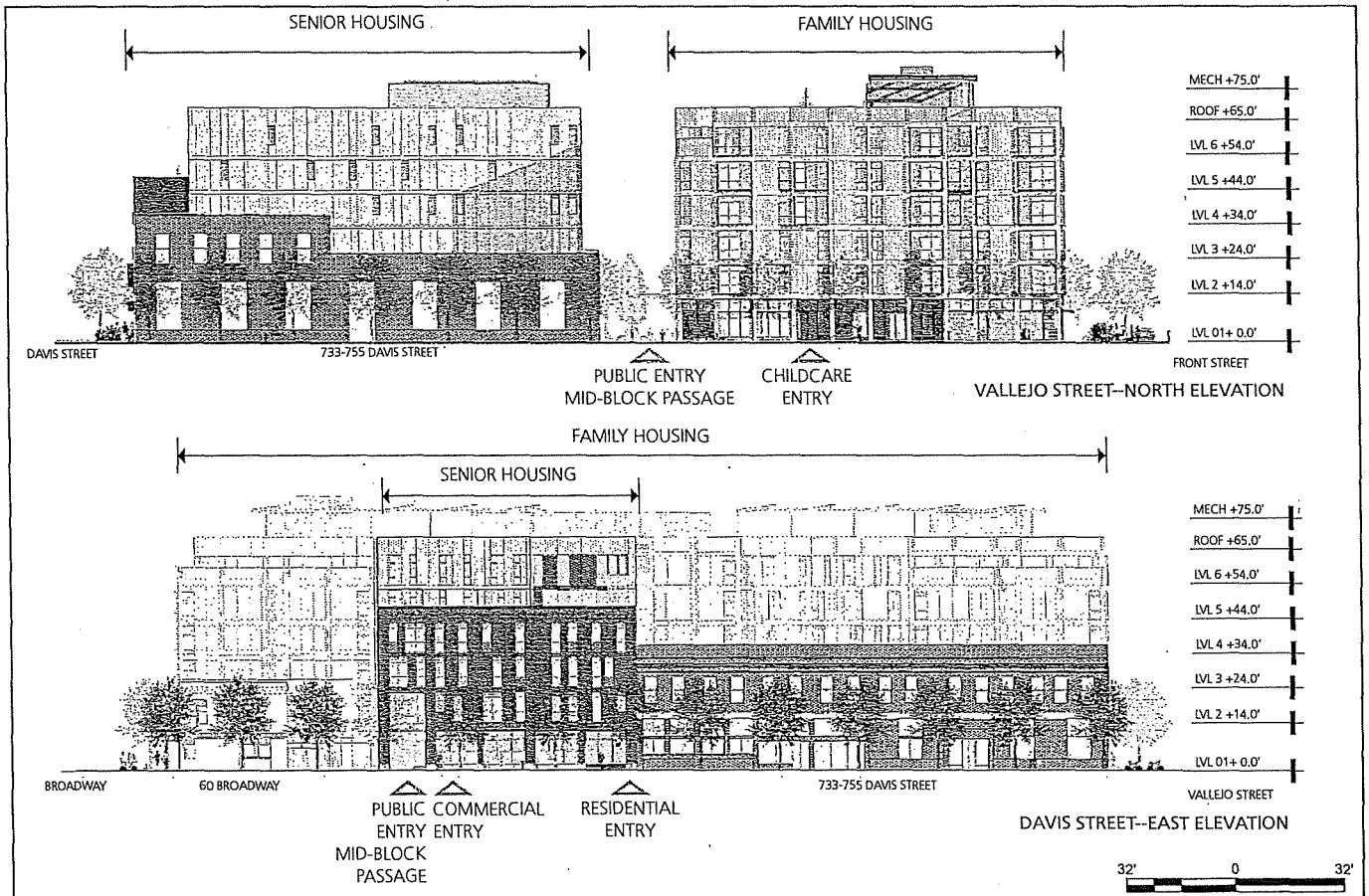


Source: The John Stewart Company, Bridge Housing, Leddy Maytum Stacy Architects, February 26th, 2018.

88 BROADWAY & 735 DAVIS STREET PROJECT INITIAL STUDY

Case No. 2016-007850ENV

FIGURE 10
Proposed South and West Elevations

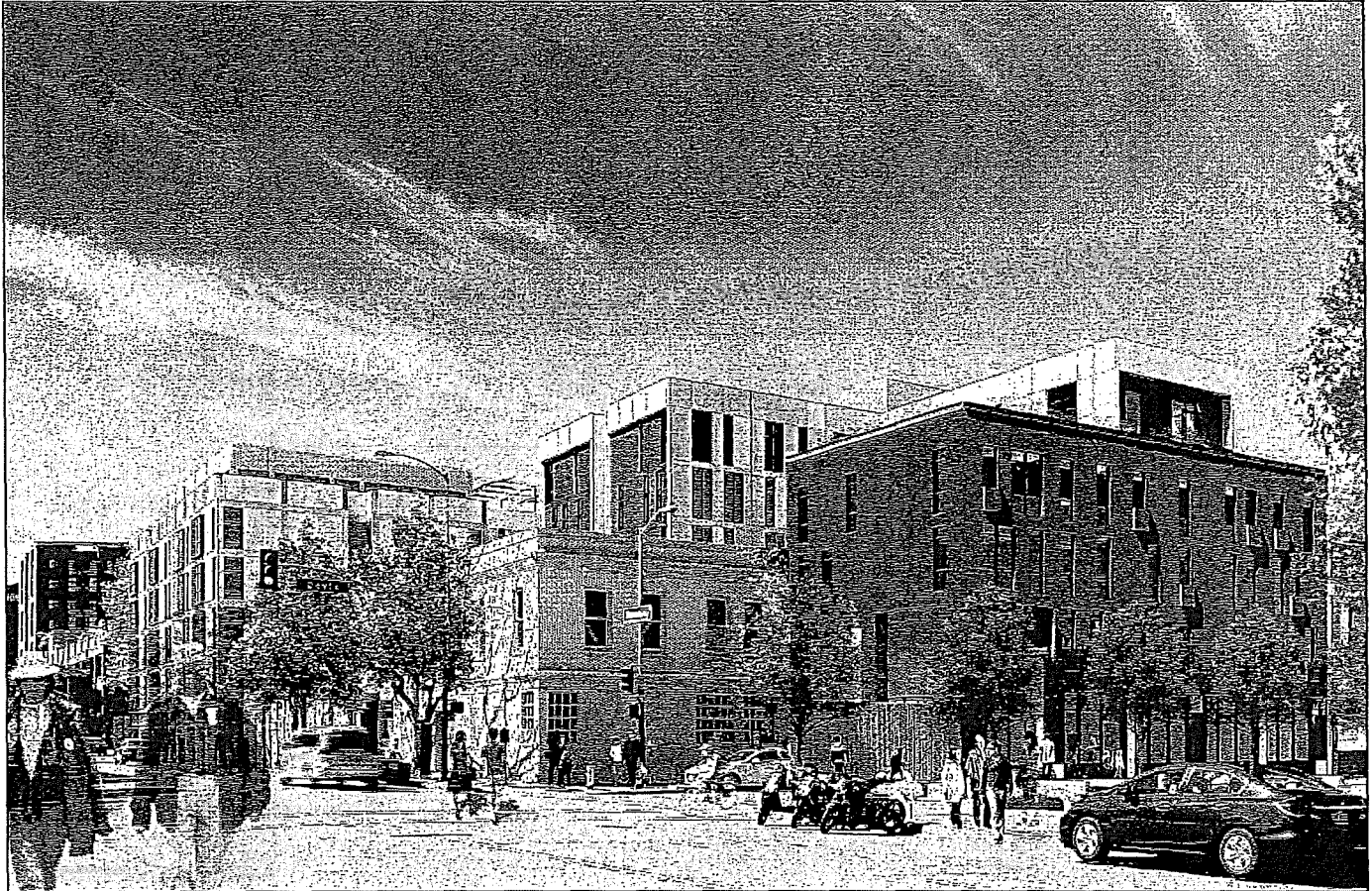


Source: The John Stewart Company, Bridge Housing, Leddy Maytum Stacy Architects, February 26th, 2018.

88 BROADWAY & 735 DAVIS STREET PROJECT INITIAL STUDY

Case No. 2016-007850ENV

FIGURE 11
Proposed North and East Elevations



Source: The John Stewart Company, Bridge Housing, Leddy Maytum Stacy Architects, February 26th, 2018.

88 BROADWAY & 735 DAVIS STREET PROJECT INITIAL STUDY

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FIGURE 12

Perspective A: Davis Street/Broadway Intersection



Source: The John Stewart Company, Bridge Housing, Leddy Maytum Stacy Architects, February 26th, 2018.

88 BROADWAY & 735 DAVIS STREET PROJECT INITIAL STUDY

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FIGURE 13

Perspective B: Front Street/Broadway Intersection



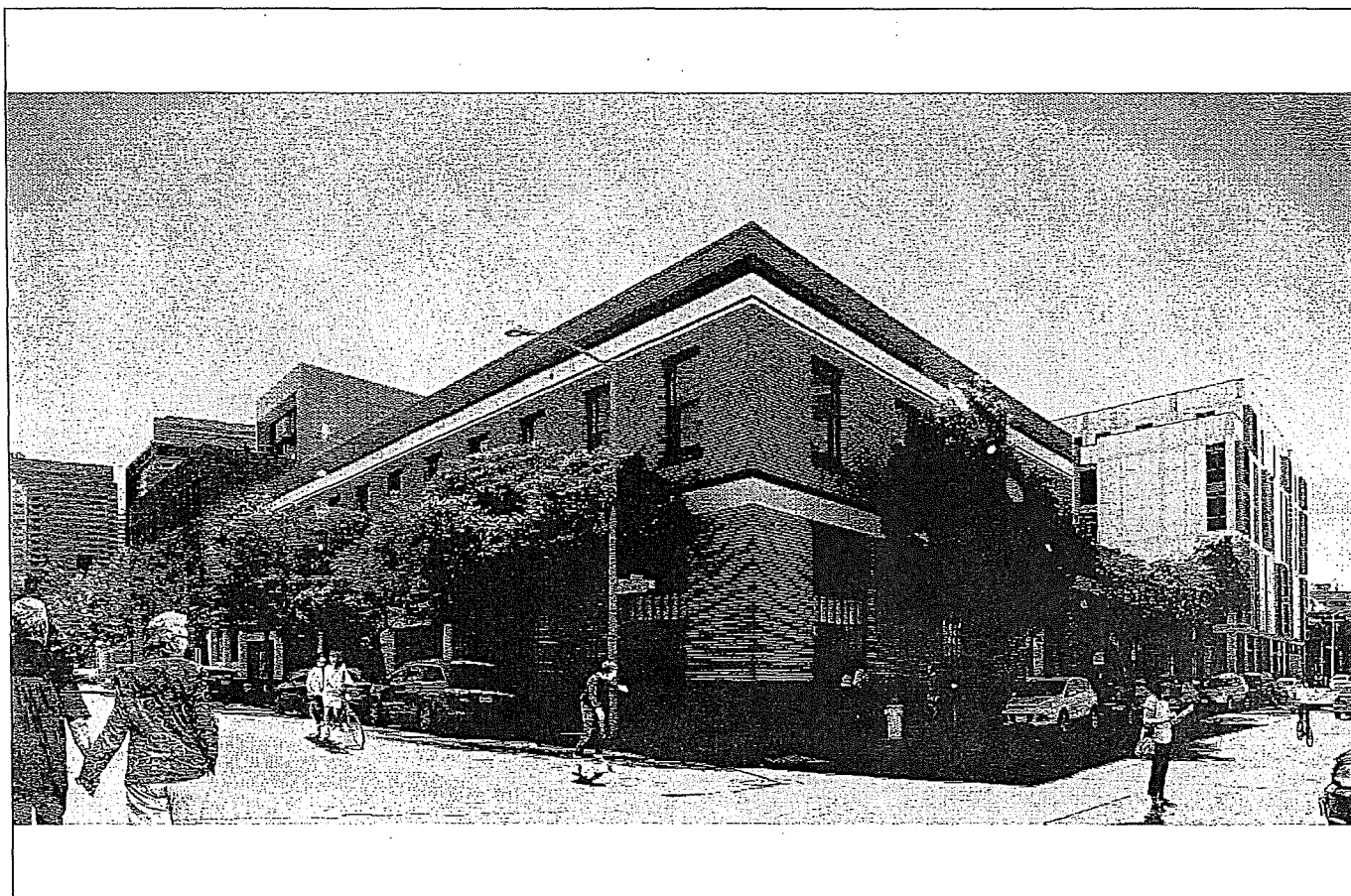
Source: The John Stewart Company, Bridge Housing, Leddy Maytum Stacy Architects, February 26th, 2018.

88 BROADWAY & 735 DAVIS STREET PROJECT INITIAL STUDY

Case No. 2016-007850ENV

FIGURE 14

Perspective C: Front Street/Vallejo Street Intersection



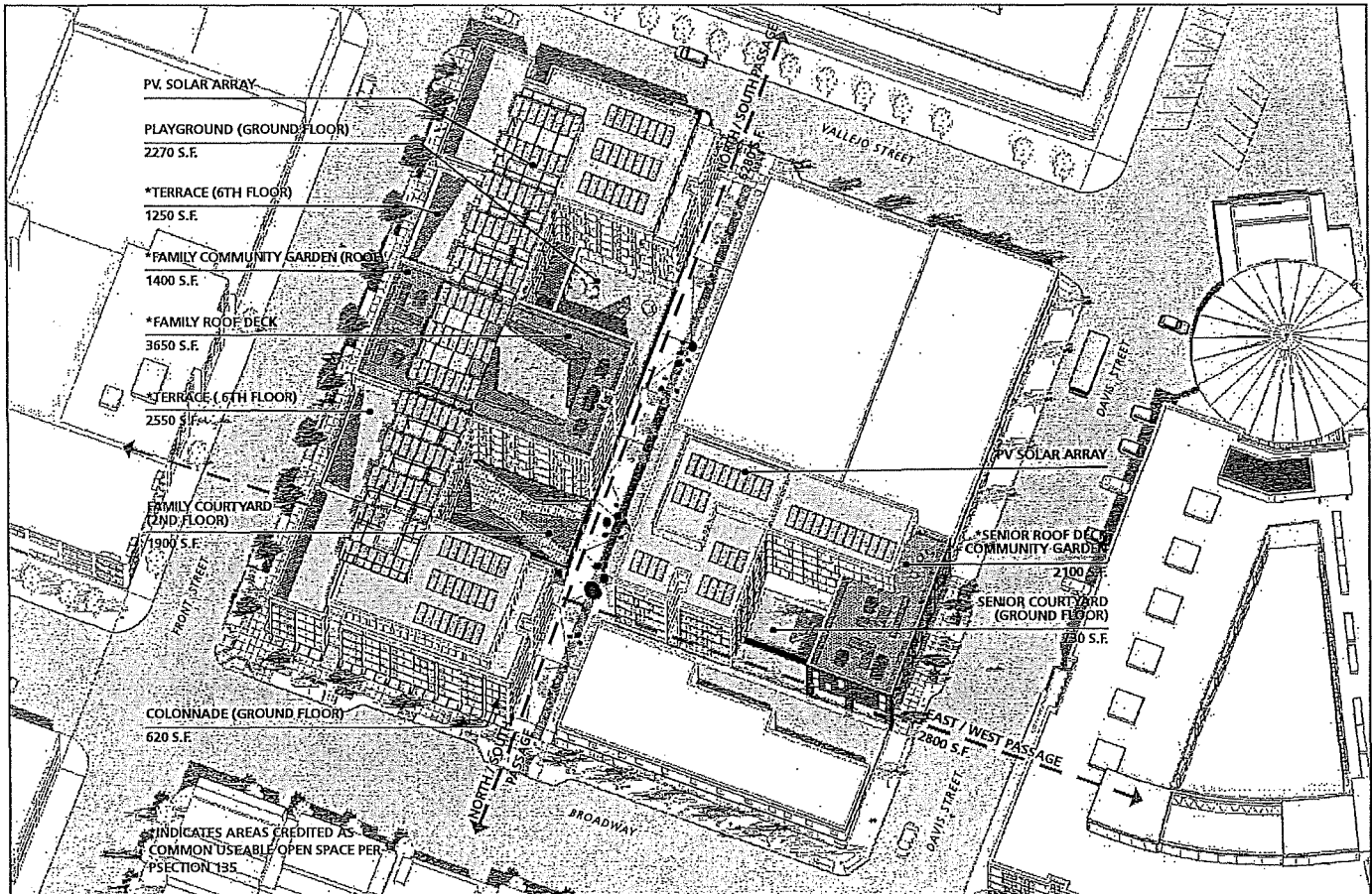
Source: The John Stewart Company, Bridge Housing, Leddy Maytum Stacy Architects, February 26th, 2018.

88 BROADWAY & 735 DAVIS STREET PROJECT INITIAL STUDY

Case No. 2016-007850ENV

FIGURE 15

Perspective D: Vallejo Street/Davis Street Intersection



Source: The John Stewart Company, Bridge Housing, Leddy Maytum Stacy Architects, February 26th, 2018.

88 BROADWAY & 735 DAVIS STREET PROJECT INITIAL STUDY

Case No. 2016-007850ENV

FIGURE 16
Open Space

OPEN SPACE

The proposed project would provide open space for residents, tenants, and members of the general public. The proposed open space is shown on Figures 3 and 4, and Figures 7 through 9 above.

Per Planning Code section 135, the proposed project is required to provide 48 square feet of common open space per family housing unit.⁵ As shown above on Figure 16, the approximately ~~6,900~~6,850 square feet of common open space for residents of the family housing building would be comprised of an approximately ~~1,100~~1,250-square-foot terrace on the ~~fifth~~sixth floor, a second ~~1,200~~1,550-square-foot terrace on the sixth floor, a ~~3,200~~3,650-square-foot roof deck, and a 1,400-square-foot community garden on the roof. The proposed total of approximately ~~6,900~~6,850 square feet of common open space would exceed the City's open space requirements for the family housing building by approximately ~~900~~2,850 square feet.

Per Planning Code section 135(d)(3),⁶ the proposed project is required to provide 24 square feet of common open space per senior housing unit.⁷ As shown on Figure 16, the common open space for residents of the senior housing building would be comprised of an approximately 2,100-square-foot roof deck and community garden on the fifth floor. The proposed total of approximately 2,100 square feet of common open space would exceed the City's open space requirements for the senior housing by approximately 800 square feet. Per section 135(g)(2), the proposed project would also be required to meet the City's inner court dimension requirements.

Other proposed open space areas that do not meet Planning Code section 135(d)(3) and are not credited towards the City's open space requirement include the approximately ~~3,200~~2,270-square-foot playground on the ground floor, the approximately ~~700~~620-square-foot colonnade (for the commercial space) on the ground floor, and the approximately ~~2,000~~1,900-square-foot family courtyard on the second floor of the family housing building, as well as the approximately ~~1,300~~730-square-foot senior courtyard on the ground floor of the senior housing building.

The proposed project also includes open space in the form of the two mid-block passages. While it is anticipated that the majority of the users of these passage ways would be residents of the proposed project and users of the childcare facility and retail space, these mid-block passages would be publically accessible during certain times. The north-south mid-block passage that would connect Vallejo Street and Broadway would include approximately ~~6,600~~6,280 square feet of open space. The east-west mid-block passage would connect the family housing building's residential lobby to Davis Street and would include approximately ~~2,100~~2,800 square feet of open space. Both mid-block passages would be open to the public during general retail hours (8:00 a.m. to 8:00 p.m.), and these hours are subject to assessment once the project is in operation.

⁵ 48 square feet of family housing common open space x 125 units = 6,000 square feet

⁶ *San Francisco Planning Code* section 135(d) references the actual amount of reduced square footage to satisfy open space requirement for senior housing projects defined pursuant to Planning Code section 202.2(f)(1).

⁷ 24 square feet of senior housing common open space x 53 units = 1,272 square feet

BICYCLE FACILITIES, ACCESS, AND LOADING

The proposed project would provide *class 1* and *class 2* bicycle parking spaces.⁸ Per Planning Code sections 155.1 and 155.2, total bicycle parking would be provided via 120 *class 1* spaces (110 spaces for the family housing building⁹ and 10 spaces for the senior housing building¹⁰) and 20 *class 2* bicycle parking spaces (16 for the family building and four for the senior building) for residential and commercial¹¹ uses (see Figure 3). An approximately 1,300-square-foot bike room would be located at the ground level of the family housing building. This bike room would hold residential *class 1* bicycle parking spaces and cargo spaces. A second approximately 100-square-foot bike room would be located in the senior housing building on the ground floor. Both *class 1* bike rooms would be accessed through the residential lobbies of both buildings via Front Street, Davis Street, and the east-west mid-block passage. The *class 2* spaces would be located at Vallejo Street and Broadway Street adjacent to the entrances to the north-south mid-block passage and at Davis Street in front of the senior building.

As shown on Figure 3 above, pedestrians and bicyclists would access the project site via the proposed north-south mid-block passage, and east-west mid-block passage, and the sidewalks adjacent to the project site frontages.

No off-street vehicular parking spaces or off-street loading zones would be provided at the project site; however, the project proposes three on-street loading zones that would meet the ADA standards. The proposed project would convert two existing metered parking spaces on Front Street to a freight loading zone to service the family housing building; two existing metered parking spaces on Davis Street to a passenger loading zone to service the senior housing building; and two existing metered parking spaces on Vallejo Street to a passenger loading zone to service the childcare space. The three proposed on-street loading zones would each be 35 feet long. The conversion of metered parking spaces to loading zones would require approval at a public hearing of the SFMTA.

New ADA-compliant curb ramps would be constructed for both connecting crosswalks at the northeast corner of the Front Street /Broadway intersection and the southeast corner of the Front Street/Vallejo Street intersection. Additional ADA-compliant curb ramps would be provided at the north end of the proposed passenger loading zone along Davis Street, at the north end of the proposed sidewalk extension along Front Street (immediately south of the proposed commercial loading zone), and at the east end of the corner bulb-out into Vallejo Street at the Front Street/Vallejo Street intersection.

⁸ The *class 1* bicycle spaces are in secure, weather-protected facilities intended for use as long-term, overnight, and work-day bicycle storage by dwelling unit residents, non-residential occupants, and employees; and *class 2* bicycle spaces are located in a publicly-accessible, highly visible location intended for transient or short-term use by visitors, guests, and patrons to the building or use.

⁹ Family Housing: *class 1* bicycle parking for buildings over 100 units is required to provide 100 spaces plus one space for every four units over 100; and *class 2* bicycle parking is one space per 20 units.

¹⁰ Senior Housing: *class 1* bicycle parking is one space for every 10 units or beds, whichever is applicable; *class 2* bicycle parking is two spaces for every 50 units or beds, whichever is applicable, or a minimum of two spaces.

¹¹ Childcare Facility: *class 1* bicycle parking is a minimum two spaces or one space for every 20 children; *class 2* bicycle parking is one space for every 20 children.

LANDSCAPING

There are no existing street trees adjacent to the project site. A total of 18 new trees would be planted on the sidewalks along all four frontages of the proposed project (see Figure 3), in accordance with the *San Francisco Public Works Code* (Public Works Code) section 806, which requires that one street tree be planted per every 20 linear feet of project site frontage. Ten trees would be planted along Front Street, four trees along Vallejo Street, four trees along Broadway, and three trees along Davis Street. All of the new street trees would be placed in continuous soil-filled trenches. Along the 88 Broadway project location frontages (Front, Broadway, and Vallejo), 27 street trees are required; however, only 18 street trees are proposed. Therefore, the proposed project would require a waiver for providing fewer than the minimum number of street trees required under Public Works Code section 806. No trees may be located within 25 feet of an intersection, for pedestrian safety. Raised planters and approximately eight trees would be planted along the north-south and east-west public passages between the two buildings.

FOUNDATION AND EXCAVATION

The proposed project would include demolition of approximately 365 tons of asphalt debris and include excavation of approximately 4,000 cubic yards of soil material. Excavation would extend to a maximum depth of approximately 4 feet below grade to accommodate building foundations and between 70 to 100 feet below grade to accommodate the required piles.¹² The proposed project is anticipated to be constructed applying a deep foundation system with piles and grade beams. The family building (88 Broadway) would require 123 piles plus an allowance for an additional three piles. The senior building (735 Davis Street) would require 47 piles plus an allowance for two piles, for a total of approximately 175 piles across the project site. The project would not use the high-impact method of pile driving.

CONSTRUCTION SCHEDULE

The project sponsor estimates that the demolition of the existing surface parking lots and construction of the proposed project would occur over an approximately 19-month period with both buildings being constructed concurrently. The construction of the family building (the larger building) would occur over the full 19-month period and construction of the senior building (the smaller building) would take place over the first 16 months. Construction of the two buildings would include the following: demolition (1 month), shoring and excavation (1 month), foundation (1 to 3 months), building construction (10 to 12 months), and installation of facades (3 to 4 months). The proposed project would generate approximately 365 tons of asphalt demolition debris and 4,000 cubic yards of soil material during construction which would be exported offsite. During the construction phase of the proposed project, worker parking would

¹² Bedrock depth varies across the project site and ranges from 50 to 70 feet below the surface at the 88 Broadway location (page 5, *88 Broadway Geotechnical Exploration* dated June 22, 2017) and 70 to 80 feet below the surface at the 735 Davis Street location (page 5, *735 Davis Street Geotechnical Exploration* dated June 22, 2017). As shown in Table 4.1.1-1 (Estimate of Vertical Capacities) of both geotechnical reports, the embedment into the bedrock ranges from 10 to 20 feet. All documents cited in this report (unless otherwise noted) and used in its preparation are hereby incorporated by reference into this initial study. Copies of documents referenced herein are available for review at the San Francisco Planning Department, 1650 Mission Street, Suite 400 as part of Case File No. 2016-007850ENV.

occur off-site. As the entire project site would be under construction at the same time, no designated parking for construction workers would be provided on-site, and they would be expected to park on the street or in nearby garages, or use transit.

3. APPROVALS REQUIRED FOR THE PROPOSED PROJECT

The proposed project would require the following approvals from the City and County of San Francisco:

BOARD OF SUPERVISORS

- Approval of a ground lease for Assessor's Block 140, Lot 007 (88 Broadway) owned by the Port of San Francisco.
- Approval of a ground lease for Assessor's Block 140, Lot 008 (735 Davis Street) owned by the San Francisco Public Works Department.

PLANNING DEPARTMENT

- Administrative approval of an Affordable Housing Project Authorization per Planning Code section 315, of the Conditional Use Authorization (section 303 of the Planning Code) for a Planned Unit Development (PUD) per Planning Code section 304. Implementation of the proposed project would require modification of the following Planning Code requirements through the approval of a PUD: modifications for the rear yard configuration per sections 130 and 134, dwelling unit exposure for 14 family housing units and three senior housing units located on the mid-block passage per section 140, active use depth setback per section 145.1, childcare parking requirement per section 151, and off-street loading per section 152.

HISTORIC PRESERVATION COMMISSION

- Approval of a Certificate of Appropriateness from the Historic Preservation Commission for new construction within the Northeast Waterfront Landmark District (a Planning Code Article 10 historic district).

ACTIONS BY OTHER CITY DEPARTMENTS (APPROVING BODIES NOTED IN PARENTHESES)

- Urban design recommendations following the waterfront design review process (Design Advisory Committee)
- Approval of demolition and site permits permit (Planning Department and Department of Building Inspection).
- Approval of demolition, grading, and building permits (Department of Building Inspection).
- Approval of dewatering well permits, if dewatering is required, (Public Utilities Commission).
- Approval of permits for streetscape improvements in the public right-of-way (Public Works).
- Approval of a waiver for providing nine fewer street trees than required under Public Works Code section 806 (Public Works).

A. PROJECT DESCRIPTION

- Approval of a request for curb cut, color curb, and on-street parking changes on Front Street, Vallejo Street, and Davis Street (SFMTA).
- Approval of project compliance with the Stormwater Management Requirements and Design Guidelines, a Stormwater Control Plan, a Landscape Plan per the Water Efficient Irrigation Ordinance, a Water Budget Application and Non-potable Implementation Plan per the Non-potable Water Ordinance (Public Utilities Commission).
- Approval of and use of dewatering wells (should they be used) per Article 12B of the San Francisco Health Code (joint approval Public Utilities Commission and Department of Public Health).
- Approval of a Site Mitigation Plan, Soil Mitigation Plan, and Dust Control Plan prior to commencement of excavation work pursuant to the *San Francisco Health Code* Article 22A (Department of Public Health).

ACTIONS BY OTHER GOVERNMENT AGENCIES

- Approval of non-public trust uses of the project and ground lease (State Lands Commission).
- Approval of permit for installation, operation, and testing of diesel backup generators (Bay Area Air Quality Management District).

APPROVAL ACTION

The approval of the Conditional Use Authorization for a Planned Unit Development under an Affordable Housing Project Authorization by the Planning Department constitutes the Approval Action for the proposed project, pursuant to section 31.04(h)(3) of the *San Francisco Administrative Code*. The Approval Action date establishes the start of the 30-day appeal period for this California Environmental Quality Act (CEQA) determination pursuant to section 31.(d) of the *San Francisco Administrative Code*.

A. PROJECT DESCRIPTION

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B. Project Setting

1. PROJECT SITE AND SURROUNDING LAND USES

The project site is located in the North Beach neighborhood one block west of Pier 7, Pier 9, and the Embarcadero, which is a major arterial road to get around San Francisco. It is bounded on all sides by two-way streets: Vallejo Street to the north, Davis Street to the east, Broadway to the south, and Front Street to the west. Access to the project site is currently available via each of the four surrounding streets. The project site consists of two separate parcels, with the larger western parcel (Lot 007) fronting Vallejo Street, Front Street, and Broadway and the smaller eastern parcel (Lot 008) fronting Davis Street, in between two existing buildings. Both parcels are relatively flat and currently serve as surface parking lots without existing structures.

The project site is located within the Northeast Waterfront Landmark District, which is a Planning Code Article 10 historic district, and the Waterfront Special Use District No. 3, and the Base of Telegraph Hill Subarea of the *Northeastern Waterfront Area Plan* area of the General Plan. There are two landmarked historic buildings near the project site along Front Street, including the Gibb-Sanborn Warehouse (North) to the north of the project site at 901 Front Street at Vallejo Street and the Gibb-Sanborn Warehouse (Trinidad) to the west of the project site at 855 Front Street at Vallejo Street.¹³ The project site is also within the C-2 (Community Business) Zoning District and a 65-X Height and Bulk District (65-foot maximum height, no bulk limit). Most properties to the north, east, and west of the project site have a General Plan land use designation of General Commercial and are within the C-2 Zoning District with a mix of 65-X and 40-X Height and Bulk Districts. Most properties to the south and southeast of the project site have a General Plan land use designation of High Density Residential and are within the RC-4 (High Density, Residential Commercial) Zoning District with a mix of 275-E and 84-E Height and Bulk Districts. The project site is also within the area that was the subject of the 2010 Northeast Embarcadero Study,¹⁴ guidelines which were incorporated into the *Northeast Waterfront Area Plan*.

The types of land uses in the surrounding area include mixed-use, commercial offices, and some residential uses with most of the buildings two to five stories high (approximately 35 to 55 feet tall.) The area does not have nearby community facilities, but has diverse commercial businesses and offices. The project site shares a block with two existing office buildings. Directly to the north of the project site is a building used for various local news outlets, including KRON 4, KGO, and ABC7. Directly to the west and south of the proposed project are public parking garages, and more offices, and residences. To the east of the project site is a parking lot used by the Port of San Francisco. The project site's Front Street sidewalk is currently used for A Moveable Feast's food truck events from time to time.

¹³ The Gibb-Sanborn Warehouses are listed at the local level, for Article 10 of the *San Francisco Planning Code*.

¹⁴ This is an urban design analysis for the northeast embarcadero area that presents public realm improvements and urban design guidelines for new development consistent with eight design principles established during the Planning Department's analysis.

B. PROJECT SETTING

The nearest parks or public open spaces are the Levi's Plaza and Seawall Lot approximately 0.3 miles to the north of the project site, Sydney G. Walton Square approximately 0.1 miles to the south of the project site on Jackson Street, Sue Bierman Park approximately 0.3 miles to the south of the project site along the Embarcadero, and the Filbert Steps approximately 0.5 miles to the west of the project site. The piers and sidewalks along the Embarcadero (one block to the east) are used for recreation and entertainment including the Exploratorium to the north and Ferry Building to the south.

2. CUMULATIVE PROJECTS

Past, present, and reasonably foreseeable cumulative development projects within a 0.25-mile radius of the project site are listed below in Table 2 and mapped on Figure 17. These cumulative projects are either under construction or the subject of an Environmental Evaluation Application currently on file with the Planning Department. As shown in Table 2, reasonably foreseeable projects within a 0.25-mile radius of the project site includes new residential, museum, hotel and theater development as well as space for community, retail, and office uses.

TABLE 2 CUMULATIVE PROJECTS WITHIN A 0.25-MILE RADIUS OF THE PROPOSED PROJECT

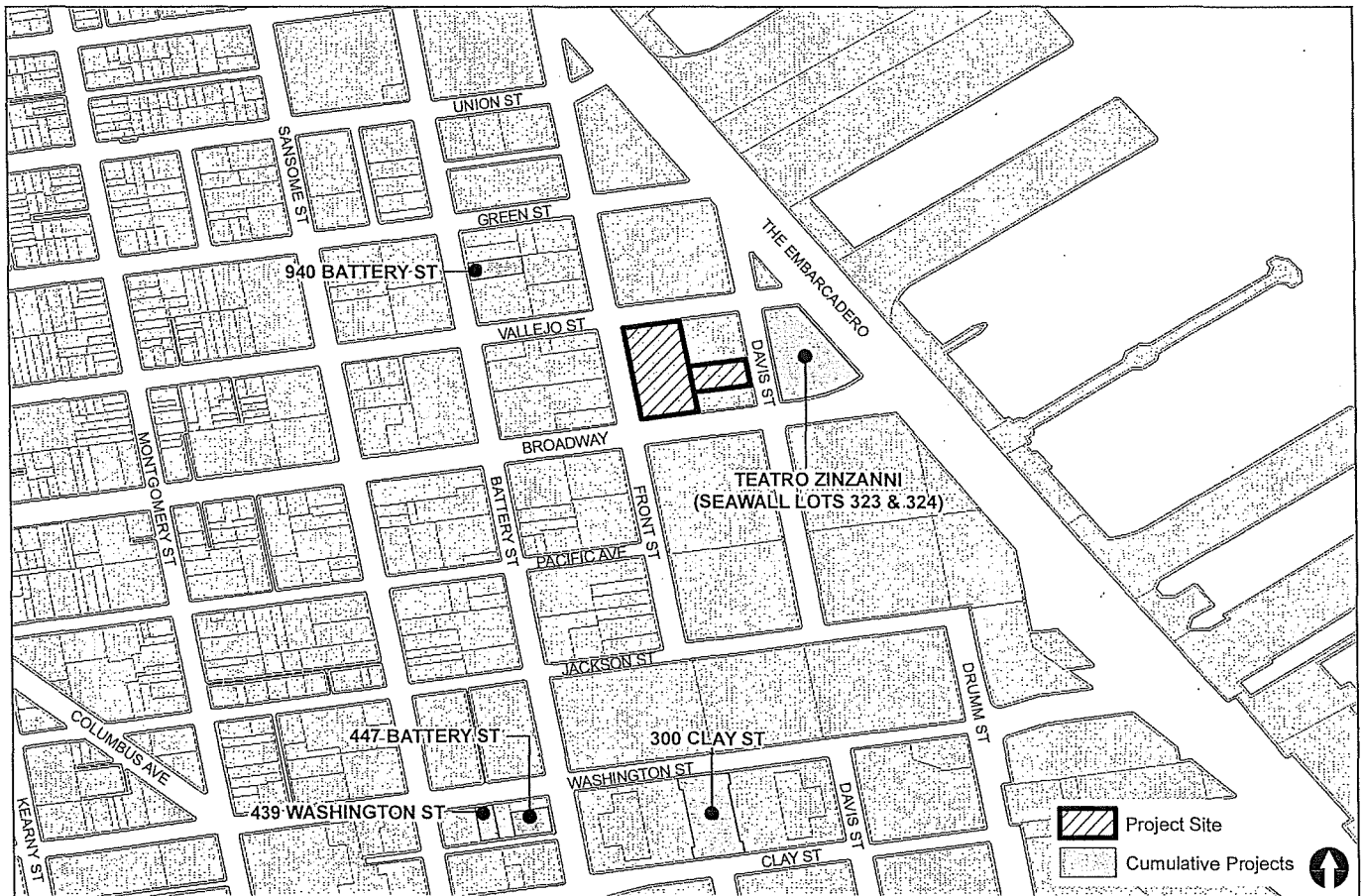
#	Address	Case File No.	Dwelling Units	Open	Retail	Office	Museum	Hotel	Theater
				Space					
				(Gross Square Feet)					
1	Seawall Lots 323/324	2015-016326ENV		7,500				183,000 (200 rooms)	25,000 (280 seats)
2	439 Washington Street	2015-015553ENV			4,500			101,000 (189 rooms)	
3	447 Battery Street	2014-1036ENV	9		2,470			85,510 (188 rooms)	
4	300 Clay Street ^a	2015-006980ENV				16,230			
5	940 Battery Street ^b	2015-001033ENV			625	11,470	28,669		
Totals			9	7,500	7,595	27,700	28,669	369,510	25,000

Notes:

a. The 300 Clay Street project would enclose approximately 16,230 gross square feet of open air space on the ground and plaza levels within an existing office building.

b. The 940 Battery Street is for interior and exterior alterations to create a new fourth floor and fifth floor at the roof level. This project also proposes a change of use from warehouse to museum and retail.

Source: City of San Francisco.



Source: City of San Francisco, 2017; PlaceWorks, 2018.

88 BROADWAY & 735 DAVIS STREET PROJECT INITIAL STUDY

Case No. 2016-007850ENV

FIGURE 17
Cumulative Projects within 0.25-mile Radius

B. PROJECT SETTING

Cumulative analysis under CEQA may use a list-based or projections-based approach depending on the environmental topic and resources addressed. The above Table 2 represents cumulative projects within a 0.25-mile radius of the project site that may be considered in determining environmental effects that are more localized. A projections-based analysis would consider county-wide or regional growth and is typically based on growth projections developed by the Association of Bay Area Governments (ABAG) and refined by Planning Department staff.

For analysis of potential cumulative effects, each environmental topic herein briefly identifies the cumulative context relevant to that topic. For example, for shadow impacts, the cumulative context would be nearby projects that could contribute to cumulative shadow effects on the same open space shadowed by the project. In other cases, such as air quality, the context would be the San Francisco Bay Area Basin.

C. Compatibility With Existing Zoning and Plans

	Applicable	Not Applicable
Discuss any variances, special authorizations, or changes proposed to the Planning Code or Zoning Map, if applicable.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Discuss any conflicts with any adopted plans and goals of the City or Region, if applicable.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Discuss any approvals and/or permits from City departments other than the Planning Department or the Department of Building Inspection, or from Regional, State, or Federal Agencies.	<input checked="" type="checkbox"/>	<input type="checkbox"/>

1. SAN FRANCISCO PLANNING CODE

All projects for the City of San Francisco are required to abide by the Planning Code, which includes the City's zoning, land uses, densities, and building configurations requirements. Unless projects conform to the Planning Code, including any exceptions, special authorizations, and amendments, permits to construct, alter, or demolish buildings may not be issued. The following section presents federal, local, and regional plans, policies, and goals that are applicable to the proposed project. Additionally, where inconsistencies are identified that could result in physical effects on the environment, the reader is directed to analysis of those effects below in section E: Evaluation of Environmental Impacts. Any conflicts of the project with applicable plans and policies would not, in and of themselves, constitute significant environmental impacts. Decision-makers will consider the consistency of the project that do not directly relate to physical environmental issues when they determine whether to approve or disapprove the project.

Overall, the proposed project would be consistent with the Planning Code as listed below, and the physical environmental impacts of the proposed project are analyzed in this initial study:

- **Zoning District:** The project site is within the C-2 (Community Business) Zoning District. The proposed project would develop 125 affordable family units and 53 affordable senior units in two 6-story buildings, which would include approximately 5,300 square feet of commercial development and an approximately 4,300-square-foot childcare facility in the family housing building and approximately 1,200 square feet of commercial space in the senior housing building. Per Planning Code section 210.1, residential, commercial, and institutional uses are principally permitted uses within the C-2 Zoning District.
- **Height and Bulk:** The project site is within the 65-X Height and Bulk District, which has a 65-foot maximum height and no bulk limit. Mechanical equipment and appurtenances, and elevator and stair penthouses are permitted to extend an additional 10 feet beyond the height limit, pursuant to Planning Code section 260(b). The proposed six-story buildings would be 65 feet tall and with roof top appurtenances would extend to a maximum of 75 feet tall. Accordingly, the proposed project would meet the City's height restrictions for the project site.

C. COMPATIBILITY WITH EXISTING ZONING AND PLANS

- **Residential Density:** The base density (dwelling units per acre) permitted for the proposed project is based on its C-2 Zoning designation, which permits one unit per 200 square feet of lot area. Therefore, under the C-2 Zoning District, 243 units are permitted.¹⁵ However, if a PUD is granted, the proposed project would be allowed the density equivalent to the next highest zoning district, minus one unit (C-3 Zoning District), which allows one unit per 125 square feet of lot area. Therefore, the permitted density through a PUD would be 388 units.¹⁶ Additionally, pursuant to section 202.2(f)(E) of the Planning Code and relevant zoning sections, more density would be permitted for senior housing. The proposed 178 units is within the permitted density under any of these scenarios; thus, the proposed project is consistent with the City's density requirements.
- **Residential Open Space:** Per Planning Code section 135, the C-2 Zoning District abides by the nearest R (Residential) district to establish the residential density and open space requirements. The adjacent RC-4 Zoning District requires 36 square feet of private open space or 48 square feet of common open space for each dwelling unit. Under this requirement the proposed project is required to provide 48 square feet of common open space per family housing unit. The proposed approximate 9,000 square feet of common open space in the family housing building would exceed the City's 6,000-square-foot¹⁷ open space requirements by approximately 3,000 square feet. Per Planning Code section 202.2(f)(1) the proposed project is required to provide 24 square feet of common open space per senior housing unit. The approximately 32,100 square feet of common open space proposed in the senior housing building would exceed the City's 1,272-square-foot¹⁸ open space requirements by approximately 1,800 square feet. Accordingly, the proposed project would comply with the City's open space requirements. Per section 135(g)(2), the proposed project would also be required to meet the City's inner court dimension requirements.
- **Rear Yard Requirements:** The rear yard requirements under Planning Code sections 130 and 134 are intended to ensure the protection and continuation of established mid-block, landscaped open spaces, and maintenance of a scale of development appropriate to each zoning district, consistent with the location of adjacent buildings. Under Planning Code section 134, a rear yard equivalent to 25 percent of the average lot depth, starting at the lowest story containing a dwelling unit and at each succeeding level of the building is required. The proposed project is required to provide 9,453 square feet of rear yard space for the family housing building and 2,701 square feet of rear yard space for the senior housing building. Open space for residents is proposed; however, the open space will not be a rear yard at 25 percent of lot depth. Thus, the proposed project would require modifications through a PUD for the proposed rear yard configuration because the project would not provide a rear yard at 25 percent of lot depth per Planning Code sections 130 and 134.
- **Active Depth Setbacks:** Planning Code section 145.1 regulates street frontages to ensure that they are attractive and pedestrian-oriented, and are appropriate and compatible with the surrounding

¹⁵ 48,620-square-foot lot/200 square feet of lot area = 243.1 units

¹⁶ 48,620-square-foot lot/125 square feet of lot area = 388.96 units

¹⁷ 48 square feet x 125 units = 6,000 square feet required open space

¹⁸ 24 square feet x 53 units = 1,272 square feet required open space

C. COMPATIBILITY WITH EXISTING ZONING AND PLANS

buildings and uses. The proposed project would require a PUD modification for the proposed active use depth setback per section 145.1.

- **Dwelling Unit Exposure:** Planning Code section 140 requires that each dwelling unit have at least one room that meets the 120-square-foot minimum superficial floor area requirement of section 503 of the *San Francisco Housing Code* which has a window that faces directly on a street right-of-way, code-complying rear yard, or an appropriately sized courtyard. The proposed project would require a modification through the PUD process for 10 dwelling units in the senior housing building located on the mid-block passage because these units face onto courtyards that do not meet the minimum dimensional requirements in Planning Code section 140.
- **Parking and Loading:** Pursuant to Planning Code section 151, vehicular parking is not required for affordable housing or senior housing projects, nor is vehicular parking required for the commercial uses. Per Planning Code section 151, the childcare use requires one vehicular parking space for each 25 children to be accommodated at any one time, where the number of such children exceeds 24. The childcare facility is expected to accommodate up to 55 children, requiring two vehicular parking spaces.¹⁹ The proposed project does not include vehicular parking. Therefore, the proposed project would meet the residential and general commercial parking requirements, but would not meet the childcare parking requirement and requires an exception from the Planning Code. Pursuant to Planning Code section 152.1, one off-street loading space is required for residential use between 100,001 to 200,000 gsf. No off-street loading spaces are proposed. However, the conversion of six existing metered parking spaces to three 35-foot-long on-street loading spaces is proposed for the project. As shown on Figure 2, a freight loading zone would be provided on Front Street for the family housing building, a passenger loading zone would be provided on Vallejo Street for the childcare facility, and another passenger loading zone would be provided on Davis Street for the senior housing building. Therefore, the proposed project would require a PUD modification per section 152 because no off-street loading would be provided.

Planning Code sections 155.1 and 155.2 require that the project provide *class 1* and *class 2* bicycle parking for residential (family and senior housing) and commercial (retail and childcare) uses. The project proposes bicycle parking rooms in both buildings on Level 1 (ground level) (see Figure 3). The family housing building requires 110 *class 1* bicycle parking spaces as follows: 106 residential spaces, one commercial space and three childcare facility spaces. Additionally, 16 *class 2* bicycle parking spaces are required as follows: six residential spaces, seven commercial spaces, and three childcare facility spaces. The family housing building would provide 110 *class 1* and 16 *class 2* bicycle parking spaces and would therefore meet these requirements. The senior housing building requires five *class 1* bicycle parking spaces as follows: five residential spaces and zero commercial spaces. The senior housing building also requires four *class 2* bicycle parking spaces as follows: two residential spaces and two commercial spaces. The senior housing building would provide 10 *class 1* and four *class 2* spaces and would therefore meets these requirements. Accordingly, the proposed project meets the City's bicycle parking requirements.

¹⁹ AECOM, 2017. *88 Broadway Transportation Impact Study*, San Francisco, CA, June 20. page 8.

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- **Street Trees:** Public Works Code section 806(d)(2) requires one 24-inch box tree be planted for every 20 feet of property frontage along each street, with any remaining fraction of 10 feet or more of frontage requiring an additional tree. Additionally, the proposed project is required to make pedestrian and streetscape improvements to the public right-of-way as set forth in the *Better Streets Plan* (Planning Code section 138.1) for projects involving more than 250 feet of linear street frontage and an entire blockface. There are no existing street trees adjacent to the project site. The proposed project would add a total of 21 trees along the frontages on Vallejo Street, Davis Street, Broadway, and Front Street. For the senior housing development, three street trees are required for the 30-foot frontage on Davis Street and three street trees are proposed. However, for the family housing building, 27 trees are required but only 18 street trees are proposed. The proposed project does not comply with the street tree ordinance required by the City and is seeking an approval of a waiver for providing nine fewer trees than is required under Public Works Code section 806. To fulfill the requirement, an in-lieu fee shall be paid or alternative landscaping is required in amount comparable to or greater than the number of street trees waived.

Additionally, the City's Urban Forestry Ordinance, Public Works Code sections 801 et seq., requires a permit from Public Works to remove any protected trees which include landmark trees, significant trees, or street trees located on private or public property anywhere within the territorial limits of the City and County of San Francisco. The project site does not include any on-site or streets trees under existing conditions and therefore would not violate the ordinance.

- **Historic District/Special Use District:** The project site is a 'non-contributing'²⁰ property within the Northeast Waterfront Landmark District, which is a designated historic district per Planning Code Article 10. As described in Appendix D of Article 10, this historic district is maintained as an architecturally historic and aesthetically historic significant area, and Appendix D establishes the location and boundaries of the historic district and outlines the acceptable styles and criteria for alterations and new construction. Due to the location of the project site, the proposed project is subject to the review and approval of a Certificate of Appropriateness application by the Historic Preservation Commission for compatibility with the Northeast Waterfront Landmark District. The review would determine if the proposed project is consistent with sections 6 and 7 of Appendix D of Article 10, which require that the proposed project maintain the scale and basic character of the Northeast Waterfront Landmark District. Section 6 and section 7 describe the requirements for the overall form and continuity, scale, and proportion, fenestration (i.e., the arrangement of windows and doors on the elevations of a building), and types of building materials, color, texture, and use of decorative elements appropriate for this historic district. Per the requirements in Appendix D, fenestration must be rhythmically spaced and related in shape

²⁰ According to Appendix D of Article 10 of the *San Francisco Planning Code*, the characteristics of the contributing buildings in the Northeast Waterfront Landmark District (a historic district) important to compatibility of new construction include: height, scale and proportion, detail, fenestration, materials, color, texture, façade line continuity, skylights, and infill construction. Under existing conditions, the project site does not include any buildings; therefore, the project site does not contain a contributor to the Northeast Waterfront Landmark District in which it is located.

C. COMPATIBILITY WITH EXISTING ZONING AND PLANS

and proportion to those in nearby buildings, and have building materials that are rough-textured in appearance similar to surrounding buildings in the district.

The project is also within the Waterfront Special Use District No. 3, and is subject to the requirements outlined in Planning Code section 240.3. Planning Code section 240 sets forth regulations to preserve the unique characteristics of waterfront special use districts, requiring developments to undergo a Waterfront Design Review process. Planning Code section 240.3 discusses the specific design, land use, scale, and other factors for development within Waterfront Special Use District No. 3 to ensure that new developments adhere to the character of surrounding areas of the city, have higher portions near Telegraph Hill and lower portions near the Embarcadero, conform to the Northeast Waterfront Area Plan, and are consistent with the Waterfront Land Use Plan's Waterfront Design and Access goals, policies, and criteria.

The project is an affordable housing project and shall undergo administrative review and approval procedures for an Affordable Housing Project Authorization (Planning Code section 315). As described above, implementation of the proposed project would require modification of the Planning Code requirements for rear yard setbacks, dwelling unit exposure, active use depth setback, and vehicular parking (for the childcare facility) through the approval of a PUD. The project also seeks an approval of a waiver for providing nine fewer trees than is required under Public Works Code section 806. In addition, the project requires review and approval of a Certificate of Appropriateness from the Historic Preservation Commission for new construction within the Northeast Waterfront Landmark District (a Planning Code Article 10 historic district).

2. PLANS AND POLICIES

SAN FRANCISCO GENERAL PLAN

In addition to the Planning Code, the proposed project is subject to the General Plan. The General Plan provides general policies and objectives to guide land use decisions. The General Plan contains 10 elements (Commerce and Industry, Recreation and Open Space, Housing, Community Facilities, Urban Design, Environmental Protection, Transportation, Air Quality, Community Safety, and Arts) that set forth goals, policies, and objectives for physical development within the city. In addition, the General Plan includes area plans that outline goals and objectives for specific geographic planning areas, such as the *Northeast Waterfront Area Plan*, which includes the project site.

A conflict between a proposed project and a General Plan policy does not, in itself, indicate a significant effect on the environment within the context of CEQA. Any physical environmental impacts that could result from such conflicts are analyzed in this initial study. Where inconsistencies are identified that could result in physical effects on the environment, the reader is directed to the analysis of those effects in section E, Evaluation of Environmental Effects. In general, potential conflicts with the General Plan are considered by the decisions-makers (typically the Planning Commission) independent of the environmental review process. Thus, in addition to considering inconsistencies that affect environmental issues, the Planning Commission considers other potential inconsistencies with the General Plan, independent of the environmental review process, as part of the decision to approve or disapprove a

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proposed project. Any potential conflict not identified in this environmental document would be considered in that context and would not alter the physical environmental effects of the proposed project that are analyzed in this initial study.

Urban Design Element

The Urban Design Element addresses San Francisco's physical character and environment with respect to development and preservation.²¹ The element primarily addresses objectives and policies relating to review of new development, or substantial alterations to existing buildings. Urban design policies require proposed projects to take into account the surrounding urban context through building design and placement. Policies strive to integrate proposed buildings with existing buildings by designing building height and bulk that respects adjacent buildings, establishing and protecting visual relationships and transitions, and respecting older or historical structures. Specifically, Policy 2.6 states that proposed buildings respect the character of older surrounding buildings. Additionally, Policy 2.6 protects prevailing heights, building lines, and dominant building features from new construction, ensuring that new construction complements the surrounding development using similar detail, texture, color, and materials. The proposed project would not obviously or substantially conflict with any goals, policies, or objectives of the General Plan, including those of the Urban Design Element. The proposed buildings would range from 6 to 4 stories in height, which is consistent with the prevailing heights in the area. In addition, the proposed project is subject to the approval of a Certificate of Appropriateness from the Historic Preservation Commission for new construction in the Northeast Waterfront Landmark District, which would review the project for compatibility with the surrounding development.

Northeast Waterfront Area Plan

As part of the General Plan, the *Northeast Waterfront Area Plan* (Area Plan) includes goals, policies, and objectives to maintain, expand, and allow new shipping, commercial, and recreational maritime operations that provide improved and expanded commercial and recreational maritime facilities, open spaces and public access on the waterfront. Residential and commercial uses, such as housing, offices, neighborhood-oriented retail and service businesses, and community and cultural facilities, are identified as appropriate uses in the inland areas (*i.e.*, where the project site is located). The Area Plan also aims to re-integrate the waterfront area with the fabric of the City and continue to implement a robust multi-modal movement network that would connect recreational areas with community facilities, historic and architecturally significant buildings, residential areas, and employment centers. The project site is within the Base of Telegraph Hill Subarea, which is one of the Area Plan's four subareas and contains Pier 35 through Pier 7. The Area Plan recommends general objectives and policies for Land Use, Transportation, and Urban Design and specific objectives and policies that are explicit to each subarea. The following policies are examples of applicable policies for the proposed project:

- Policy 10.1 outlines preservation of physical form of the waterfront and reinforces San Francisco's distinctive hill form by maintaining low structures near the water, with an increase in vertical development near hills or the downtown core area.

²¹ San Francisco General Plan, Urban Design Element (adopted by Planning Commission Resolution No. 12040, 1990, as amended through 2005.

C. COMPATIBILITY WITH EXISTING ZONING AND PLANS

- Policy 17.2 ensures the compatibility of new development with the historic and architectural maritime character of the Northeast Waterfront Landmark District.
- For example, Policy 18.2 encourages the development of residential uses as a major use on inland sites in this area, and states that such uses should be especially encouraged immediately adjacent to Telegraph Hill and at the upper levels of commercial development.
- Policy 20.1 maintains low structures near the water, with an increase in vertical development towards Telegraph Hill.

The proposed project would not obviously or substantially conflict with any goals, policies, or objectives of the General Plan, including those of the Area Plan. The proposed project would step down from 6 stories at the Front Street property line to 4 stories at the Davis Street property line, decreasing in height in proximity to the waterfront. In addition, an approximately 5-foot step back on the sixth floor of the Front Street façade of the proposed family housing building would reduce the appearance of mass along that property line making the building appear closer to 5 stories tall from Front Street. The stepping down of the proposed buildings would be consistent with the Policies 10.1 and 20.1, which call for lower structures near the water with an increase in height in the direction of Telegraph Hill and the downtown area. Furthermore, the Historic Preservation Commission's review of the proposed project for a Certificate of Appropriateness for new construction in the Northeast Waterfront Landmark District would ensure conformance with Policy 17.2. The compatibility of the proposed project with General Plan goals, policies, and objectives that do not relate to physical environmental issues would be considered by decision-makers as part of their decision whether to approve or disapprove the proposed project. The proposed project does not encroach upon the Gibbs-Sanborn Warehouse historic landmarks and is subject to the approval of a Certificate of Appropriateness from the Historic Preservation Commission for new construction in the Northeast Waterfront Landmark District.

The project site is within the boundary of the *Northeast Embarcadero Study: An Urban Design Analysis for the Northeast Embarcadero Area* (Northeast Embarcadero Study), prepared by the City's Planning Department. This study was conducted to assess empty surface parking lots, including the project site, along the west side of the Embarcadero for future infill development and was adopted on July 8, 2010. The guidelines from this study were incorporated into the *Northeast Waterfront Area Plan*. The objectives of the Northeast Embarcadero Study are to create site guidelines that are beneficial to the pedestrian realm, establish east-west connections between the City and the Bay, establish an appropriate streetscape for pedestrians, create open space connections, and ensure that new development fits into context of historic properties. The proposed project is compatible with the heights of the surrounding buildings and provides east-west and north-south landscaped mid-block passageways located between the two proposed buildings that generally accommodate pedestrians and cyclists.

WATERFRONT LAND USE PLAN

The portion of the project site that would contain the family housing building (the parcel at 88 Broadway) is within the boundary of the Port of San Francisco's *Waterfront Land Use Plan* (Land Use Plan), which was

C. COMPATIBILITY WITH EXISTING ZONING AND PLANS

adopted in 1997 and is currently being updated.²² The Port of San Francisco Commission (Port Commission) is responsible for the seven and one-half miles of San Francisco Waterfront adjacent to San Francisco Bay, which the Port of San Francisco develops, markets, leases, administers, manages, and maintains. The project will require a ground lease agreement with the Port of San Francisco for the 88 Broadway parcel. Under the Land Use Plan, the 88 Broadway parcel is identified as Seawall Lot 322-I and is within the Northeast Waterfront Subarea. This subarea extends from Pier 35 to Pier 7 and is part of a former maritime and industrial district, which is successfully evolving into a vibrant urban neighborhood. The 88 Broadway parcel is a designated Waterfront Mixed Use Opportunity Area which are areas identified for mixed-use development.²³ Additionally, the Land Use Plan's Waterfront Design and Access Element includes the following policies that seek to ensure development on seawall lots under Port ownership are compatible with the seven city neighborhoods that begin at the waterfront, including the Base of Telegraph Hill Neighborhood:

- Respect City Form: Respect city form by stepping new building down toward The Embarcadero or other waterfront roadways.
- Neighborhood Scale and Character: New buildings should respect the scale and architectural character of adjacent neighborhoods.

The residential uses, open space, retail uses, architectural features, and community facilities identified in the proposed project are among the approved land uses under the Land Use Plan.²⁴ The proposed project is subject to review by the Waterfront Design Advisory Committee for consistency with the policies and design criteria Land Use Plan's Waterfront Design and Access Element to ensure the proposed project would be compatible with the surrounding neighborhood.

THE ACCOUNTABLE PLANNING INITIATIVE

In November 1986, the voters of San Francisco approved Proposition M, the Accountable Planning Initiative, which added section 101.1 to the Planning Code to establish eight Priority Policies. The Priority Policies, which provide general policies and objectives to guide certain land use decisions, contain policies that relate to physical environmental issues. Where appropriate these issues are discussed in the relevant environmental topical subsection of section E, Evaluation of Environmental Impacts, of this initial study. These policies are listed as follows with a description of the environmental topic subsection where they are addressed: 1) preservation and enhancement of neighborhood-serving retail uses; 2) protection of neighborhood character (see section E.3, Cultural Resources); 3) preservation and enhancement of affordable housing; (see section E.1, Land Use and Planning); 4) discouragement of commuter automobiles (see section E.4, Transportation and Circulation); 5) protection of industrial and service land uses from commercial office development and enhancement of resident employment and

²² Port of San Francisco, *Waterfront Plan Update*. Available at: <http://sfport.com/waterfront-plan-update>, accessed on March 1, 2017.

²³ Port of San Francisco, Waterfront Map. Available at: http://sfport.com/ftp/uploadedfiles/about_us/divisions/planning_development/MapD-Waterfront.pdf, accessed on March 1, 2017

²⁴ Port of San Francisco. Available at: <http://sfport.com/sites/default/files/FileCenter/Documents/8521-ch4NEWF.pdf>, page 7, accessed on March 1, 2017.

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business ownership; 6) maximization of earthquake preparedness (see section E.13, Geology and Soils); 7) landmark and historic building preservation (see section E.3, Cultural Resources); and 8) protection of open space (see section E.8, Wind and Shadow, and section E.9, Recreation).

Prior to issuing a permit for any project which requires an initial study under CEQA; prior to issuing a permit for any demolition, conversion, or change of use; and prior to taking any action which requires a finding of inconsistency with the General Plan, the City is required to find that the proposed project would be consistent with the Priority Policies. As noted above, the physical environmental effects of the project as they may relate to the Priority Policies are addressed in the analyses in this initial study. The information contained in this initial study will be referenced as appropriate in the Planning Department's comprehensive project analysis and findings regarding the consistency of the proposed project with the Priority Policies.

OTHER LOCAL PLANS AND POLICIES

In addition to the *San Francisco General Plan*, the *Northeast Waterfront Area Plan*, the *Waterfront Land Use Plan*, the *Northeast Embarcadero Study*, the *Planning Code and Zoning Maps*, and the *Accountable Planning Initiative*, other local plans and policies that are relevant to the proposed project are discussed below.

- *San Francisco Sustainability Plan* is a blueprint for achieving long-term environmental sustainability by addressing specific environmental issues including, but not limited to, air quality, climate change, energy, ozone depletion, and transportation. The goal of the *San Francisco Sustainability Plan* is to enable the people of San Francisco to meet their present needs without sacrificing the ability of future generations to meet their own needs.
- *Climate Action Plan for San Francisco: Local Actions to Reduce Greenhouse Emissions* is a local action plan that examines the causes of global climate change and the human activities that contribute to global warming, provides projections of climate change impacts on California and San Francisco based on recent scientific reports, presents estimates of San Francisco's baseline greenhouse gas (GHG) emissions inventory and reduction targets, and describes recommended actions for reducing the City's GHG emissions. The 2013 Climate Action Strategy is an update to this plan.
- *San Francisco Transit First Policy (City Charter, section 8A.115)* is a set of principles that underscore the City's commitment to prioritizing travel by transit, bicycle, and on foot over travel by private automobile. These principles are embodied in the objectives and policies of the Transportation Element of the *General Plan*. All City boards, commissions, and departments are required by law to implement Transit First principles in conducting the City's affairs.
- *San Francisco Bicycle Plan* is a citywide bicycle transportation plan that identifies short-term, long-term, and other minor improvements to San Francisco's bicycle route network. The overall goal of the *San Francisco Bicycle Plan* is to make bicycling an integral part of daily life in San Francisco.
- *Better Streets Plan* consists of illustrative typologies, standards, and guidelines for the design of San Francisco's pedestrian environment, with the central focus of enhancing the livability of the City's streets.

3. REGIONAL PLANS AND POLICIES

The proposed project must also be evaluated for consistency with regional plans and policies whose environmental, land use, and transportation plans and policies consider the growth and development on the nine-county San Francisco Bay Area. Some of these plans are advisory, and some include specific goals and provisions that must be considered when evaluating a project under CEQA. The regional plans and policies that are relevant to the proposed project are discussed below.

- *Plan Bay Area* is the principal regional planning document that guides planning in the nine-county Bay Area, including the region's first Sustainable Communities Strategy, developed in accordance with Senate Bill 375 and jointly adopted by ABAG and the Metropolitan Transportation Commission (MTC) first on July 18, 2013 with the update, *Plan Bay Area 2040* adopted on July 26, 2017. *Plan Bay Area 2040* is a long-range land use and transportation plan that covers the period from 2010 to 2040 and is scheduled to be updated every four years. *Plan Bay Area 2040* calls for concentrating housing and job growth around transit corridors, particularly within areas identified by local jurisdictions as Priority Development Areas (PDAs). In addition, *Plan Bay Area 2040* specifies strategies and investments for maintaining, managing, and improving the region's multi-modal transportation network and proposes transportation projects and programs to be implemented with reasonably anticipated revenue. The project site is located in the Port of San Francisco PDA.²⁵ *Plan Bay Area 2040* is a limited and focused update to the 2013 *Plan Bay Area*, with updated planning assumptions that incorporate key economic, demographic, and financial trends from the last several years. *Plan Bay Area 2040* is an advisory policy document used to assist in the development of local and regional plans and policy documents, and MTC's 2040 *Regional Transportation Plan*, which is a policy document that outlines transportation projects for highway, transit, rail, and related uses through 2040 for the nine Bay Area counties.
- *Regional Housing Needs Plan for the San Francisco Bay Area: 2014–2022* reflects projected future population growth in the Bay Area region as determined by ABAG and addresses housing needs across income levels for each jurisdiction in California. All of the Bay Area's 101 cities and nine counties are given a share of the Bay Area's total regional housing need. The Bay Area's regional housing need is allocated to each jurisdiction by the California Department of Housing and Community Development and finalized through negotiations with ABAG.
- *2017 Clean Air Plan: Spare the Air, Cool the Climate* (2017 Clean Air Plan) is the Bay Area Air Quality Management District's (BAAQMD) update to the *Bay Area 2010 Clean Air Plan*. The 2017 Clean Air Plan is based on the "all feasible measures" approach to meet the requirements of the California Clean Air Act to reduce ozone and provide a control strategy to reduce ozone, particulate matter (PM), air toxics, and GHG emissions throughout the region.
- *Water Quality Control Plan for the San Francisco Bay Basin* (Basin Plan) is the San Francisco Regional Water Quality Control Board's master water quality control planning document. The Basin Plan designates beneficial uses and water quality objectives for waters of the state,

²⁵ Association of Bay Area Governments, *Plan Bay Area*, Priority Development Area Showcase. Available at: <http://gis.abag.ca.gov/website/PDAShowcase/>, accessed on March 1, 2017.

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including surface waters and groundwater, and includes implementation programs to achieve water quality objectives.

The proposed project is an affordable housing residential infill project near transit that is generally considered small in scale and it would not conflict with the overall intent of these regional plans and policies. Consistency with these plans are discussed in detail in sections E.2, Population and Housing, E.6, Air Quality, E.7, Greenhouse Gas Emissions, and E.14, Hydrology and Water Quality.

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D. Summary of Environmental Effects

The proposed project could potentially affect the environmental factor(s) checked below, for which mitigation measures would be required to reduce potentially significant impacts to less-than-significant levels. The following pages present a more detailed checklist and discussion of each environmental factor.

- | | | |
|---|--|---|
| <input type="checkbox"/> Land Use | <input type="checkbox"/> Greenhouse Gas Emissions | <input type="checkbox"/> Geology and Soils |
| <input type="checkbox"/> Population and Housing | <input type="checkbox"/> Wind and Shadow | <input type="checkbox"/> Hydrology and Water Quality |
| <input checked="" type="checkbox"/> Cultural Resources | <input type="checkbox"/> Recreation | <input type="checkbox"/> Hazards/Hazardous Materials |
| <input type="checkbox"/> Transportation and Circulation | <input type="checkbox"/> Utilities and Service Systems | <input type="checkbox"/> Mineral/Energy |
| <input type="checkbox"/> Noise | <input type="checkbox"/> Public Services | <input type="checkbox"/> Agricultural and Forest |
| <input type="checkbox"/> Air Quality | <input type="checkbox"/> Biological Resources | <input type="checkbox"/> Mandatory Findings of Significance |

1. APPROACH TO ENVIRONMENTAL REVIEW

This initial study examines the proposed project to identify potential effects on the environment. For each checklist item, the evaluation has considered the impacts of the proposed project both individually and cumulatively, with the exception of greenhouse gas emissions (GHG), which is only evaluated in the cumulative context. All items on the initial study checklist that have been checked "Less than Significant with Mitigation Incorporated," "Less than Significant Impact," "No Impact" or "Not Applicable" indicate that, upon evaluation, staff has determined that the proposed project could not have a significant adverse environmental effect relating to that topic. A discussion is included for those issues checked "Less than Significant with Mitigation Incorporated" and "Less than Significant Impact" and for most items checked with "No Impact" or "Not Applicable." For all of the items checked "No Impact" or "Not Applicable" without discussion, the conclusions regarding potential significant adverse environmental effects are based upon field observation, staff experience, and expertise on similar projects, and/or standard reference material available within the Planning Department, such as the City's *Transportation Impact Analysis Guidelines for Environmental Review*, or the California Natural Diversity Database and maps published by the California Department of Fish and Wildlife.

SENATE BILL 743 AND PUBLIC RESOURCES CODE SECTION 21099

On September 27, 2013, Senate Bill (SB) 743 was signed into law and became effective on January 1, 2014. Among other provisions, SB 743 amends CEQA by adding Public Resources Code section 21099 regarding analysis of aesthetics, parking and transportation impacts for urban infill projects.²⁶

²⁶ Public Resources Code section 21099(d).

D. SUMMARY OF ENVIRONMENTAL EFFECTS

Aesthetics and Parking Analysis

CEQA section 21099(d)(1), states, “Aesthetic and parking impacts of a residential, mixed- use residential, or employment center project on an infill site located within a transit priority area shall not be considered significant impacts on the environment.” Accordingly, aesthetics and parking are no longer to be considered in determining if a project has the potential to result in significant environmental effects for projects that meet all of the following three criteria:

- a) The project is in a transit priority area,²⁷
- b) The project is on an infill site,²⁸ and
- c) The project is residential, mixed-use residential, or an employment center.²⁹

The proposed project meets each of the above three criteria because it (1) is located within 0.50 miles of several rail and bus transit (see section A.1, Existing Conditions); (2) is located on an infill site that is a surface parking lot and is surrounded by other urban development (see section A.1, Existing Conditions); and (3) would be a residential project with ground-floor commercial space (see section A.2, Project Characteristics).³⁰ Thus, this initial study does not consider aesthetics and the adequacy of parking in determining the significance of project impacts under CEQA.

The Planning Department recognizes that the public and decision makers nonetheless may be interested in information pertaining to the aesthetic effects of a proposed project and may desire that such information be provided as part of the environmental review process. In addition, CEQA section 21099(d)(2) states that a Lead Agency maintains the authority to consider aesthetic impacts pursuant to local design review ordinances or other discretionary powers and that aesthetics impacts do not include impacts on historical or cultural resources (e.g., historic architectural resources). As such, the Planning Department does consider aesthetics for design review and to evaluate effects on historic and cultural resources. Therefore, some of the information that would have otherwise been provided in an aesthetics section of this initial study (such as project renderings and photo simulations) are included in section A, Project Description. Specifically, Figures 12, 13, 14, and 15 are provided to depict the project solely for informational purposes and are not used to determine the significance of the environmental impacts of the project, pursuant to CEQA.

²⁷ Public Resources Code section 21099(a)(7) defines a “transit priority area” as an area within one-half mile of an existing or planned major transit stop. A “major transit stop” is defined in section 21064.3 of the California Public Resources Code as a 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.

²⁸ Public Resources Code section 21099(a)(4) defines an “infill site” as a lot located within an urban area that has been previously developed, or a vacant site where at least 75 percent of the perimeter of the site adjoins, or is separated only by an improved public right-of-way from, parcels that are developed with qualified urban uses.

²⁹ Public Resources Code section 21099(a) defines an “employment center” as a project located on property zoned for commercial uses with a floor area ratio of no less than 0.75 and located within a transit priority area.

³⁰ San Francisco Planning Department. Eligibility Checklist: CEQA section 21099 – Modernization of Transportation Analysis for 88 Broadway, March 10, 2017.

D. SUMMARY OF ENVIRONMENTAL EFFECTS

Automobile Delay and Vehicle Miles Traveled Analysis

CEQA section 21099(b)(1) requires that the State Office of Planning and Research (OPR) develop revisions to the CEQA Guidelines establishing criteria for determining the significance of transportation impacts of projects that “promote the reduction of GHG emissions, the development of multimodal transportation networks, and a diversity of land uses.” CEQA section 21099(b)(2) states that upon certification of the revised guidelines for determining transportation impacts pursuant to section 21099(b)(1), automobile delay, as described solely by level of service or similar measures of vehicular capacity or traffic congestion shall not be considered a significant impact on the environment under CEQA. In January 2016, OPR published a Revised Proposal on Updates to the CEQA Guidelines on Evaluating Transportation Impacts in CEQA for public review and comment. The update recommended that transportation impacts for projects be measured using a vehicle miles traveled (VMT) metric. On March 3, 2016, in anticipation of the future certification of the revised CEQA Guidelines, the San Francisco Planning Commission adopted OPR’s recommendation to use the VMT metric instead of automobile delay to evaluate the transportation impacts of projects (Resolution 19579). (Note: the VMT metric does not apply to the analysis of impacts on non-automobile modes of travel such as riding transit, walking, and bicycling.) Accordingly, this initial study does not contain a discussion of automobile delay impacts. Instead, a VMT and induced automobile travel impact analysis is provided under section E.4, Transportation and Circulation. The topic of automobile delay, nonetheless, may be considered by decision-makers, independent of the environmental review process, as part of their decision to approve, modify, or disapprove the proposed project.

D. SUMMARY OF ENVIRONMENTAL EFFECTS

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E. EVALUATION OF ENVIRONMENTAL IMPACTS

E. Evaluation of Environmental Impacts

E.1 LAND USE AND LAND USE PLANNING

Topics:	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact	Not Applicable
LAND USE AND LAND USE PLANNING – Would the project:					
a) Physically divide an established community?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Impact LU-1: The proposed project would not physically divide an established community. (No Impact)

The division of an established community would typically involve the construction of a barrier to neighborhood access (*e.g.*, a new freeway segment) or removal of a means of access, such as a roadway or bridge.

The proposed project site is composed of two lots that include two surface public parking lots operated by SP Plus Parking (88 Broadway) and Aqua Parking (735 Davis Street). The proposed project would include the construction of two buildings—one building for affordable senior housing and one for affordable family housing with commercial uses on the ground floor of each building. The proposed project would not disrupt or divide the physical arrangement of existing uses adjacent to the project site or impede the passage of persons or vehicles. Those surrounding uses would be expected to continue in operation and relate to each other as they do presently, without disruption from the proposed project. Although portions of the sidewalks adjacent to the project site would likely be closed for periods of time during project construction, these closures would be temporary in nature and sidewalk access would be restored following completion of construction. The project site is located within, but on the border of the North Beach neighborhood directly adjacent to the Financial District neighborhood. The proposed senior and family housing would not construct a physical barrier to the North Beach neighborhood area or remove an existing means of access, such as a bridge or roadway that would create an impediment to the passage of persons or vehicles. The proposed project has plans for north-south and east-west pedestrian- and cyclist-friendly passages between the buildings at street level. Both mid-block passages would be open to the public during general retail hours (8:00 a.m. to 8:00 p.m.) and these hours are subject to assessment once the project is in operation. Therefore, the proposed project would have *no impact* in physically dividing an established community and would not necessitate mitigation measures.

E. EVALUATION OF ENVIRONMENTAL IMPACTS

Impact LU-2: The proposed project would not conflict with any applicable land use plans, policies, or regulations (including, but not limited to, the general plan, a specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect. (Less than Significant)

Land use impacts could be considered significant if the proposed project conflicts with any plan, policy, or regulation adopted for the purpose of avoiding an environmental effect, as discussed under section C, Compatibility with Existing Zoning and Plans. However, a conflict with a plan, policy, or regulation adopted for the purpose of mitigating an environmental effect does not necessarily indicate a significant effect on the environment.

As shown in section C, Compatibility with Existing Zoning and Plans, the proposed project would not substantially conflict with any applicable land use plan, policy, or regulation such that an adverse physical change in the environment would result.³¹ The proposed affordable family and senior housing project is permitted in the General Plan's General Commercial land use designation and the C-2 Zoning District. Additionally, the proposed project is within the Northeast Waterfront Landmark District, a historic designated neighborhood per Planning Code Article 10. Based on the Historic Resources Evaluation³² prepared for the proposed project, the proposed project would be compatible with the Northeast Waterfront Landmark District with respect to the height, scale and proportion, the lack of ornamentation, fenestration, materials, colors, visual complexity, and built to the front lot lines on all four streets that characterize the District. Additionally, the proposed project would be reviewed by the Historic Preservation Commission for approval of a Certificate of Appropriateness compliance with the Northeast Waterfront Landmark District development requirements. Further discussion of the Historic Resources Evaluation and the proposed project's potential impacts on the Northeast Waterfront Landmark District historical significance is provided in section E.3, Cultural Resources.

Environmental plans and policies are those, like the 2017 Clean Air Plan, which directly address environmental issues and/or contain targets or standards that must be met to preserve or improve characteristics of the City's physical environment. The proposed project would not conflict with any such adopted environmental plan or policy, including the 2017 Clean Air Plan, the City's *Strategies to Address Greenhouse Gas Emissions* (GHG Reduction Strategy), Urban Forestry Ordinance, and the Basin Plan, as discussed in sections E.6, Air Quality, E.7, Greenhouse Gas Emissions, E.12, Biological Resources, and E.14 Hydrology and Water Resources, respectively. Accordingly, the proposed project would have a *less-*

³¹As described in section A, Project Description, the proposed project was revised to increase the step-backs from Front Street and Broadway, modify the building materials and fenestration (i.e., the arrangement of windows and doors on the elevations of a building) that would further be compatible with the Northeast Waterfront Landmark District. As a result of this change, the dwelling unit mix of the family housing building was revised to reduce two one-bedroom units to two studio units, and one three-bedroom unit to a two-bedroom unit. In addition, text edits were made to further describe proposed project's consistency with the Planning Code and Land Use Plans in section C, Compatibility with Existing Zoning and Plans. No changes to the impact conclusions discussed in this section are required as a result of these changes and additions.

³² Knapp Architects, 2017. *Historic Resource Evaluation: 88 Broadway & 735 Davis Street*, June.

E. EVALUATION OF ENVIRONMENTAL IMPACTS

than-significant impact with regard to conflicts with land use plans, policies, or regulations. No mitigation measures are necessary.

Impact C-LU-1: The proposed project would not, in combination with reasonably foreseeable cumulative projects, result in cumulative land use impacts. (Less than Significant)

Cumulative development projects located within an approximate 0.25-mile radius of the project site are identified in Table 2 and mapped on Figure 17 in section B.2, Cumulative Projects. With the exception of the mixed-use office buildings at 300 Clay Street and 940 Battery Street, the cumulative development projects primarily include hotels with ground-floor retail, such as Seawall Lots 323/324, 439 Washington Street, and 447 Battery Street. All of the cumulative development projects would result in the intensification of land uses in the project vicinity, similar to the proposed project. However, they are infill projects that would not physically divide an established community by constructing a physical barrier to neighborhood access, such as a new freeway, or remove a means of access, such as a bridge or roadway.

Similar to the proposed 88 Broadway & 735 Davis Street Project, some future projects may require modifications, variances, or exceptions to the Planning Code requirements. In addition, as with the proposed project, two of the cumulative projects (940 Battery Street and Seawall Lots 323/324) would be reviewed by the Historic Preservation Commission for compliance with the Northeast Waterfront Landmark District development requirements. Although these cumulative development projects would introduce new infill hotel, retail, office, entertainment, and residential uses in the project vicinity, they would be required to comply with the City's zoning and land use designations. In addition, these cumulative development projects would be required to comply with the same plans, policies, and regulations as the proposed project as discussed throughout this initial study, which include, but are not limited to, the 2017 Clean Air Plan, Strategies to Address Greenhouse Gas Emissions, Noise Ordinance, section 2909 of the Police Code (Article 29), Title 24, Part 11 (2016 CALGreen Code), San Francisco Green Building Ordinance, and the San Francisco Ordinance No. 27-06 for recycling construction and demolition debris, etc. Compliance with these plans and other mandatory regulations would ensure that development of cumulative development projects would not conflict with any applicable plans, policies, or regulations adopted to avoid or mitigate an environmental effect. Thus, the proposed project, in combination with past, present, and reasonably foreseeable future projects, would not combine with cumulative development projects to create or contribute to a cumulative land use impact, and therefore, the cumulative impact is *less than significant*. No mitigation measures are necessary.

E. EVALUATION OF ENVIRONMENTAL IMPACTS

E.2 POPULATION AND HOUSING

<i>Topics:</i>	<i>Potentially Significant Impact</i>	<i>Less Than Significant with Mitigation Incorporated</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>	<i>Not Applicable</i>
POPULATION AND HOUSING—					
Would the project:					
a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Displace substantial numbers of existing housing units or create demand for additional housing, necessitating the construction of replacement housing?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Impact PH-1: The proposed project would not induce substantial population growth in the area, either directly or indirectly. (Less than Significant)

The project would be considered growth inducing if its implementation would result in substantial population increases and/or new development that might not occur if the project were not approved and implemented. The proposed project would add approximately 125 new affordable family housing and 53 new affordable senior housing residential units, consisting of a mix of studio, one-bedroom, two-bedroom, and three-bedroom residences. The project would also include approximately 6,400 square feet of new commercial space and approximately 4,300 square feet of childcare facilities, which could generate the need for more housing.

The proposed project would prioritize housing for the chronically homeless in San Francisco and provide housing for seniors. Both of these populations would potentially already live in San Francisco. Housing projects, such as the proposed project, that are funded by the San Francisco's Mayor's Office of Housing and Community Development, prioritize residents from San Francisco for the lottery to get into City-funded housing. Furthermore, the project is not of regional significance so new employees associated with the proposed retail or childcare uses would likely come from San Francisco or the greater Bay Area and would not necessarily move to San Francisco as a result of the project. However, an analysis of a direct increase of population and employment at the project site and a contribution to anticipated population and employment growth in the neighborhood and citywide context is provided below.

Plan Bay Area 2040, which is the current regional transportation plan and Sustainable Communities Strategy adopted by MTC and ABAG on July 26, 2017, contains housing and employment projections anticipated to occur in San Francisco through 2040. *Plan Bay Area 2040* calls for an increasing percentage of Bay Area growth to occur as infill development in areas with good transit access and where services necessary to daily living are provided in proximity to housing and jobs. With its abundant transit service

E. EVALUATION OF ENVIRONMENTAL IMPACTS

and mixed-use neighborhoods, San Francisco is expected to accommodate an increasing share of future regional growth. Over the last several years, the supply of housing has not met the demand for housing within San Francisco. *Plan Bay Area 2040* is a limited and focused update to the 2013 *Plan Bay Area*, with updated planning assumptions that incorporate key economic, demographic, and financial trends from the last several years. As previously described, the project site is in the Port of San Francisco PDA, which is an area designated for concentrating housing and job growth around transit corridors.³³

According to the 2010 U.S. Census, the proposed project is located within Census Tract 105, which had a reported population of 2,685 residents. The 2010 U.S. Census reported a population of 805,235 residents in the City and County of San Francisco, and a population of approximately 6,992 residents near the project site (within Census Tracts 105 and 611).³⁴ Based on the 2010 U.S. Census, the average household size in the City and County of San Francisco is 2.26 people per household,³⁵ the addition of 178 new residential units would increase the citywide population by approximately 402 residents.³⁶ The proposed project would bring a population increase of approximately 6.0 percent near the project site and 15 percent within Census Tract 105, and is not considered substantial within the neighborhood or citywide context.³⁷ Furthermore, the population of San Francisco is projected to increase by approximately 280,490 persons for a total of 1,085,725 by 2040.³⁸ The residential population introduced as a result of the proposed project would constitute approximately 0.14 percent of this population increase.³⁹ Therefore, this population increase would be accommodated within the projected growth for San Francisco. Thus, implementation of the proposed project would not directly induce substantial population growth.

The proposed project also would not indirectly induce substantial population growth in the project area, because it would be located on an infill site in an urbanized area and would not involve any extensions to area roads or other infrastructure that could enable additional development in currently undeveloped areas.

The proposed approximately 6,400 square feet of new commercial area and 4,300 square feet of childcare facilities would generate an estimated 31 employees.⁴⁰ However, as stated above, it is anticipated that

³³ Association of Bay Area Governments, *Plan Bay Area*, Priority Development Area Showcase. Available at: <http://gis.abag.ca.gov/website/PDAShowcase/>, accessed on March 1, 2017.

³⁴ The population estimate is based on data from the 2010 U.S. Census for Census Tracts 105 and 611. Census Tract 611 is located to the west of the project site.

³⁵ $805,235 \text{ population} / 356,299 \text{ households} = 2.26 \text{ people per household}$

³⁶ $178 \text{ residential units} \times 2.26 \text{ people per household} = 402.28 \text{ new residents}$

³⁷ Near project site (Census Tracts 105 and 611): $402 \text{ new residents} / 6,992 \text{ existing residents} = 6 \text{ percent}$; Census tract 105: $402 \text{ new residents} / 2,685 \text{ existing residents} = 15 \text{ percent}$

³⁸ Association of Bay Area Governments, *Plan Bay Area*. Available at: http://files.mtc.ca.gov/pdf/Plan_Bay_Area_FINAL/Plan_Bay_Area.pdf, accessed on February 1, 2017, page 40.

³⁹ $402 \text{ new residents} / 280,490 \text{ residents} = 0.14 \text{ percent}$

⁴⁰ The estimated number of employees is based on Planning Department Transportation Impact Analysis Guidelines for Environmental Review (October 2002) (SF Guidelines) and assumes an average of one employee per

E. EVALUATION OF ENVIRONMENTAL IMPACTS

most employees would likely come from the local and regional labor pools, and the number of employees moving from outside of the region would be negligible compared to the total population, and would not be a substantial increase in the citywide context. Therefore, it can be anticipated that most of the employees would already live in San Francisco (or nearby communities), and that the project would not generate demand for new housing from potential employees of the new commercial uses. Additionally, employment in San Francisco is projected to increase by 34 percent (191,740 jobs) between 2010 and 2040.⁴¹ The project's increase of 31 employees would be accommodated within the projected employment growth in San Francisco.

Overall, the increase in the number of residents and employees on the project site would be noticeable near the project site. However, project-related population and employment increases would not be substantial relative to the existing number of residents and employees in the city, nor would the increase in residents and/or employees exceed regional projections for growth and employment. Therefore, direct or indirect population growth would be *less than significant* as a result of the proposed project. No mitigation measures are necessary.

Impact PH-2: The proposed project would not displace a substantial number of existing housing units, people, or employees, or create demand for additional housing elsewhere. (No impact)

The project site is located on two separate surface parking lots that currently serve the public. The proposed project would not displace any residents or housing units, because there is no existing residential development at the project site. The proposed project would displace parking for the public and the Port of San Francisco, but would not affect housing or employment. As the proposed project would not displace existing housing units or people, it would not generate demand for additional housing elsewhere. Therefore, the proposed project would have *no impact* in regards to displacing residents or employees and would not create demand for new housing. No mitigation measures are necessary.

Impact C-PH-1: The proposed project in combination with past, present, and reasonably foreseeable cumulative projects would not result in significant cumulative effects related to population or housing. (Less than Significant)

As described above, *Plan Bay Area 2040* contains housing and employment projections anticipated to occur in San Francisco through 2040 and its projections provide context for the population and housing cumulative analysis. *Plan Bay Area 2040* calls for an increasing percentage of Bay Area growth (jobs and

350 square feet of retail and restaurant. 6,522 square feet of commercial + 4,306 square feet of childcare = 10,828 square feet total; 10,828 square feet of commercial/childcare / 350 = 31 new employees

⁴¹ Association of Bay Area Governments and Metropolitan Transportation Commission, *Jobs-Housing Connection Strategy*, revised May 16, 2012. Available at: http://www.planbayarea.org/pdf/JHCS/May_2012_Jobs_Housing_Connection_Strategy_Main_Report.pdf, accessed on February 1, 2017, page 49.

E. EVALUATION OF ENVIRONMENTAL IMPACTS

housing) to occur as infill development in areas with good transit access and where services necessary to daily living are provided in proximity to housing and jobs. With its abundant transit service and mixed-use neighborhoods, San Francisco is expected to accommodate an increasing share of future regional growth (jobs and housing). Additionally, the project site is in the Port of San Francisco Priority Development Areas⁴² identified in *Plan Bay Area 2040*. Therefore, the *Plan Bay Area 2040* projections provide context for the population and housing cumulative analysis.

As described above, the proposed project would not induce substantial direct or indirect population growth or displace a substantial number of existing housing units, people, or employees, or create demand for additional housing elsewhere.

The approved and proposed projects identified in Table 2, and mapped on Figure 17 in section B.2, Cumulative Projects, would add approximately 20 new permanent residents within nine dwelling units in the 0.25-mile radius of the project site.⁴³ Overall, these approved and proposed projects, when combined with the proposed project, would add 422 new residents within a 0.25-mile radius of the project site, which would represent a residential population increase of 6.0 percent near the project site.⁴⁴ These projects would be required to comply with the City's Inclusionary Housing Program (*Planning Code* Sec. 415 et. seq.) and, therefore, would result in the creation of affordable housing in addition to market-rate housing. In addition, the cumulative projects would also introduce new employees associated with new retail, office, museum, hotel and theater uses. However, like the proposed project, these projects are not of regional significance so new employees would likely come from San Francisco or the greater Bay Area and would not necessarily move to San Francisco as a result of these projects.

In the last few years, the supply of housing has not met the demand for housing within San Francisco. In July 2013, ABAG projected regional housing needs in the *Regional Housing Need Plan for the San Francisco Bay Area: 2014 to 2022*. In 2013, ABAG projected housing needs in San Francisco for 2014 to 2022 as 28,869 dwelling units, consisting of 6,234 dwelling units within the very low income level (0 to 50 percent), 4,639 within the low income level (51 to 80 percent), 5,460 within the moderate income level (81 to 120 percent), and 12,536 within the above moderate income level (120 percent plus).⁴⁵ As noted above, project site is in the Port of San Francisco Priority Development Areas. In addition, several cumulative projects identified in Table 2 and shown on Figure 17 in section B.2, Cumulative Projects, are located in Port of San Francisco Priority Development Area and the Downtown-Van Ness-Geary (San Francisco) Priority Development Area. These Priority Development Areas are existing neighborhoods near transit that are appropriate places to concentrate future growth of jobs and housing. Thus, although the proposed project, in combination with other past, present, and reasonably foreseeable future projects, would increase the population in the vicinity of the project site by 6.0 percent, this population growth has been anticipated

⁴² Association of Bay Area Governments, *Plan Bay Area*, Priority Development Area Showcase. Available at: <http://gis.abag.ca.gov/website/PDAShowcase/>, accessed on March 1, 2017.

⁴³ 9 new dwelling units x 2.26 people per household = 20 new residents

⁴⁴ (402 new residents from project + 20 new residents from cumulative projects = 422 new residents; 422 new residents / 6,992 existing residents (Census Tracts 105 and 611)) x 100 = 6%

⁴⁵ Association of Bay Area Governments, *Regional Housing Need Plan for the San Francisco Bay Area: 2014-2022*. Available at: <http://www.abag.ca.gov/planning/housingneeds/>, accessed September 6, 2017.

E. EVALUATION OF ENVIRONMENTAL IMPACTS

and accounted for according to the City's and ABAG's projections and planned growth, and, therefore, would have a less-than-significant direct and indirect impact on the population and housing. Other sections of this document that address physical environmental impacts related to cumulative growth with regard to specific resources can be found in section E.4, Transportation and Circulation; section E.5, Noise; section E.6, Air Quality; section E.9, Recreation; section E.10, Utilities and Service Systems; and section E.11, Public Services.

Furthermore, the proposed project, in combination with other past, present, and reasonably foreseeable future projects, would not result in substantial numbers of housing units or people being displaced because the majority of the approved and proposed cumulative projects would be constructed on underutilized lots with no residential units or are changes to existing developments.⁴⁶

For these reasons, the proposed project, in combination with other past, present, and reasonably foreseeable future projects, would not combine with cumulative development projects to create or contribute to a cumulative impact to population or housing, and therefore the proposed project would result in a *less-than-significant* cumulative impact on population and housing and no mitigation measures are necessary.

E.3 CULTURAL RESOURCES

<i>Topics:</i>	<i>Potentially Significant Impact</i>	<i>Less Than Significant with Mitigation Incorporated</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>	<i>Not Applicable</i>
CULTURAL RESOURCES—					
Would the project:					
a) Cause a substantial adverse change in the significance of a historical resource as defined in section 15064.5, including those resources listed in Article 10 or Article 11 of the San Francisco Planning Code?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to section 15064.5?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Disturb any human remains, including those interred outside of formal cemeteries?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Cause a substantial adverse change in the significance of a tribal cultural resource as defined in Public Resources Code section 21074?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

⁴⁶ The Seawall Lots 323/324 is a proposed development to be built on underutilized parking lots. Remaining projects are changes to existing buildings.

E. EVALUATION OF ENVIRONMENTAL IMPACTS

The following analysis is based on the *Final Addendum Archeological Research Design and Treatment Plan* prepared by WSA Incorporated,⁴⁷ the *Historic Resources Evaluation* report prepared by Knapp Architects,⁴⁸ and the Tribal notification outreach conducted by the City.⁴⁹

Impact CR-1: The proposed project would not result in a substantial adverse change in the significance of a historical resource as defined in section 15064.5, including those resources listed in Article 10 or Article 11 of the San Francisco Planning Code. (Less than Significant)

Historical resources are those properties that meet the definitions in Public Resources Code section 21084.1 and section 15064.5 of the CEQA Guidelines. Historical resources include properties listed in, or formally determined eligible for listing in the California Register of Historical Resources (California Register) or in an adopted local historic register. Historical resources also include resources identified in a historical resource survey meeting certain criteria. Additionally, properties that are not listed but are otherwise determined to be historically significant, based on substantial evidence, would also be considered historical resources. A property may be considered a historical resource if it meets any of the California Register criteria related to (1) events, (2) persons, (3) architecture, or (4) information potential that make it eligible for listing in the California Register, or if it is considered a contributor to an existing or potential historic district. The significance of a historical resource is materially impaired when a project "demolishes or materially alters in an adverse manner those physical characteristics of a historical resource that convey its historical significance."

The project site is currently occupied by a surface parking lot. The site is not listed on the National Register of Historic Places or the California Register and has not been rated by the California Historic Resources Information Center. However, the project site is within the Northeast Waterfront Landmark District, which is designated under Planning Code Article 10 as a historic district. As described above, a Historic Resources Evaluation was prepared to determine whether the project site is a historic resource and, thus, whether site development would result in a significant impact as defined under CEQA. The existing parking lots were determined to not be historic resources during the Historic Resource Evaluation scoping process the Planning Department conducted with the historic resources consultant. The Planning Department determined that the proposed new construction on the project site would not result in a significant impact on the historic district.⁵⁰

The property was not listed in *Here Today or Splendid Survivors*, nor included in the 1976 Architectural Survey.⁵¹ According to the San Francisco Property Information Map, parcel 0140-007 was given the status

⁴⁷ WSA Incorporated, 2017. *Addendum Archeological Research Design and Treatment Plan: 88 Broadway/735 Davis Street Project*, May.

⁴⁸ Knapp Architects, *Historic Resource Evaluation: 88 Broadway & 735 Davis Street*, June 2017.

⁴⁹ Tribal Notification Regarding Tribal Cultural Resources and CEQA sent on January 11, 2017.

⁵⁰ Marcelle Boudreaux, Flex Team Leader/Senior Planner, San Francisco Planning Department, e-mail correspondence with Jenny Delumo, Environmental Planner, San Francisco Planning Department, August 17, 2017 as proposed in the PMND and February 26, 2018 as revised and proposed in the FMND.

⁵¹ Naploha, J. and Kortum, J. Northeast Waterfront District. Case report for district designation, unpublished official document. San Francisco, 1982.

E. EVALUATION OF ENVIRONMENTAL IMPACTS

code 7R (Not evaluated) in a reconnaissance-level survey for eligibility to the National Register of Historic Places. The Historic Resources Evaluation does not include an evaluation of significance or identification of character-defining features of the project site, because the existing surface parking lot is not an individual resource or a contributor to a historic district. The Historic Resources Evaluation evaluated the proposed project for compatibility with the Northeast Waterfront Landmark District, and determined it is compatible with the character of the Northeast Waterfront Landmark District and in conformance with the Secretary of the Interior's Standards for Rehabilitation (Secretary's Standards), specifically Standards number 9 and 10.^{52,53} The proposed buildings would be compatible with the height range of contributing buildings to the district because it would:

- be articulated so that its visual components fit the scale and proportion that characterize the District;
- be nearly devoid of ornamentation;
- have fenestration much of which mirrors important characteristics of that in the District;
- employ materials that share key traits with the brick and concrete that characterize the District, in colors that predominate in the District; and
- achieve visual complexity giving the building a roughness compatible with the District; and
- will be built to the front lot lines on all four streets.^{54, 55}

As the proposed project conforms to the Secretary Standards and is compatible with the specific characteristics of the District, the new construction would not materially impair the Northeast Waterfront Landmark District.⁵⁶ Thus, the Northeast Waterfront Landmark District would remain eligible for listing in Article 10 of the San Francisco Planning Code.

⁵² Secretary of the Interior's Standards for Rehabilitation Standard 9: New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.

⁵³ Secretary of the Interior's Standards for Rehabilitation Standard 10: New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

⁵⁴ Knapp Architects, 2017. *Historic Resource Evaluation: 88 Broadway & 735 Davis Street*, June.

⁵⁵ As described in section A, Project Description, the proposed project was revised to increase the step-backs from Front Street and Broadway, modify the building materials and fenestration (i.e., the arrangement of windows and doors on the elevations of a building) that would further be compatible with the Northeast Waterfront Landmark District. As a result of this change, the dwelling unit mix of the family housing building was revised to reduce two one-bedroom units to two studio units, and one three-bedroom unit to a two-bedroom unit. In addition, text edits were made to further describe proposed project's consistency with the Planning Code and Land Use Plans in section C, Compatibility with Existing Zoning and Plans. No changes to the impact conclusions discussed in this section are required as a result of these changes and additions.

⁵⁶ Knapp Architects, 2017. *Historic Resource Evaluation: 88 Broadway & 735 Davis Street*, June.

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Because the proposed design would not diminish the significance of the district under CEQA Guidelines section 15064.5, the proposed project would have a *less than significant* impact on a historical resource. No mitigation measures are necessary.

Impact CR-2: Construction of the proposed project could result in physical damage to adjacent historical resources. (Less than Significant with Mitigation).

The proposed project is adjacent to three historical architectural resources: 735 Davis Street, 60 Broadway, and 75 Broadway. These buildings could be susceptible to ground-borne vibration from demolition and construction activities on the project site, including demolition and the use of heavy equipment, and could cause ground-borne vibration that could materially impair the identified adjacent buildings.

Construction vibration impacts are assessed based on standards from the Federal Transportation Authority (FTA) for vibration. As shown on Table 3, for architectural damage, FTA guidelines define an impact as significant if it exceeds peak particle velocity (PPV) measured in inches per second as follows: 0.2 PPV for non-engineered timber and masonry buildings, 0.3 PPV for engineered concrete and masonry (no plaster) buildings, and 0.5 PPV for reinforced concrete, steel, or timber buildings.

TABLE 3 CONSTRUCTION VIBRATION DAMAGE CRITERIA

Building Category	Peak Particle Velocity (PPV), in/sec ^a
Category I: reinforced concrete, steel or timber (no plaster)	0.5
Category II: engineered concrete and masonry (no plaster)	0.3
Category III: non-engineered timber and masonry buildings	0.2
Category IV: buildings extremely susceptible to vibration damage	0.12

Notes:

a. peak particle velocity (PPV) measured in inches per second

Source: CSDA Design Group, 2017. *88 Broadway/735 Davis, SF – Project-Generated Noise Study*. September 6. Table 1.

The buildings at 753 Davis Street and 60 Broadway are of masonry construction and are therefore subject to the 0.3 PPV standard for architectural damage. The building at 75 Broadway is a steel building clad in brick veneer building, and is therefore, subject to the 0.5 PPV standard for architectural damage.

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TABLE 4 CALCULATED CONSTRUCTION VIBRATION LEVELS FOR ARCHITECTURAL DAMAGE AT ADJACENT RECEIVERS

Receiver	Equipment	Distance to Construction Activity ^a (feet)	Calculated Vibration Level at the buildings, PPV (in/sec)	Criteria, PPV (in/sec)	Below PPV Criteria?
CV-1: Commercial 753 Davis Street ^b	Large Bulldozer	8	0.49	0.3	N
	Loaded Trucks	15	0.16		Y
CV-2: Commercial 60 Broadway ^b	Large Bulldozer	10	0.35	0.3	N
	Loaded Trucks	15	0.16		Y
CV-3: Residential 75 Broadway	Large Bulldozer	90	0.01	0.5	Y
	Loaded Trucks	90	0.01		Y

Notes:

a. For architectural vibrations) the distance estimates are the $PPV_{equip} = PPV_{ref} \times (25/D)^{1.5}$; Annoyance: $L_v(D) = L_v(25 \text{ ft}) - 30 \log(D/25)$ where D=receiver distance).

b. This is an historic building.

Source: CSDA Design Group, 2017. *88 Broadway/735 Davis, SF – Project-Generated Noise Study*. September 6. Table 10.

As shown in Table 4 above, vibration from construction would not exceed the architectural damage criteria at 75 Broadway. However, vibration from large bulldozers would exceed the architectural damage criteria at 753 Davis Street and 60 Broadway, and impacts would be significant. However, if a minimum distance of 15 feet is maintained between the bulldozer and 753 Davis Street and 60 Broadway, the building damage criteria of 0.3 PPV would be met. Implementation of **Mitigation Measure M-CR-2, Vibration Monitoring Program for Adjacent Historical Resources**, would ensure the building damage criteria of 0.3 PPV would be met and architectural damage from construction vibration at 753 Davis Street and 60 Broadway would be *less than significant with mitigation*.

Mitigation Measure M-CR-2: Vibration Monitoring Program for Adjacent Historical Resources

The project sponsor shall retain the services of a qualified structural engineer and preservation architect that meet the Secretary of the Interior's Historic Preservation Professional Qualification Standards to conduct a Pre-Construction Assessment of the adjacent historical resources at 753 Davis Street and 60 Broadway prior to any ground-disturbing activity. The Pre-Construction Assessment shall be prepared to establish a baseline, and shall contain written and/or photographic descriptions of the existing condition of the visible exteriors of the adjacent buildings. The structural engineer and/or preservation architect shall also develop and the project sponsor shall prepare and implement a Vibration Management and Monitoring Plan to protect the adjacent historical resources against damage caused by vibration or differential settlement caused by vibration during project construction activities. In this plan, the maximum vibration level not to be exceeded at each building shall be determined by the structural engineer and/or preservation architect for the project. The Vibration Management and Monitoring Plan shall document the criteria used in establishing the maximum vibration level for the project. The Vibration Management and Monitoring Plan shall include vibration monitoring and regular periodic inspections at the project site by the structural engineer and/or historic preservation consultant throughout the duration of the major structural project activities to ensure that vibration levels do not exceed the established standard. The Pre-Construction

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Assessment and Vibration Management and Monitoring Plan shall be submitted to the Planning Department Preservation staff prior to issuance of any construction permits. Should damage to 753 Davis Street or 60 Broadway be observed, construction shall be halted and alternative techniques put in practice, to the extent feasible, and/or repairs shall be completed as part of project construction. A final report on the vibration monitoring of 753 Davis Street and 60 Broadway shall be submitted to Planning Department Preservation staff prior to the issuance of a Certificate of Occupancy for the project.

Therefore, with implementation of **Mitigation Measure M-CR-2, Vibration Monitoring Program for Adjacent Historical Resources**, impacts from construction vibration to historical architectural resources would be *less than significant with mitigation*.

Impact CR-3: The proposed project could result in a substantial adverse change in the significance of an archeological resource. (Less than Significant with Mitigation)

This section discusses archeological resources, both as historical resources according to section 15064.5 as well as unique archeological resources as defined in section 21083.2(g).

The potential for encountering archeological resources is determined by several relevant factors including archeological sensitivity criteria and models, local geology, site history, and the extent of potential projects' soils disturbance/modification, as well as any documented information on known archeological resources in the area. In 2003, Stanford Hospitality Incorporated planned to build the Broadway Hotel on three city blocks near the Embarcadero in San Francisco and an Archeological Research Design and Treatment Plan (ARDTP) was prepared for the proposed project; however, the project was never built.⁵⁷ An addendum to the 2003 ARDTP was prepared for the proposed project. The ARDTP addendum included the historical and archeological background of the area and assessed the possibility of encountering subsurface archeological resources. They reported that "there is a high potential of encountering materials from the Gold Rush (1849 to 1859) and later 19th century (1860 to 1906) periods, and a low potential of encountering prehistoric materials (4000 B.C. to A.D. 1776), or materials from the Contact Period or Spanish/Mexican Period (1776 to 1849)." The ARDTP recommended pre-construction archeological testing and data recovery, and monitoring during construction to mitigate adverse impacts.

There are no documented or recorded archeological sites in the immediate vicinity of the proposed project. The ARDTP determined that there are likely Gold Rush era maritime deposits and other late nineteenth century and early twentieth century remains still present. According to the project-specific preliminary geotechnical reports, there is between 20 to 40 feet of artificial fill across the senior housing site (735 Davis Street)⁵⁸ and 25 to 40 feet of artificial fill across the family housing site (88 Broadway).⁵⁹ Based on a historical map review, although the project site was submerged during most of the Gold Rush, historic maps and other archival sources reveal that wharves were situated adjacent to the project site

⁵⁷ WSA Incorporated, 2017. *Addendum Archeological Research Design and Treatment Plan: 88 Broadway/735 Davis Street Project*, May.

⁵⁸ ENGEO Incorporated, 2017. *735 Davis Street Senior Housing Geotechnical Exploration*, San Francisco, CA, June 22.

⁵⁹ ENGEO Incorporated, 2017. *88 Broadway Family Housing Geotechnical Exploration*, San Francisco, CA, June 22.

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(Vallejo Street Wharf, the Broadway Wharf, and Cunningham's Wharf). Remnants of the wharves themselves, refuse discarded from the wharves, or remnants of ship hulks could potentially lie beneath the project site. The project site was filled in by 1857 and several structures were present in the project area. Refuse and architecture from these buildings could also potentially still exist within the project parcel.

Based on the above analysis, there is a high potential for uncovering archeological resources during project implementation. It is possible that previously unrecorded and buried (or otherwise obscured) archeological deposits could be discovered during ground disturbing activities due to project implementation. Such ground disturbing activities would include demolition of the existing surface parking lots as well as overall grading of the project site and trenching for utilities installation.

Excavating, grading, and moving heavy construction vehicles and equipment used to construct the proposed project could expose and have impacts on unknown archeological resources. Thus, the proposed project could have a significant impact on archeological resources.

With implementation of **Mitigation Measure M-CR-3, Archeological Testing**, impacts would be reduced to *less than significant with mitigation*. This mitigation measure requires that archeological resources be avoided and, if discovered, that they be treated appropriately.

Mitigation Measure M-CR-3: Archeological Testing

The project sponsor shall retain the services of an archeological consultant from the rotational Department Qualified Archeological Consultants List (QACL) maintained by the Planning Department archeologist. The project sponsor shall contact the Department archeologist to obtain the names and contact information for the next three archeological consultants on the QACL. The archeological consultant shall undertake an archeological testing program as specified herein. In addition, the consultant shall be available to conduct an archeological monitoring and/or data recovery program if required pursuant to this measure. The archeological consultant's work shall be conducted in accordance with this measure at the direction of the Environmental Review Officer (ERO). All plans and reports prepared by the consultant as specified herein shall be submitted first and directly to the ERO for review and comment, and shall be considered draft reports subject to revision until final approval by the ERO. Archeological monitoring and/or data recovery programs required by this measure could suspend construction of the project for up to a maximum of four weeks. At the direction of the ERO, the suspension of construction can be extended beyond four weeks only if such a suspension is the only feasible means to reduce to a less than significant level potential effects on a significant archeological resource as defined in CEQA Guidelines section 15064.5(a) and (c).

Consultation with Descendant Communities. On discovery of an archeological site⁶⁰ associated with descendant Native Americans, the Overseas Chinese, or other potentially interested descendant

⁶⁰ The term "archeological site" is intended here to minimally include any archeological deposit, feature, burial, or evidence of burial.

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group, an appropriate representative⁶¹ of the descendant group and the ERO shall be contacted. The representative of the descendant group shall be given the opportunity to monitor archeological field investigations of the site and to offer recommendations to the ERO regarding appropriate archeological treatment of the site, of recovered data from the site, and, if applicable, any interpretative treatment of the associated archeological site. A copy of the Final Archeological Resources Report shall be provided to the representative of the descendant group.

Archeological Testing Program. The archeological consultant shall prepare and submit to the ERO for review and approval an archeological testing plan (ATP). The archeological testing program shall be conducted in accordance with the approved ATP. The ATP shall identify the property types of the expected archeological resource(s) that potentially could be adversely affected by the proposed project, the testing method to be used, and the locations recommended for testing. The purpose of the archeological testing program will be to determine to the extent possible the presence or absence of archeological resources and to identify and to evaluate whether any archeological resource encountered on the site constitutes an historical resource under CEQA.

At the completion of the archeological testing program, the archeological consultant shall submit a written report of the findings to the ERO. If based on the archeological testing program the archeological consultant finds that significant archeological resources may be present, the ERO in consultation with the archeological consultant shall determine if additional measures are warranted. Additional measures that may be undertaken include additional archeological testing, archeological monitoring, and/or an archeological data recovery program. No archeological data recovery shall be undertaken without the prior approval of the ERO or the Planning Department archeologist. If the ERO determines that a significant archeological resource is present and that the resource could be adversely affected by the proposed project, at the discretion of the project sponsor either:

- A. The proposed project shall be re-designed so as to avoid any adverse effect on the significant archeological resource; or
- B. A data recovery program shall be implemented, unless the ERO determines that the archeological resource is of greater interpretive than research significance and that interpretive use of the resource is feasible.

Archeological Monitoring Program. If the ERO in consultation with the archeological consultant determines that an archeological monitoring program (AMP) shall be implemented the archeological monitoring program shall minimally include the following provisions:

- The archeological consultant, project sponsor, and ERO shall meet and consult on the scope of the AMP reasonably prior to any project-related soils disturbing activities commencing. The ERO in consultation with the archeological consultant shall determine what project activities shall be

⁶¹ An "appropriate representative" of the descendant group is here defined to mean, in the case of Native Americans, any individual listed in the current Native American Contact List for the City and County of San Francisco maintained by the California Native American Heritage Commission and in the case of the Overseas Chinese, the Chinese Historical Society of America. An appropriate representative of other descendant groups should be determined in consultation with the Department archeologist.

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archeologically monitored. In most cases, any soils- disturbing activities, such as demolition, foundation removal, excavation, grading, utilities installation, foundation work, site remediation, etc., shall require archeological monitoring because of the risk these activities pose to potential archeological resources and to their depositional context;

- The archeological consultant shall advise all project contractors to be on the alert for evidence of the presence of the expected resource(s), of how to identify the evidence of the expected resource(s), and of the appropriate protocol in the event of apparent discovery of an archeological resource;
- The archeological monitor(s) shall be present on the project area according to a schedule agreed upon by the archeological consultant and the ERO until the ERO has, in consultation with project archeological consultant, determined that project construction activities could have no effects on significant archeological deposits;
- The archeological monitor shall record and be authorized to collect soil samples and artefactual/ecofactual material as warranted for analysis;
- If an intact archeological deposit is encountered, all soils-disturbing activities in the vicinity of the deposit shall cease. The archeological monitor shall be empowered to temporarily redirect demolition/excavation/construction activities and equipment until the deposit is evaluated. The archeological consultant shall immediately notify the ERO of the encountered archeological deposit. The archeological consultant shall make a reasonable effort to assess the identity, integrity, and significance of the encountered archeological deposit, and present the findings of this assessment to the ERO.

Whether or not significant archeological resources are encountered, the archeological consultant shall submit a written report of the findings of the monitoring program to the ERO.

Archeological Data Recovery Program. If required based on the results of the ATP, an archeological data recovery program shall be conducted in accord with an archeological data recovery plan (ADRP). The archeological consultant, project sponsor, and ERO shall meet and consult on the scope of the ADRP prior to preparation of a draft ADRP. The archeological consultant shall submit a draft ADRP to the ERO. The ADRP shall identify how the proposed data recovery program will preserve the significant information the archeological resource is expected to contain. That is, the ADRP will identify what scientific/historical research questions are applicable to the expected resource, what data classes the resource is expected to possess, and how the expected data classes would address the applicable research questions. Data recovery, in general, should be limited to the portions of the historical property that could be adversely affected by the proposed project. Destructive data recovery methods shall not be applied to portions of the archeological resources if nondestructive methods are practical.

If required, the scope of the ADRP shall include the following elements:

- *Field Methods and Procedures*—Descriptions of proposed field strategies, procedures, and operations.
- *Cataloguing and Laboratory Analysis*—Description of selected cataloguing system and artifact analysis procedures.
- *Discard and Deaccession Policy*—Description of and rationale for field and post-field discard and deaccession policies.

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- *Interpretive Program*—Consideration of an on-site/off-site public interpretive program during the course of the archeological data recovery program.
- *Security Measures*—Recommended security measures to protect the archeological resource from vandalism, looting, and non-intentionally damaging activities.
- *Final Report*—Description of proposed report format and distribution of results.
- *Curation*—Description of the procedures and recommendations for the curation of any recovered data having potential research value, identification of appropriate curation facilities, and a summary of the accession policies of the curation facilities.

Final Archeological Resources Report. The archeological consultant shall submit a Draft Final Archeological Resources Report (FARR) to the ERO that evaluates the historical significance of any discovered archeological resource and describes the archeological and historical research methods employed in the archeological testing/monitoring/data recovery program(s) undertaken. Information that may put at risk any archeological resource shall be provided in a separate removable insert within the final report.

Once approved by the ERO, copies of the FARR shall be distributed as follows: California Archeological Site Survey Northwest Information Center (NWIC) shall receive one (1) copy and the ERO shall receive a copy of the transmittal of the FARR to the NWIC. The Environmental Planning division of the Planning Department shall receive one bound, one unbound and one unlocked, searchable PDF copy on CD of the FARR along with copies of any formal site recordation forms (CA DPR 523 series) and/or documentation for nomination to the National Register of Historic Places/California Register of Historical Resources. In instances of high public interest in or the high interpretive value of the resource, the ERO may require a different final report content, format, and distribution than that presented above.

Impact CR-4: The project could disturb human remains, including those interred outside of formal cemeteries. (Less than Significant with Mitigation)

There are no known human remains, including those interred outside of formal cemeteries, located in the immediate vicinity of the project site. In the event that construction activities disturb unknown human remains within the project site, any inadvertent damage to human remains would be considered a significant impact.

With implementation of **Mitigation Measure M-CR-4, Inadvertent Discovery of Human Remains**, impacts resulting from inadvertent discovery of human remains would be reduced to *less than significant with mitigation*.

Mitigation Measure M-CR-4: Inadvertent Discovery of Human Remains

The treatment of human remains and of associated or unassociated funerary objects discovered during any soils disturbing activity shall comply with applicable State and federal laws. This shall include immediate notification of the Coroner of the City and County of San Francisco and the Environmental Review Officer (ERO), and in the event of the Coroner's determination that the

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human remains are Native American remains, notification of the California State Native American Heritage Commission (NAHC) who shall appoint a Most Likely Descendant (MLD) (Public Resources Code section 5097.98). The archeological consultant, project sponsor, ERO, and MLD shall have up to but not beyond six days of discovery to make all reasonable efforts to develop an agreement for treating or disposing of, with appropriate dignity, the human remains and any associated items (CEQA Guidelines section 15064.5(d)). The agreement should take into consideration the appropriate excavation, removal, recordation, analysis, custodianship, curation, and final disposition of the human remains and associated or unassociated funerary objects. Nothing in existing State regulations or in this mitigation measure compels the project sponsor and the ERO to accept recommendations of an MLD. The archeological consultant shall retain possession of any Native American human remains and associated or unassociated burial objects until completion of any scientific analyses of the human remains or objects as specified in the treatment agreement if such as agreement has been made or, otherwise, as determined by the archeological consultant and the ERO.

Impact CR-5: The project could result in a substantial adverse change in the significance of a tribal cultural resource as defined in Public Resources Code section 21074. (Less than Significant with Mitigation)

CEQA section 21074.2 requires the lead agency to consider the effects of a project on tribal cultural resources. As defined in section 21074, tribal cultural resources are sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe that are listed, or determined to be eligible for listing, on the national, state, or local register of historical resources. Pursuant to CEQA section 21080.3.1(d), on January 11, 2017, the Planning Department contacted Native American individuals and organizations for the San Francisco area, providing a description of the project and requesting comments on the identification, presence and significance of tribal cultural resources in the project vicinity. During the 30-day comment period, no Native American tribal representatives contacted the Planning Department to request consultation.

Based on the background research performed for the *Final Addendum Archeological Research Design and Treatment Plan* prepared by WSA Incorporated there are no known tribal cultural resources in the project area;⁶² however, as discussed under Impact CR-3, the project site is an archeological sensitive area with the potential for prehistoric archeological resources. Prehistoric archeological resources may also be considered tribal cultural resources. In the event that construction activities disturb unknown archeological sites that are considered tribal cultural resources, any inadvertent damage would be considered a significant impact.

With implementation of **Mitigation Measure M-CR-5, Tribal Cultural Resources Interpretive Program**, impacts to previously unknown tribal cultural resources would be *less-than-significant with mitigation*.

⁶² WSA Incorporated, 2017. *Addendum Archeological Research Design and Treatment Plan: 88 Broadway/735 Davis Street Project*, May. page 51.

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Mitigation Measure M-CR-5: Tribal Cultural Resources Interpretive Program

If the Environmental Review Officer (ERO) determines that a significant archeological resource is present, and if in consultation with the affiliated Native American tribal representatives, the ERO determines that the resource constitutes a tribal cultural resource (TCR) and that the resource could be adversely affected by the proposed project, the proposed project shall be redesigned so as to avoid any adverse effect on the significant tribal cultural resource, if feasible.

If the ERO, in consultation with the affiliated Native American tribal representatives and the project sponsor, determines that preservation-in-place of the tribal cultural resources is not a sufficient or feasible option, the project sponsor shall implement an interpretive program of the TCR in consultation with affiliated tribal representatives. An interpretive plan produced in consultation with the ERO and affiliated tribal representatives, at a minimum, and approved by the ERO would be required to guide the interpretive program. The plan shall identify, as appropriate, proposed locations for installations or displays, the proposed content and materials of those displays or installation, the producers or artists of the displays or installation, and a long-term maintenance program. The interpretive program may include artist installations, preferably by local Native American artists, oral histories with local Native Americans, artifacts displays and interpretation, and educational panels or other informational displays.

In the event that construction activities disturb unknown archeological sites that are considered tribal cultural resources, any inadvertent damage would be considered a significant impact. With implementation of Mitigation Measures M-CR-3, M-CR-4, and M-CR-5 as described above, the proposed project would have a *less than significant impact with mitigation* on previously unknown tribal cultural resources.

Impact C-CR-1: The proposed project in combination with past, present, and reasonably foreseeable future projects in the vicinity would result in cumulative impacts to cultural resources. (Less than Significant with Mitigation)

The cumulative impact for cultural resources includes potential future development within a 0.25-mile radius of the proposed project combined with effects of development on lands within the City of San Francisco. Future development facilitated by the proposed project, in conjunction with the cumulative development project listed in Table 2 and shown on Figure 17 in section B.2, Cumulative Projects, has the potential to cumulatively impact cultural resources including historic resources archaeological and paleontological deposits, human remains, and tribal cultural resources.

Project-related impacts on unknown archeological resources, tribal cultural resources, and human remains that may be discovered during project construction are site-specific and generally limited to a project's construction area. Therefore, like the proposed project, the other cumulative projects listed in Table 2 and shown on Figure 17 would be required to undergo site-specific evaluation for impacts for impacts to archeological resources, human remains, and tribal cultural resources. Because impacts resulting from cumulative projects are unknown, for a conservative assumption, cumulative impacts on archeological resources, human remains, and tribal cultural resources are considered to be significant.

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Implementation of Mitigation Measure M-CR-3, Archeological Testing, Mitigation Measure M-CR-4, Inadvertent Discovery of Human Remains, and Mitigation Measure M-CR-5, Tribal Cultural Resources Interpretive Program, would ensure project-specific impacts to unknown archaeological resources, human remains, or tribal cultural resources on the project site would not be adversely impacted. Thus, the proposed project would not combine with cumulative projects to result in a cumulative effect on unknown archaeological resources, human remains, or tribal cultural resources.

As shown in Table 2, the cumulative projects would involve modifications to existing buildings or the renovation/reuse of existing buildings for other uses, with the exception of Seawall Lots 323/324. The cumulative projects would involve changes to existing buildings that could result in impacts to historic buildings; however, the Seawall Lots 323/324 project and the 940 Battery project are the only two cumulative projects in the Northeast Waterfront Landmark District. Therefore, the proposed changes to the other cumulative projects would not combine with the proposed project to have a cumulative impact to the Northeast Waterfront Landmark District. The proposed Seawall Lots 323/324 is a surface parking lot. Therefore, development on this lot would not result in the direct loss or change to a historic structure; however, a determination as to whether this project would be compatible with the Northeast Waterfront Landmark District has yet to be determined. As noted in Table 2, the 940 Battery Street is for interior and exterior alterations to create a new fourth floor and fifth floor at the roof level, and also proposes a change of use from warehouse to museum and retail. The impacts to the potentially historic building at 940 Battery Street are currently unknown. However, all cumulative projects within the Northeast Waterfront Landmark District are subject to Article 10 of the Planning Code which required that all new construction receive a Certificate of Appropriateness from the Historic Preservation Commission. As discussed under Impact CR-1, the proposed project's design was found to be compatible with the Northeast Waterfront Landmark District. Therefore, the proposed project would not combine with other cumulative projects to result in significant cumulative impacts on the Northeast Waterfront Landmark District.

As discussed under Impact CR-2, the proposed project could result in a significant impact on adjacent historical structures from vibration generated by project construction. Cumulative effects related to construction vibration could occur if construction activities for other projects in proximity to the project site involve impact equipment (e.g., pile driving, impact hammers/hoe rams, jackhammers) and would take place concurrent with construction of the proposed project. It is possible that construction of cumulative development projects could undergo construction activities that would involve use of impact equipment simultaneously with the proposed project. Therefore, cumulative vibration impacts on adjacent historical resources could be significant. However, with implementation of Mitigation Measure M-CR-2, Vibration Monitoring Program for Adjacent Historical Resources, the proposed project's contribution to cumulative vibration impacts on adjacent historical architectural resources would be reduced to a less-than-cumulatively-considerable level, by establishing vibration reduction performance standards and best management practices to ensure construction of the proposed project does not result in damage to adjacent historic architectural resources.⁶³

⁶³ As described in section A, Project Description, the proposed project was revised to increase the step-backs from Front Street and Broadway, modify the building materials and fenestration (i.e., the arrangement of windows and doors on the elevations of a building) that would further be compatible with the Northeast Waterfront Landmark District. As a result of this change, the dwelling unit mix of the family housing building was revised to reduce two

E. EVALUATION OF ENVIRONMENTAL IMPACTS

Accordingly, with implementation of the mitigation measures listed above, the proposed project would not combine with cumulative development projects to create or considerably contribute to a cumulative impact on archaeological resources, historic architectural resources from construction vibration, human remains, or tribal cultural resources. Therefore, in combination with past, present, and reasonably foreseeable projects, the proposed project would result in a *less-than-significant with mitigation* cumulative impact with respect to cultural resources.

E.4 TRANSPORTATION AND CIRCULATION

Topics:	Potentially Significant Impact	Less Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact	Not Applicable
TRANSPORTATION AND CIRCULATION--					
Would the project:					
a) Conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Conflict with an applicable congestion management program, including but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location, that results in substantial safety risks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Result in inadequate emergency access?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f) Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

one-bedroom units to two studio units, and one three-bedroom unit to a two-bedroom unit. In addition, text edits were made to further describe proposed project's consistency with the Planning Code and Land Use Plans in section C. Compatibility with Existing Zoning and Plans. No changes to the impact conclusions discussed in this section are required as a result of these changes and additions.

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The project is not located within an airport land use plan area or in the vicinity of a private airstrip. Therefore, Question 4c is not applicable to the project. The following discussion is based on the information provided in the transportation impact study prepared for the proposed project in accordance with the San Francisco Planning Department's *Transportation Impact Analysis Guidelines for Environmental Review*.⁶⁴

The 48,620-square-foot project site is composed of two surface parking lots that provide 180 public parking spaces. The proposed project would construct two new 6-story, mixed-use residential buildings for family and senior housing connected by open mid-block passageways as shown on Figure 2 and summarized in Table 1 in section A, Project Description, of this Initial Study.⁶⁵ The family housing building would include a childcare facility accessed from Vallejo Street and commercial space (exact use to be determined) accessed from Broadway; both are also accessible off the north-south mid-block passage. The family housing building would not provide any accessory off-street automobile parking spaces, but would provide 110 *class 1* bicycle parking spaces and two cargo bicycle parking spaces. Another 16 *class 2* bicycle parking spaces would be provided at locations within portions of adjacent sidewalk on Vallejo Street and Broadway, subject to consultation with the Port of San Francisco, the SFMTA, and San Francisco Public Works (SFPW). The proposed project would also establish a 35-foot-long on-street passenger loading zone along Vallejo Street to serve the proposed childcare facility and a 35-foot-long on-street commercial loading zone along Front Street to accommodate freight loading needs for the family housing building. The senior housing building would not feature any accessory off-street automobile parking, but would include 10 *class 1* bicycle parking spaces, as well as four *class 2* bicycle parking spaces in the adjacent sidewalk along the west side of Davis Street (subject to consultation with the Port of San Francisco, SFMTA, and SFPW). The proposed project would also establish a 35-foot-long on-street passenger loading zone along Davis Street to service the senior housing building. These features are described and shown on Figure 3 in section A, Project Description.

Setting and Existing Conditions

Surrounding Streets, Pedestrian, Bicycle and Loading Facilities

The project site is located within the North Beach neighborhood, San Francisco's Waterfront Special Use District No. 3, and the *Northeastern Waterfront Area Plan* area on a block bounded by Vallejo Street to the north, Davis Street to the east, Broadway to the south, and Front Street to the west. The project site has frontages on all four surrounding streets. Broadway is a major east-west thoroughfare in the vicinity of

⁶⁴ AECOM, 2017. *88 Broadway Transportation Impact Study*, San Francisco, CA, June 20.

⁶⁵ As described in section A, Project Description, the proposed project was revised to increase the step-backs from Front Street and Broadway, modify the building materials and fenestration (i.e., the arrangement of windows and doors on the elevations of a building) that would further be compatible with the Northeast Waterfront Landmark District. As a result of this change, the dwelling unit mix of the family housing building was revised to reduce two one-bedroom units to two studio units, and one three-bedroom unit to a two-bedroom unit. Because trip generation is typically higher for dwelling units with more bedrooms, the reduction of three-bedroom and one-bedroom units would result in fewer person-trips than what was analyzed in the transportation impact study prepared for the proposed project (AECOM, 2017. *88 Broadway Transportation Impact Study*, San Francisco, CA, June 20). No changes to the impact conclusions discussed in this section are required as a result of this change to the dwelling unit.

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the project site with two travel lanes and a parking lane in each direction. Vallejo Street is a minor collector roadway that runs east-west with one travel lane and a parking lane in each direction. Front Street is a north-south, minor collector roadway that runs along the eastern edge of the project site and has one travel lane, one bicycle lane, and a parking lane in both directions. Davis Street is a minor collector roadway that has one travel lane and a parking lane in both directions. Sidewalks of varying widths are provided on both sides of all four streets. There are existing Class II bicycle lanes on Front Street and Class III bicycle routes on Broadway.⁶⁶

Site Access

Access to the project site by transit, foot, or bicycle is available through existing bus transit service, sidewalks, streets, and crosswalks near the site. Vehicular access to the project site is currently provided via curb cuts located on all four frontages. There are no existing passenger or commercial loading zones adjacent to the project site. The project site is surrounded by metered parking with one ADA-accessible parking zone located on Front Street at the northeast corner of Broadway and Front Street.

Emergency vehicle access to the project site would be provided along the adjacent street frontages of Vallejo Street, Broadway, Davis Street, and Front Street.

Local and Regional Transit

There are no Muni stops directly adjacent to the project site; however, the project site is located 1 block from the Embarcadero, where frequent service is provided by the E Embarcadero and F Market & Wharves historic streetcar lines, providing connections to major local transit corridors and hubs including Market Street. Additional local transit service is provided by the 10 Townsend and 12 Folsom-Pacific, operating along Sansome Street and Broadway/Pacific Avenue, with stops approximately 2 to 3 blocks west of the project site. Within a radius of approximately a 0.50 miles from the project site, Muni provides additional service on the 1 California, 8 Bayshore, 8AX Bayshore "A" Express, 8BX Bayshore "B" Express, 30 Stockton, 41 Union, and 45 Union-Stockton bus routes.

The following regional transit services operate within San Francisco and are accessible from the project site via Muni or other modes of travel: BART, Golden Gate Transit, Alameda-Contra Costa County Transit District, Caltrain, San Mateo County Transit District, Solano County Transit, the Western Contra Costa Transit Authority, and ferry operators including the Water Emergency Transportation Authority and Golden Gate Ferry. The BART station most easily accessible to the project site is the Embarcadero Station, located approximately 0.50 miles from the project site. The Golden Gate Transit buses that serve the project site are Commute Bus Route services that operate along Battery Street and Sansome Street, including routes 2, 4, 8, 18, 24, 24X, 27, 38, 44, 54, 56, 58, 72, 72X, 74, 76, and 97. The closest stops to the project site for these Golden Gate Transit services are Battery Street at Broadway (inbound) and Sansome Street at Vallejo Street (outbound), within 2 to 3 blocks of the project site. Golden Gate Transit also

⁶⁶ Class II Bikeway (Bike Lane): striped lane for one-way bike travel on a street or highway; Class III Bikeway (Bike Route): shared use with pedestrian or motor vehicle traffic, where bicyclists travel in the same lane as motor vehicle traffic.

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operates ferry service between the North Bay and San Francisco, connecting Larkspur, Sausalito, and Tiburon with the Ferry Building during the morning and evening commute periods. The Ferry Building is approximately 0.50 miles southeast of the project site. Alameda-Contra Costa County Transit District (serving the East Bay), San Mateo County Transit District (serving the Peninsula/South Bay), Solano County Transit (serving Vallejo), and Western Contra Costa Transit Authority (serving Hercules) do not make local stops within 0.25 miles of the proposed project, but operate out of the Temporary Transbay Terminal, located at Howard Street and Beale Street, which is located approximately 1 mile southeast of the project site. The nearest Caltrain station is the Fourth/King Station, which is located approximately 2 miles south of the project site. Water Emergency Transportation Authority operates ferries under the "San Francisco Bay Ferry" brand, with terminals in Vallejo, at Oakland's Jack London Square, and in Alameda at Main Street and in Harbor Bay. Much like the Golden Gate Transit ferry service, Water Emergency Transportation Authority ferry services also terminate at the Ferry Building at the foot of Market Street along the Embarcadero, which is within extended walking or biking distance of the project site and easily accessible through transfers to and from Muni service along the Embarcadero.

Methodology and Standards of Significance

This section discusses the methods that were used to evaluate the project impacts related to VMT, traffic, transit, bicycle, pedestrian, loading, and emergency vehicles, under both "Existing plus Project" conditions and "Cumulative 2040 plus Project" conditions.

As part of the transportation impact study, PM peak hour⁶⁷ conditions were evaluated for two signalized, one all-way stop-controlled, and one uncontrolled intersections along roadways adjacent to or nearby the project site, including the north-south roadways: Front Street and Davis Street; and east-west roadways: Broadway and Vallejo Street. The PM peak hour was used to assess potential impacts to evaluate the worst-case scenario and because it is the adopted standard established by the *San Francisco Transportation Impact Analysis Guidelines for Environmental Review* (San Francisco Guidelines).

Vehicle Miles Traveled in San Francisco and the Bay Area

Many factors affect travel behavior. These factors include density, diversity of land uses, design of the transportation network, access to regional destinations, distance to high-quality transit, development scale, demographics, and transportation demand management. Typically, low-density development at great distance from other land uses located in areas with poor access to non-private vehicular modes of travel generate more automobile travel compared to development located in urban areas, where a higher density, mix of land uses, and travel options other than private vehicles are available.

Given these travel behavior factors, San Francisco has a lower VMT ratio than the nine-county San Francisco Bay Area region. In addition, some areas of the city have lower VMT ratios than other areas of the city. These areas of the city can be expressed geographically through transportation analysis zones. Transportation analysis zones are used in transportation planning models for transportation analysis and

⁶⁷ The weekday PM peak hour corresponds to the peak 60-minute period (i.e., four consecutive 15-minute periods) of the two-hour weekday PM peak period (4:00 p.m. to 6:00 p.m.).

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other planning purposes. The zones vary in size from single city blocks in the downtown core, to multiple blocks in outer neighborhoods, to even larger zones in historically industrial areas like the Hunters Point Shipyard.

The San Francisco County Transportation Authority (Transportation Authority) uses the San Francisco Chained Activity Model Process (SF-CHAMP) to estimate VMT by private automobiles and taxis for different land use types. Travel behavior in SF-CHAMP is calibrated based on observed behavior from the 2010-2012 *California Household Travel Survey*, Census data regarding automobile ownership rates and county-to-county worker flows, and observed vehicle counts and transit boardings. SF-CHAMP uses a synthetic population, which is a set of individual actors that represents the Bay Area's actual population, who make simulated travel decisions for a complete day. The Transportation Authority uses tour-based analysis for office and residential uses, which examines the entire chain of trips over the course of a day, not just trips to and from a project. For retail uses, the Transportation Authority uses trip-based analysis, which counts VMT from individual trips to and from the project (as opposed to the entire chain of trips). A trip-based approach, as opposed to a tour-based approach, is necessary for retail projects because a tour is likely to consist of trips stopping in multiple locations, and the summarizing of tour VMT to each location would over-estimate VMT.^{68,69}

Table 5 shows the Bay Area regional average VMT and the VMT for the traffic analysis zone (TAZ) where the project site is located (TAZ 830) for existing and cumulative 2040 conditions. Note that the San Francisco 2040 cumulative conditions were projected using a SF-CHAMP model run, using the same methodology as outlined above for existing conditions, but including residential and job growth estimates and reasonably foreseeable transportation investments through 2040. As shown in Table 5, for residential development, the regional average daily VMT per capita is 17.2 and for retail development, regional average daily work-related VMT per employee is 14.9.

⁶⁸ To state another way: a tour-based assessment of VMT at a retail site would consider the VMT for all trips in the tour, for any tour with a stop at the retail site. If a single tour stops at two retail locations, for example, a coffee shop on the way to work and a restaurant on the way back home, both retail locations would be allotted the total tour VMT. A trip-based approach allows the Transportation Authority to apportion all retail-related VMT to retail sites without double-counting.

⁶⁹ San Francisco Planning Department, *Executive Summary: Resolution Modifying Transportation Impact Analysis*, Appendix F, Attachment A. March 3, 2016.

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TABLE 5 DAILY VEHICLE MILES TRAVELED

Land Use	Existing			Cumulative 2040		
	Bay Area Regional Average	Bay Area Regional Average minus 15%	TAZ 830 ^a	Bay Area Regional Average	Bay Area Regional Average minus 15%	TAZ 830 ^a
Residential	17.2	14.6	2.6	16.1	13.7	2.2
Retail	14.9	12.6	11.2	14.6	12.4	10.1
Childcare ^b	19.1	16.2	8.1	14.6	12.4	6.5

Notes:

a. The transportation analysis zone (TAZ) containing the project site is TAZ 830. TAZ 830 is bounded by Filbert Street to the north, Broadway to the south, the Embarcadero to the east, and Front Street to the west.

b. Office VMT standards are used as a proxy for childcare uses, because trips associated with childcare typically function similarly to office.

Source: AECOM, *88 Broadway Transportation Impact Study, San Francisco, CA*, June 20, 2017, Tables 11 and 21.

Vehicle Miles Traveled Standards

Land use projects may cause substantial additional VMT. The following identifies thresholds of significance and screening criteria used to determine if a land use project would result in significant impacts under the VMT metric.

Residential, Childcare, and Retail (and Similar) Projects

As documented in the *State Office of Planning and Research Revised Proposal on Updates to the CEQA Guidelines on Evaluating Transportation Impacts in CEQA* (i.e., the proposed transportation impact guidelines), a 15 percent threshold below existing development is “both reasonably ambitious and generally achievable.”⁷⁰ For residential projects, a project would generate substantial additional VMT if it exceeds the regional household VMT per capita minus 15 percent.⁷¹ For retail projects, the Planning Department uses a VMT efficiency metric approach for retail projects: a project would generate substantial additional VMT if it exceeds the regional VMT per retail employee minus 15 percent. Trips associated with childcare typically function similarly to office. While some of these uses may have some visitor/customer trips associated with them (e.g., childcare and school drop-off, patient visits, etc.), those trips are often a side trip within a larger tour. For example, the visitor/customer trips are influenced by the origin (e.g., home) and/or ultimate destination (e.g., work) of those tours. Therefore, these land uses are treated as office for screening and analysis. For the proposed childcare uses, the Planning Department

⁷⁰ Available at: https://www.opr.ca.gov/s_sb743.php, page III: 20.

⁷¹ The California Office of Planning and Research’s proposed transportation impact guidelines state that a project would cause substantial additional vehicle miles traveled (VMT) if it exceeds both the existing City household VMT per capita minus 15 percent and existing regional household VMT per capita minus 15 percent. In San Francisco, the average VMT per capita is lower (8.4) than the regional average (17.2). Therefore, the City average is irrelevant for the purposes of the analysis.

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treats these uses similar to office uses, and a project that exceeds the regional VMT rate per employee minus .15 percent would be a project that generates substantial VMT. This approach is consistent with CEQA section 21099 and the thresholds of significance for other land uses recommended in the State Office of Planning and Research's proposed transportation impact guidelines. For mixed-use projects, each proposed land use is evaluated independently, per the significance criteria described above.

The State Office of Planning and Research's proposed transportation impact guidelines provide screening criteria to identify types, characteristics, or locations of land use projects that would not exceed these VMT thresholds of significance. The State Office of Planning and Research recommends that if a project or land use proposed as part of a project meets any of the following screening criteria, VMT impacts are presumed to be less than significant for that land use and a detailed VMT analysis is not required. The VMT screening criteria applicable to the proposed project and how they are applied in San Francisco are described as follows:

- *Map-Based Screening for Residential, childcare, and Retail Projects.* OPR recommends mapping areas that exhibit VMT less than the applicable threshold for that land use. Accordingly, the Transportation Authority has developed maps depicting existing VMT levels in San Francisco for residential, office (*i.e.*, childcare), and retail land uses based on the SF-CHAMP 2012 base-year model run. The Planning Department uses these maps and associated data to determine whether a proposed project is located in an area of the city that is below the VMT threshold.
- *Proximity to Transit Stations.* OPR recommends that residential and retail projects, as well as projects that are a mix of these uses, proposed within 0.50 miles of an existing major transit stop (as defined by CEQA section 21064.3) or an existing stop along a high-quality transit corridor (as defined by CEQA section 21155) would not result in a substantial increase in VMT. However, this presumption would not apply if the project would (1) have a floor area ratio of less than 0.75; (2) include more parking for use by residents, customers, or employees of the project than required or allowed, without a conditional use; or (3) is inconsistent with the applicable Sustainable Communities Strategy (*i.e.*, *Plan Bay Area 2040*).⁷²
- *Small Projects Screening Criterion.* OPR recommends that lead agencies may generally assume that a project would not have significant VMT impacts if the project would either: (1) generate fewer trips than the level for studying consistency with the applicable congestion management program or (2) where the applicable congestion management program does not provide such a level, fewer than 100 vehicle trips per day. The Transportation Authority's Congestion Management Program, December 2015, does not include a trip threshold for studying consistency. Therefore, the Planning Department uses the 100 vehicle trip per day screening criterion as a level generally where projects would not generate a substantial increase in VMT.

Induced Automobile Travel Standards

Transportation projects may substantially induce additional automobile travel. The following identifies thresholds of significance and screening criteria used to determine if transportation projects would result

⁷² A project is considered to be inconsistent with the Sustainable Communities Strategy if development is located outside of areas contemplated for development in the Sustainable Communities Strategy.

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in significant impacts by inducing substantial additional automobile travel. Pursuant to OPR's proposed transportation impact guidelines, a transportation project would substantially induce automobile travel if it would generate more than 2,075,220 VMT per year. This threshold is based on the fair share VMT allocated to transportation projects required to achieve California's long-term greenhouse gas emissions reduction goal of 40 percent below 1990 levels by 2030. OPR's proposed transportation impact guidelines include a list of transportation project types that would not likely lead to a substantial or measureable increase in VMT. If a project fits within the general types of projects (including combinations of types) described above (*e.g.*, map-based screening for residential, childcare, and retail projects, proximity to transit stations, and small project screening criteria), it is presumed that VMT impacts would be less than significant and a detailed VMT analysis is not required. Although the project is not a transportation project, it would include some features that would modify the local circulation network, including, 20 *class 2* bicycle parking spaces, two new mid-block passages, and sidewalk widening (extensions and bulb-outs), ADA-compliant curb ramps at several locations, remove and/or reconfigure on-street parking to create sidewalk extensions and establish new on-street passenger and commercial loading zones at several locations; and remove existing curb cuts.

As shown on Table 6, the proposed project would generate 5,536 person-trips on a daily basis and 859 person-trips during the weekday PM peak hour.

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TABLE 6 PROJECT TRAVEL DEMAND MODE: NEW PERSON-TRIPS BY LAND USE TYPE

Building / Land Use	Size	Trip Rates ^a		Person-Trips	
		Weekday Daily	Weekday PM Peak Hour Share	Weekday Daily	Weekday PM Peak Hour
88 Broadway					
Residential (general)					
Studio / one-bedroom	53 units	7.5 trips / unit	17.3%	398	69
Two-bedroom or larger	72 units	10.0 trips / unit		720	125
Subtotal Residential	125 units	n/a	n/a	1,118	193
Commercial ^b	5,246 square feet	600 trips / 1,000 square feet	13.5%	3,148	425
Childcare ^c					
Enrollment	55 children	4.0 trips / child ^d	50.0%	220	110
Staffing	18 persons	4.0 trips / person ^e	25.0%	72	18
Subtotal Childcare	n/a	n/a	n/a	292	128
Subtotal 88 Broadway	n/a	n/a	n/a	4,557	746
735 Davis Street					
Residential (senior housing)					
Studio/ one-bedroom	52 units	5.0 trips / unit	6.0%	260	16
Two-bedroom or larger	1 unit	5.0 trips / unit		5	0
Subtotal Residential	53 units	n/a	n/a	265	16
Commercial ^c	1,190 square feet	600 trips / 1,000 square feet	13.5%	714	96
Subtotal 735 Davis				979	112
Total					
Residential	178 units			1,383	209
Commercial	6,436 square feet			3,862	521
Childcare	4,306 square feet			292	128
Total				5,536	859

Notes: Component values may not sum to total values due to rounding.

a. Weekday daily trip rates and weekday PM peak hour shares from the *San Francisco Guidelines*, unless indicated otherwise.

b. Commercial tenants are unknown, the commercial uses are analyzed using the *composite* trip rate for retail from the *San Francisco Guidelines*.

c. Travel demand estimates for childcare are based on maximum enrollment and staffing levels (up to 55 children and up to 18 staff, respectively).

d. Each child is conservatively assumed to be dropped off/picked up individually (*i.e.*, no group travel/siblings being escorted together). All drop-off/pick-up activities are conservatively assumed to occur during the weekday AM and PM peak hour. The person-trips associated specifically with the children are ignored, resulting in approximately four trips per day enrolled child.

e. Conservatively assumes that each staff makes two trips per day (one to and one from the facility), with allowance for off-site trip activity (*e.g.*, lunch breaks, errands), visitors, and other ancillary trip activity.

Source: AECOM, *88 Broadway Transportation Impact Study*, San Francisco, CA, July 9, 2017, Table 8.

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As shown on Table 7, during the weekday PM peak hour, the proposed project would generate 360 net new person-trips by automobile, 137 net new person-trips by transit, 292 net new person-trips by walking, and 70 net new trips by other modes. In addition, the proposed project would generate 234 net new vehicle-trips during the weekday PM peak hour.

TABLE 7 PROJECT TRAVEL DEMAND: NEW TRIPS BY MODE (WEEKDAY PM PEAK HOUR)

Direction	Weekday Daily						Weekday PM Peak Hour					
	Person-Trips					Vehicle Trips	Person-Trips					Vehicle Trips
	Auto	Transit	Walk	Other	Total		Auto	Transit	Walk	Other	Total	
Inbound												
Residential	272	90	311	18	691	222	55	18	63	4	139	45
Commercial	692	330	674	234	1,931	292	89	39	90	31	250	37
Childcare	97	30	17	2	146	92	42	6	7	0	55	42
Subtotal	1,062	450	1,002	254	2,768	605	186	63	160	35	444	123
Outbound												
Residential	272	90	311	18	691	222	28	9	32	2	70	22
Commercial	692	330	674	234	1,931	292	98	50	92	32	271	42
Childcare	97	30	17	2	146	92	49	15	9	1	73	46
Subtotal	1,062	450	1,002	254	2,768	605	174	74	132	35	414	111
Total	2,124	900	2,005	507	5,536	1,211	360	137	292	70	859	234

Notes: Component values may not sum to total values due to rounding

Source: AECOM, 88 Broadway Transportation Impact Study, San Francisco, CA, June 20, 2017, Table 9.

Freight, Service Vehicle and Passenger Loading

Existing freight loading/service vehicle and passenger loading conditions were evaluated along the street segments bordering the project site. Freight loading and service vehicle demand (frequently referred to simply as "loading demand") consists of the number of delivery/service vehicle trips generated by the project, as well as the number of loading spaces that would be required to accommodate the expected demand during the average hour and peak hour of freight loading/service vehicle activity. In accordance with the standard methodology outlined in the San Francisco Guidelines, the number of daily delivery/service vehicle trips was estimated based on the size of each land use and a truck trip generation rate (specific to each land use). The number of loading spaces necessary to accommodate this demand was estimated based on the anticipated hours of operation, turnover of loading spaces, and an hourly distribution of trips. The information and rates used in the loading demand analysis were obtained from the San Francisco Guidelines for the relevant land uses. Under Planning Code section 152.1, the residential component of the proposed project would be required to provide two on-site loading spaces. A project would have a significant effect on the environment if it would result in a loading demand during the peak hour of loading activities that could not be accommodated within proposed on-site loading facilities or within convenient on-street loading zones, and if it would create potentially

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hazardous conditions affecting traffic, transit, bicycles, or pedestrians or significant delays affecting transit.

Transit

Existing ridership and capacity data for local and regional public transit services were generally referenced from the San Francisco Planning Department's *Transit Data for Transportation Impact Studies Memorandum* (updated May 15, 2015). For Muni the ridership and capacity data published in the most recent update of the *Transit Data for Transportation Impact Studies Memorandum* are compiled from manual counts (for rail lines) and automatic passenger count (APC) data (for bus lines) collected in fall 2013.

Based on the ridership and capacity data, a capacity utilization⁷³ percentage was calculated as a measure of crowding inside transit vehicles. For each line, the capacity utilization is reported for the respective maximum load point (MLP), defined as the stop along a given line where average passenger loads reach their peak. For local public transit services, a capacity utilization greater than 85 percent is considered unacceptable. The SFMTA Board has determined that this threshold most accurately reflects actual operations and the likelihood of "pass-ups" (i.e., vehicles not stopping to pick up more passengers). For regional public transit services, a capacity utilization standard of 100 percent was applied, equivalent to a full-seated load for all regional transit providers (with the exception of BART, which assumes a full-seated load plus standees). A capacity standard based on a full-seated load reflects the fact that regional transit operators generally serve longer-distance trips, and passengers would generally not be expected to stand for extended periods of time on these journeys. An increase in transit ridership generated by a project that represents more than 5.0 percent of the overall ridership on operators that currently exceed the 85 percent or 100 percent capacity utilization, or would exceed these capacity utilization thresholds under existing plus project conditions, would be considered a significant impact.

Impact TR-1: The proposed project would not cause substantial additional VMT or substantially induce automobile travel. (Less than Significant)

Vehicle Miles Traveled Analysis

The existing VMT by land use in the TAZ 830 is discussed above and shown in Table 5. The impacts by land use type are as follows:

- **Residential VMT:** The existing average daily VMT per capita for residential uses in TAZ 830 is 2.6 miles. This is 84.9 percent below the existing regional average daily VMT per capita of 17.2.⁷⁴ Given the project site is located in an area where existing VMT is more than 15 percent below the

⁷³ Capacity utilization is a calculation of ridership on a given transit service as a percentage of the total capacity of the service. The design capacity of transit vehicles can vary, but in the case of Muni is assumed to include both seated and standing capacity, where standing capacity is between 30 and 80 percent of the seated capacity depending on the vehicle design.

⁷⁴ $(17.2 \text{ miles regional average daily VMT per capita} - 2.6 \text{ miles TAZ 830 average daily VMT per capita}) / 17.2$
miles regional average daily VMT per capita = 84.88%

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existing regional average, the proposed project's residential use would not result in substantial additional VMT.

- **Retail VMT:** The existing average daily VMT per employee for retail uses in TAZ 830 is 11.2 miles. This is 24.8 percent below the existing regional average daily VMT per capita of 14.9.⁷⁵ Given the project site is located in an area where existing VMT is more than 15 percent below the existing regional average, the proposed project's retail use would not result in substantial additional VMT.
- **Childcare VMT:** The existing average daily VMT per capita for childcare uses in TAZ 830 is 8.1 miles. This is 57.6 percent below the existing regional average daily VMT per capita of 19.1.⁷⁶ Given the project site is located in an area where existing VMT is more than 15 percent below the existing regional average, the proposed project's childcare use would not result in substantial additional VMT.

Furthermore, due to the proposed project's size (floor area ratio greater than 0.75), the project's location within 0.50 miles of an existing major transit stop (1 block from Muni stop E Embarcadero and F Market & Wharves historic streetcar lines, and 2 to 3 blocks from 10 Townsend and 12 Folsom-Pacific). Additionally, the project does not exceed vehicular parking requirements, and is within the Port of San Francisco Priority Development Area. The project would meet the Proximity to Transit Station criterion, which further indicates the project would not result in substantial additional VMT.

Induced Automobile Travel Analysis

The proposed project is not a transportation project. However, as discussed above, the proposed project would include features that would alter the transportation network. The proposed project would remove an existing surface parking lot at the site, and would include no new parking spaces; a reduction in off-street parking. These features fit within the general types of projects previously identified above that would not substantially induce automobile travel.

Based on the foregoing, the proposed project would not result in substantial additional VMT and would not substantially induce automobile traffic. Therefore, impacts on VMT would be *less than significant*. No mitigation measures are required.

⁷⁵ (14.9 miles regional average daily VMT per capita – 11.2 miles TAZ 830 average daily VMT per capita) / 14.9 miles regional average daily VMT per capita = 24.8%

⁷⁶ (19.1 miles regional average daily VMT per capita – 8.1 miles TAZ 830 average daily VMT per capita) / 19.1 miles regional average daily VMT per capita = 57.59%

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Impact TR-2: The proposed project would not conflict with an applicable plan, ordinance, or policy establishing measures of effectiveness for the performance of the circulation system, nor would it conflict with an applicable congestion management program. (Less than Significant)

Vehicle Circulation

The proposed project would generate new vehicle-trips on the surrounding roadway network, but would also remove existing automobile-oriented uses (surface parking) that already generate substantial amounts of vehicle traffic and replace them with residential and commercial uses with no accessory off-street parking. The existing surface parking lots at the project site accommodates a total of approximately 180 parking spaces (not including additional capacity through tandem/valet arrangements), most of which is currently used by commuters traveling to and from workplaces in the area during the weekday AM and PM peak periods (*i.e.*, 7:00 to 9:00 a.m. and 4:00 to 6:00 p.m.). Furthermore, most of the street segments fronting the project site, including Vallejo Street, Davis Street, and Front Street, function primarily as low-volume collector roadways providing local access to adjacent or nearby properties. Given these considerations, the proposed project's impact on local circulation would be *less than significant*. No mitigation measures are required.

Freight and Passenger Loading

Freight Loading

Under Planning Code section 152.1, the residential component of the proposed project would be required to provide two on-site loading spaces; however, no loading spaces would be required for the retail component because the proposed area would be less than 10,000 square feet.

The proposed project would not provide any on-site loading spaces and, therefore, would not meet the Planning Code requirement for two on-site loading spaces for the residential component, and would seek approval of a Planned Unit Development, pursuant to Planning Code section 304, to permit modification of the on-site loading requirements of Planning Code section 152.

The proposed project would establish one on-street commercial loading zone (approximately 35 feet in length) along the east side of Front Street. As shown on Table 8, this on-street commercial loading zone would generally meet the average-hour loading demand (1.3 spaces), but would fall slightly short of the peak-hour loading demand (1.7 spaces).

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TABLE 8 PROJECT LOADING DEMAND

Land Use	Project Size (square feet)	Daily Truck Trip Generation Rate (trucks per 1,000 gross square feet)	Freight Loading/Service Vehicle Demand (spaces)	
			Average Hour	Peak Hour
Residential	160,004	0.03	0.2	0.3
Retail ^a	6,436	3.70	1.1	1.4
Childcare ^b	4,306	0.10	0.0	0.0
Total			1.3	1.7

Notes: Component values may not sum to total values due to rounding.

a. Proposed commercial uses conservatively analyzed as “drug store”, which has the highest daily truck trip generation rate of all retail uses cited in the San Francisco Guidelines.

b. The San Francisco Guidelines do not provide daily truck trip generation rates specific to childcare or educational uses. Proposed childcare use is approximated using truck trip generation rate for service (“institution”) uses.

Source: AECOM, *88 Broadway Transportation Impact Study, San Francisco, CA*, June 20, 2017, Table 10.

According to the San Francisco Guidelines, approximately two-thirds (67 percent) of daily service vehicle activity typically consists of vehicle types similar to personal (household) automobiles, including 25 percent consisting of cars and pickups and 42 percent consisting of vans. Given the size and nature of the project, examples might include a small United States Postal Service truck delivering mail and parcels for residential tenants, a vendor van delivering a small batch of goods to commercial tenants, or a pickup truck for building maintenance contractors such as plumbers or electricians. Because of their size, these vehicles would have the option of using on- or off-street parking spaces in the vicinity of the project site, and would not necessarily be restricted to using the proposed on-street commercial loading zone. The remaining 33 percent of daily service vehicle activity, corresponding to up to one truck during the average hour and peak hour of freight loading/service vehicle activity, would consist of larger vehicles that would likely be restricted to using the proposed on-street commercial loading zone due to their size and limited maneuverability. This includes moving trucks used for residents moving in and out of the project site. Given these considerations, the proposed on-street commercial loading zone, in combination with on- and off-street parking spaces in the vicinity of the project site, would generally be adequate to meet the freight loading/service needs of the building, and the project would not generate a loading demand in excess of available and proposed on- or off-street accommodations such that substantial impacts to traffic, transit, bicycle, or pedestrian circulation could occur.

Passenger Loading

Passenger loading zones for the project are proposed along the west side of Davis Street and south side of Vallejo Street. While there may be some concentrated queuing during drop-off and pick-up periods at the proposed childcare facility, any potential effects on traffic circulation would be temporary and dissipate immediately with the conclusion of drop-off and pick-up activities. Unlike a school (which typically has fixed schedules), a childcare facility is typically designed for flexibility in drop-off and pick-up times, and any potential effects of passenger loading activities at the proposed Vallejo Street loading zone would likely be spread out over the course of the two-hour weekday AM and PM peak periods. Based on information provided by the planned operator of the childcare facility, drop-off activities would take place during a 3-hour window in the mornings between 7:00 and 10:00 a.m., while pick-up activities would take place during a similar window in the afternoons/evenings between 3:00 and 6:30 p.m. The

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proposed restrictions described in Improvement Measure I-TR-2a below would be in effect at the Vallejo Street loading zone on weekdays during these time periods to accommodate drop-off/pick-up activities, with the loading zone reverting back to metered general-purpose parking at other times. Additionally, the proposed 35-foot-long passenger loading zone along Davis Street is intended to serve the senior housing building. Expected users of the zone could include paratransit vehicles, vanpools, taxis /rideshares, or other vehicles conducting pick-up/drop-off of building residents. Activity at this passenger loading zone is expected to be less concentrated than at the Vallejo Street passenger loading zone, and would likely be spread out over the course of the day according to residents' schedules, which could include medical appointments, shopping trips, group outings, visits with friends or family, or other types of trips. The zone would have sufficient capacity to accommodate the largest types of expected vehicles, which could include paratransit shuttles and cutaway vans. Similar to Vallejo Street, the affected segment of Davis Street functions as a low-volume collector roadway, and there is adequate space for vehicle traffic to safely bypass any temporary queuing that might exceed the capacity of the proposed passenger loading zone.

Based on the discussion of loading operations above, loading activities would not create potentially hazardous traffic conditions including those from double parking or significant delays affecting traffic, transit, bicycles or pedestrians; therefore, the proposed project would have a *less-than-significant* loading impact.

Although no significant loading impacts would occur, implementation of Improvement Measure I-TR-2a, Passenger Loading Zone Management, would further reduce these *less-than-significant* impacts.

Improvement Measure I-TR-2a: Passenger Loading Zone Management

Passenger loading would occur on Vallejo Street and Davis Street adjacent to the proposed daycare and proposed mid-block passageway respectively. The project sponsor should ensure that project-generated passenger loading activities along Vallejo Street and Davis Street are accommodated within the confines of the on-street passenger loading zones. Specifically, the project sponsor should monitor passenger loading activities at the proposed zones to ensure that such activities are in compliance with the following requirements:

- That double parking, queuing, or other project-generated activities do not result in intrusions into the adjacent travel lane or obstruction of the adjacent sidewalk. Any Project-generated vehicle conducting, or attempting to conduct, passenger pick-up or drop-off activities should not occupy the adjacent travel lane such that free-flow traffic circulation is inhibited, and associated passengers and pedestrian activity should not occupy the adjacent sidewalk such that free-flow pedestrian circulation is inhibited.
- That vehicles conducting passenger loading activities are not stopped in the passenger loading zone for an extended period of time. In this context, an "extended period of time" shall be defined as more than 5 consecutive minutes.

Should passenger loading activities at the proposed on-street passenger loading zones not be in compliance with the above requirements, the Project Sponsor should employ abatement methods as needed to ensure compliance. Suggested abatement methods may include, but are not limited to, employment or deployment of staff to direct passenger loading activities; use of off-site parking

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facilities or shared parking with nearby uses; travel demand management strategies such as additional bicycle parking; and / or limiting hours of access to the passenger loading zones. Any new abatement measures should be reviewed and approved by the Planning Department.

If the Planning Director, or his or her designee, suspects that Project-generated passenger loading activities in the proposed passenger loading zones are not in compliance with the above requirements, the Planning Department should notify the property owner in writing. The property owner, or his or her designated agent (such as building management), should hire a qualified transportation consultant to evaluate conditions at the site for no less than seven total days. The consultant should submit a report to the Planning Department documenting conditions. Upon review of the report, the Planning Department should determine whether or not Project-generated passenger loading activities are in compliance with the above requirements, and should notify the property owner of the determination in writing.

If the Planning Department determines that passenger loading activities are not in compliance with the above requirements, upon notification, the property owner or his or her designated agent will have 90 days from the date of the written determination to carry out abatement measures. If after 90 days the Planning Department determines that the property owner or his or designated agent has been unsuccessful at ensuring compliance with the above requirements, use of the on-street passenger loading zone should be restricted during certain time periods or events to ensure compliance. These restrictions should be determined by the Planning Department in coordination with SFMTA, as deemed appropriate based on the consultant's evaluation of site conditions, and communicated to the property owner in writing. The property owner or his or her designated agent should be responsible for relaying these restrictions to building tenants to ensure compliance.

Construction

Project construction would last approximately 19 months and is planned to commence in August 2018. During the construction period, temporary and intermittent transportation impacts would result from truck movements to and from the project site. Truck movements during periods of peak traffic flow would have greater potential to create conflicts than during non-peak hours because of the greater numbers of vehicles on the streets during the peak hour that would have to maneuver around queued trucks. However, the majority of construction activity would occur during off-peak hours, when traffic volumes and the potential for conflicts are substantially lower than during peak hours.

Due to the undeveloped nature of the project site, construction staging would occur primarily within the confines of the project site, although the sidewalks fronting the site along Vallejo Street, Broadway, Davis Street, and/or Front Street may need to be closed on a temporary basis. Any closures would likely require the temporary closure of the adjacent parking lane to maintain pedestrian access but would likely otherwise have little effect on roadway capacity. Signage and pedestrian protection would be erected, as appropriate. It is anticipated that no roadways or travel lanes would need to be closed and no transit service or bus stops would need to be rerouted or relocated during the construction period.

Any temporary traffic lane closures would be coordinated with the City to minimize the impacts on local traffic. In general, lane and sidewalk closures are subject to review and approval by San Francisco Public

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Works (Public Works) and the City's Transportation Advisory Staff Committee that consists of representatives of City departments including SFMTA, Public Works, Fire, Police, Public Health, Port and the Taxi Commission.

During the 19-month construction period, the grading construction phase is estimated to generate the greatest number of daily truck trips (55 trips) and the building construction phase is estimated to generate the greatest number of daily construction worker trips (up to 100 trips). However, the addition of the worker-related vehicle- or transit-trips would not substantially affect transportation conditions, as impacts on local intersections or the transit network would be substantially less than those associated with the proposed project because fewer trips would be generated (e.g., 55 daily truck trips during grading phase and up to 100 daily construction worker trips during construction compared to 859 weekday PM peak hour person trips during project operation) and are temporary in nature. Also, the majority of construction activity would occur during off-peak hours, when traffic volumes and the potential for conflicts are substantially lower than peak-hour conditions. Construction workers who drive to the project site and the potential temporary parking restrictions along the building frontage would cause a temporary increase in parking demand and a decrease in supply. Construction workers would need to park either on-street or in parking facilities that currently have availability during the day or use other travel modes to reach the project site. However, parking shortfalls would be temporary and are not considered a significant environmental impact per SB 743 (see section D, Summary of Environmental Impacts). Furthermore, the temporary lessening of parking variability during construction is not anticipated to create hazardous traffic conditions. Therefore, the proposed project's construction impacts were determined to be *less than significant*.

Although no significant construction impacts were identified, **Improvement Measure I-TR-2b, Construction Traffic Management**, has been identified to further minimize the project's *less-than-significant* impacts as a result of project-related construction activities.

Improvement Measure I-TR-2b: Construction Traffic Management

The project sponsor should implement measures to minimize the effects of project-related construction activities on traffic, transit, bicycle, and pedestrian circulation. Potential measures could include (but are not limited to) the following:

- Limit hours of construction-related traffic, including, but not limited to, truck movements, to avoid the weekday AM and PM peak hours (7:00 to 9:00 a.m. and 4:00 to 6:00 p.m.) (or other times, if approved by the San Francisco Municipal Transportation Agency).
- Construction contractor(s) for the project should coordinate construction activities with other construction activities that may take place concurrently in the vicinity of the project site, including the Seawall Lots 323/324 and 940 Battery Street project. Potential measures could include establishing regular coordination protocols (e.g., a weekly liaison meeting between general contractors to discuss upcoming activities and resolve conflicts); offsetting schedules (e.g., scheduling materials deliveries, concrete pours, crane assembly/ disassembly, and other major activities at different hours or on different days to avoid direct overlap); shared travel and/or parking solutions for construction workers (e.g., helping establish an informal vanpool/carpool program); and other measures.

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The project sponsor should require that the construction contractor(s) for the project encourage workers to take transit, rideshare, bicycle, or walk when traveling to and from the construction site.

Impact TR-3: The proposed project would not result in substantially increased hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses. (Less than Significant)

The proposed project would not include any design features that would substantially increase traffic hazards (e.g., a new sharp curve or dangerous intersections), and would not include any incompatible uses, as discussed under section E.1, Land Use and Land Use Planning. Therefore, the proposed project would not cause adverse impacts associated with traffic hazards. In addition, the proposed project does not provide on-site parking facilities and would eliminate all existing curb cuts. As noted previously under Impact TR-2, loading zones during peak traffic hours would not interfere with bicycle, pedestrian or vehicular movements on Vallejo Street for daycare drop-off. Although the proposed project is not expected to result in substantial loading and impacts would be less than significant, Improvement Measure I-TR-2a has been identified to further decrease the severity of these less-than-significant impacts with regards to daycare drop-off. Based on the above, the proposed project would have a *less-than-significant* impact related to transportation hazards due to a design feature or resulting from incompatible uses. No mitigation measures are required.

Impact TR-4: The proposed project would not result in inadequate emergency access. (Less than Significant)

The street network currently provides access to the project site for emergency vehicles. The proposed project would not modify existing emergency access conditions; emergency vehicles would continue to access the project site via all four streets fronting the project site: Front Street, Vallejo Street, Davis Street, and Broadway. The proposed project would not close off any existing streets or entrances to public uses. Aside from the general and relatively minor increase in vehicle traffic that would result from the additional activity at the project site, the proposed project would not inhibit emergency access to the project site. Therefore, the proposed project would have a *less-than-significant* impact to emergency access. No mitigation measures are required.

Impact TR-5: The proposed project would not conflict with adopted policies, plans or programs regarding public transit, bicycle or pedestrian facilities, or otherwise decrease the performance or safety of such features. (Less than Significant)

Transit

As previously shown on Table 7, the project is estimated to generate approximately 137 PM peak-hour transit trips (63 inbound transit person-trips and 74 outbound transit person-trips), which would be distributed among Muni, BART, Caltrain, Alameda-Contra Costa County Transit District, Golden Gate Transit, San Mateo County Transit District lines, and ferries. There are no transit stops adjacent to the

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project site; however public transit is very accessible in the project vicinity. These bus lines link the neighborhood to the rest of the city, the East Bay, the North Bay, and the Peninsula.

This analysis of transit impacts focuses on the increase in transit patronage across “screenlines”⁷⁷ in the outbound direction during the weekday PM peak hour. Four screenlines have been established in San Francisco to analyze potential impacts of projects on Muni service, and three screenlines have been established for regional transit service. As shown on described above, Muni has a capacity utilization performance standard of 85 percent. The threshold of significance for identifying regional transit crowding impacts is 100 percent capacity utilization. There are no transit services operating on the street segments immediately abutting the project site. The closest transit stops are located a block or more away along the Embarcadero, Broadway, and the Battery Street/Sansome Street couplet. Because there is sufficient physical separation between the project site and transit stops, the proposed project would not conflict with bus operations; therefore, no impacts to bus circulation were identified. As shown on Table 9, all of the screenlines and the majority of corridors would operate below Muni’s standard 85 percent capacity utilization with implementation of the proposed project, with the exception of the Fulton/Hayes corridor along the northwest screenline and Third Street corridor along the southeast screenline.

TABLE 9 MUNI DOWNTOWN SCREENLINES: EXISTING PLUS PROJECT CONDITIONS

Screenline/Corridor	Weekday PM Peak Hour (Outbound)						
	Existing Conditions			Existing plus Project Conditions			
	Ridership	Capacity	Utilization	Ridership		Capacity	Utilization
				Added	Total		
Northeast Screenline							
Kearny / Stockton	2,245	3,327	67.5%	2	2,247	3,327	67.6%
Other	683	1,078	63.4%	3	686	1,078	63.6%
Subtotal	2,928	4,405	66.5%	6	2,934	4,405	66.6%
Northwest Screenline							
Geary	1,964	2,623	74.9%	5	1,969	2,623	75.1%
California	1,322	1,752	75.4%	2	1,324	1,752	75.6%
Sutter / Clement	425	630	67.5%	1	426	630	67.7%
Fulton / Hayes	1,184	1,323	89.5%	2	1,186	1,323	89.6%
Balboa	625	974	64.2%	2	627	974	64.4%
Subtotal	5,519	7,302	75.6%	12	5,532	7,302	75.8%
Southeast Screenline							
Third Street	782	793	98.6%	1	783	793	98.7%

⁷⁷ Screenlines represent a grouping of transit services, usually by a common direction or origin / destination served, reflecting the fact that transit passengers generally have multiple transit options or alternatives available to them on their journey.

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Mission	1,407	2,601	54.1%	2	1,409	2,601	54.2%
San Bruno / Bayshore	1,536	2,134	72.0%	2	1,538	2,134	72.1%
Other	1,084	1,675	64.7%	2	1,086	1,675	64.8%
<i>Subtotal</i>	<i>4,810</i>	<i>7,203</i>	<i>66.8%</i>	<i>7</i>	<i>4,816</i>	<i>7,203</i>	<i>66.9%</i>
Southwest Screenline							
Subway	4,904	6,164	79.6%	6	4,910	6,164	79.7%
Haight / Noriega	977	1,554	62.9%	2	979	1,554	63.0%
Other	555	700	79.0%	1	556	700	79.4%
<i>Subtotal</i>	<i>6,435</i>	<i>8,418</i>	<i>76.5%</i>	<i>10</i>	<i>6,446</i>	<i>8,418</i>	<i>76.6%</i>
<i>Total</i>	<i>19,693</i>	<i>27,328</i>	<i>72.1%</i>	<i>34</i>	<i>19,727</i>	<i>27,328</i>	<i>72.2%</i>

Notes: Component values may not sum to total values due to rounding. Bold indicates capacity utilization of 85 percent or greater.
Source: AECOM, 88 Broadway Transportation Impact Study, San Francisco, CA, June 20, 2017, Table 12.

While these two corridors currently operate above 85 percent capacity, the proposed project would contribute two riders or 0.2 percent of overall ridership on the Fulton/Hayes corridor and one rider or 0.1 percent of overall ridership on the Third Street corridor. The increase in transit ridership generated by the proposed project represents less than 5.0 percent of the overall ridership on corridors that currently operate over the 85 percent capacity, which as previously described is the standard applied to determine significance. As a result, the proposed project would result in *less-than-significant* impacts to local transit.

As shown on Table 10, all of the screenlines for regional transit would operate below the 100 percent regional transit capacity utilization, with the exception of BART. The proposed project would increase ridership on the regional transit screenlines, but would not directly cause any of them to exceed the 100 percent capacity utilization threshold.

TABLE 10 REGIONAL TRANSIT SCREENLINES – EXISTING PLUS PROJECT CONDITIONS

Screenline / Operator	Weekday PM Peak Hour (Outbound)						
	Existing Conditions			Existing plus Project Conditions			
	Ridership	Capacity	Utilization	Ridership		Capacity	Utilization
				Added	Total		
East Bay							
BART	24,488	22,784	107.5%	17	24,505	22,784	107.6%
AC Transit	2,256	3,926	57.5%	2	2,258	3,926	57.5%
Ferries	805	1,615	49.8%	1	806	1,615	49.9%
Subtotal	27,549	28,325	97.3%	19	27,568	28,325	97.3%
North Bay							
Golden Gate Transit	1,384	2,817	49.1%	2	1,386	2,817	49.2%
Ferries	968	1,959	49.4%	2	970	1,959	49.5%

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<i>Subtotal</i>	2,352	4,776	49.2%	4	2,356	4,776	49.3%
South Bay							
BART	13,500	18,900	71.4%	15	13,515	18,900	71.5%
Caltrain	2,377	3,100	76.7%	1	2,378	3,100	76.7%
SamTrans	141	320	44.1%	0	141	320	44.1%
<i>Subtotal</i>	16,018	22,320	71.8%	17	16,035	22,320	71.8%
<i>Total</i>	45,919	55,421	82.9%	40	45,959	55,421	82.9%

Notes: Component values may not sum to total values due to rounding. Screenlines and transit providers / services operating at capacity utilization of 100 percent or greater are highlighted in bold.

Source: AECOM, *88 Broadway Transportation Impact Study*, San Francisco, CA, June 20, 2017, Table 14.

BART service to/from the East Bay currently exceeds the 100 percent capacity utilization threshold and would continue to do so with the proposed project. The proposed project would contribute 0.1 percent to the total ridership on BART service on the East Bay screenline. The increase in transit ridership generated by the proposed project represents less than 5.0 percent of the overall ridership on operators that currently exceed the 100 percent capacity, which is the standard used to determine significance as previously described. As a result, the proposed project would result in *less-than-significant* impacts.

Transit-related policies include, but are not limited to: (1) discouragement of commuter automobiles (Planning Code section 101.1, established by Proposition M, the Accountable Planning Initiative); and (2) the City's "Transit First" policy, established in the City's Charter section 16.102. As discussed under section C, Compatibility with Existing Zoning and Plans, the proposed project would not conflict with any of these transit-related policies.

The proposed project would not conflict with transit operations as discussed above and also would not conflict with the transit-related policies established by Proposition M or the City's Transit First Policy. Therefore, impacts to the City's transit network would be considered *less than significant*.

Pedestrian Facilities

As shown previously on Table 7, the proposed project would generate up to 429 pedestrian trips (137 of which would be walking to/from transit) during a typical weekday PM peak hour. These new pedestrian trips would be spread out over several adjacent sidewalks and crosswalks. Pedestrian activity would be distributed across all four street segments adjacent to the project site, as well as along the two mid-block pedestrian passages proposed by the project. Given the quality of existing sidewalks and crosswalks and existing pedestrian activity levels in the vicinity of the project site, the new pedestrian trips generated by the proposed project could be accommodated on the adjacent facilities and would not result in substantial overcrowding on nearby pedestrian facilities, including sidewalks and crosswalks between project site access points and major destinations or transit stops in the surrounding area (e.g., the Embarcadero

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waterfront promenade or the Broadway & the Embarcadero Station for the E Embarcadero and F Market & Wharves historic streetcars).⁷⁸

The proposed project would not create potential collision risks through increased vehicle conflicts or otherwise interfere with pedestrian accessibility to the project site and adjoining areas. Given that the proposed project is replacing automobile-oriented uses (surface parking) served by multiple curb cuts that already generate substantial amounts of vehicle traffic with residential and commercial uses and no accessory parking, pedestrian circulation in sidewalks and crosswalks adjacent to and in the vicinity of the project site is unlikely to be substantially worse than existing conditions. The proposed project reduces curb cuts from an existing five curb cuts to none. However, the proposed project would introduce potential new conflicts associated with the proposed on-street freight loading zone on Front Street and the on-street passenger loading zones along Vallejo Street and Davis Street, particularly drop-off and pick-up activities associated with the childcare facilities. The passenger loading zones are expected to increase curbside activity more than a typical on-street parking space, but any vehicle-pedestrian conflicts would be substantially less than those associated with vehicles using curb cuts to cross the sidewalk to directly enter and exiting the property. Additionally, the width of the sidewalk along Vallejo Street and Davis Street is sufficient for pedestrians to bypass obstructions from loading activities from the childcare facility and senior citizen housing. Therefore, the proposed project's impact to pedestrian circulation and facilities would be *less than significant*. Although the proposed project is not expected to cause significant pedestrian impacts, the implementation of **Improvement Measure I-TR-2a, Passenger Loading Zone Management**, discussed under Impact TR-2, could improve the pedestrian environment in the project area.

Bicycle Facilities

The proposed project would provide 110 *class 1* bicycle parking spaces for the family housing building and 10 *class 1* bicycle parking spaces for the senior housing building, as well as 20 *class 2* bicycle parking spaces (16 spaces for the family housing building and 4 spaces for the senior housing building) at locations within the sidewalk adjacent to the project site on Vallejo Street, Davis Street, and Broadway. This would meet the requirement of Planning Code section 155.2, which requires a total of 115 *class 1* spaces and 20 *class 2* spaces.

The *San Francisco Bicycle Plan* includes goals and objectives to encourage bicycle use in the city, describes the existing bicycle route network (a series of interconnected streets and pathways on which bicycling is encouraged) and identifies improvements to achieve the established goals and objectives. There are multiple bicycle routes in the vicinity of the project site, the most well-utilized being the Class II facilities along the Embarcadero and the San Francisco Bay Trail along the adjacent shared-use promenade. The Project site is also immediately adjacent to secondary bikeways, including Class III facilities along Broadway and Class II facilities along Front Street. There are no proposed or planned future bikeway improvements along any of the street segments adjacent to the project site. Additional bicycle facilities in the area include the existing Bay Area Bicycle Share with stations less than a block away at the Embarcadero and Vallejo Street, and Broadway and Battery Street.

⁷⁸ AECOM, 2017. *88 Broadway Transportation Impact Study*, San Francisco, CA, June 20.

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Safety concerns for bicyclists generally stem from conflicts with vehicles, including right-turning traffic at intersections and on-street parking movements across bicycle lanes. Vehicles stopped in the bike lane, such as delivery or rideshare vehicles, can also introduce hazards for bicyclists and obstruct circulation. Existing bicycle activity during the weekday PM peak hour at the four intersections bounding the project site is generally on the order of ten bicycles or less on each intersection approach. It is anticipated that a substantial portion of the 70 “other” PM peak hour trips generated by the proposed project would be bicycle trips. While the proposed project would increase the amount of bicycle activity along streets in the vicinity of the Project site, the magnitude of this increase would not be substantial enough to affect overall bicycle circulation or the operations of bikeway facilities. Existing bikeways would have sufficient capacity to handle the incremental increase in bicycle activity generated by the proposed project. The proposed project would demolish existing automobile-oriented uses (surface parking) at the project site, which is served by multiple curb cuts that already generate substantial amounts of vehicle traffic. Given that the proposed project would replace these uses with active uses without any curb cuts or accessory parking, bicycle circulation along the streets adjacent to and in the vicinity of the project site would likely be similar to, if not substantially better than, existing conditions. The proposed project may create some new conflicts associated with the proposed on-street passenger loading zones along Vallejo Street and Davis Street and freight loading zone on Front Street. Any potential conflicts associated with these zones would not be significantly different from those associated with the existing on-street parking spaces in these locations. While there may be some concentrated queuing during drop-off and pick-up periods at the proposed childcare facility, any potential effects on bicycle circulation would be temporary and dissipate immediately with the conclusion of drop-off and pick-up activities. The proposed project would not increase auto or bicycle traffic to a level that adversely affects existing bicycle facilities in the area; nor would the proposed project create a new hazard or substantial conflict to bicycling. The proposed project would not adversely affect bicycle accessibility to the project site or adjoining areas. Thus, the proposed project’s impact to bicycle facilities and circulation would be considered *less than significant*. No mitigation measures are required.

The implementation of Improvement Measure I-TR-2a, Passenger Loading Zone Management, would further minimize any *less-than-significant* effects on bicycle circulation as a result of the proposed passenger loading zones.

Impact C-TR-1: The proposed project, in combination of past, present, and reasonably foreseeable future projects, would not result in a considerable contribution to cumulative regional VMT. (Less than Significant)

VMT, by its very nature, is largely a cumulative impact. The VMT associated with past, present, and future projects contribute to physical secondary environmental impacts. It is likely that no single project by itself would be sufficient in size to prevent the region or State from meeting its VMT reduction goals. Instead, a project’s individual VMT contributes to cumulative VMT impacts. The VMT and induced automobile travel project-level thresholds are based on levels at which new projects are not anticipated to conflict with state and regional long-term greenhouse gas emission reduction targets and statewide VMT per capita reduction targets set in 2020. Therefore, because the proposed project would not exceed the project-level thresholds for VMT and induced automobile travel (see Impact TR-1), the proposed project would not be considered to result in a cumulatively considerable contribution to VMT impacts.

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Furthermore, as shown in Table 5, projected 2040 average daily VMT per capita for residential uses in TAZ 830 is 2.2 miles. This is 86.3 percent below the projected 2040 regional average daily VMT per capita of 16.1.⁷⁹ Projected 2040 average daily VMT per employee for retail uses in TAZ 830 is 10.1 miles. This is 30.8 percent below the projected 2040 regional average daily VMT per employee of 14.6.⁸⁰ Projected 2040 average daily VMT per employee for childcare uses in TAZ 830 is 6.5 miles. This is 55.5 percent below the projected 2040 regional average daily VMT per employee of 14.6.⁸¹ Given the project site is located in an area where VMT is greater than 15 percent below the projected 2040 regional average, the proposed project's residential, childcare, and retail uses would not result in substantial additional VMT. Therefore, the proposed project's residential, childcare, and retail uses would not combine with cumulative development projects to create or contribute to any substantial cumulative increase in VMT, and impacts would be *less than significant*.

Impact C-TR-2: The proposed project in combination with past, present, and reasonably foreseeable future projects, would not result in cumulative transportation impacts. (Less than Significant)

Future Changes to Transportation Network

Various changes to the transportation network are expected to take effect by the cumulative horizon year 2040. These are summarized below and a detailed description is provided in the transportation impact study prepared for the project.

- **The Transit Effectiveness Project.** This project was initiated by SFMTA in collaboration with the City Controller's Office and is designed to implement system-wide changes to Muni service to streamline operations, adapt to changes in travel patterns, and improve reliability and passenger experience.
- **The Embarcadero Enhancement Project.** The SFMTA is leading a joint effort with the Port of San Francisco, the San Francisco Planning Department, and SFPW to study potential enhancements to the Embarcadero to increase safety for all users, support economic vitality, and improve connectivity and accessibility. The centerpiece of the proposal involves a new bikeway along the Embarcadero to better separate bicycle traffic from both automobile traffic and pedestrian traffic, minimizing vehicle-bicycle and bicycle-pedestrian conflicts and reducing safety hazards for bicyclists and pedestrians.
- **Historic Streetcar Extension to Fort Mason.** The National Park Service (specifically, the Golden Gate National Recreational Area and the San Francisco Maritime National Historic Park), working together with SFMTA and the Federal Transit Administration, is leading planning efforts for a proposed extension of historic streetcar service to Fort Mason. The project would

⁷⁹ $(16.1 \text{ miles regional average daily VMT per capita} - 2.2 \text{ miles TAZ 830 average daily VMT per capita}) / 16.1$
miles regional average daily VMT per capita = 86.33%

⁸⁰ $(14.6 \text{ miles regional average daily VMT per capita} - 10.1 \text{ miles TAZ 830 average daily VMT per capita}) / 14.6$
miles regional average daily VMT per capita = 30.82%

⁸¹ $(14.6 \text{ miles regional average daily VMT per capita} - 6.5 \text{ miles TAZ 830 average daily VMT per capita}) / 14.6$
miles regional average daily VMT per capita = 55.47%

E. EVALUATION OF ENVIRONMENTAL IMPACTS

extend the E Embarcadero and/or F Market & Wharves from their current northern terminus at Beach & Jones Station (Jones Street/Beach Street) west to Aquatic Park (via Beach Street), Ghirardelli Square, and Fort Mason Center (via rehabilitation of the disused Fort Mason Tunnel of the former San Francisco Belt Railroad).

None of these proposed changes, however, would substantially affect traffic circulation in the vicinity of the project site.

The cumulative projects are listed in Table 2 and mapped on Figure 17 in section B.2, Cumulative Projects. As shown the majority the identified cumulative projects are small-site developments and many would only involve minor modifications to existing buildings or the renovation/reuse of existing buildings for other uses. The remainder of the projects would involve replacement of existing buildings and active uses, and would not involve development of vacant lots with no existing uses.

As discussed above, the proposed project does not propose design features that would present traffic safety hazards or create new sources of substantial conflict with existing plus planned traffic circulation. Likewise, none of the various land use and transportation network changes would involve design features that would present traffic safety hazards or create new sources of substantial conflict with existing and projected traffic circulation in the immediate vicinity of the project site. Because of the proximity between the project and the proposed development on Seawall Lots 323/324, however, a focused discussion of the potential cumulative effects associated with these two projects is provided below.

Vehicular Circulation

Neither the proposed project nor the Seawall Lots 323/324 development would include on-site parking, but there are multiple public parking facilities in the surrounding vicinity (as previously described), and both projects would include passenger loading zones (along Vallejo Street and Davis Street for the proposed project and along Broadway for the Seawall Lots 323/324 development). The Seawall Lots 323/324 development would also provide a valet program at the proposed passenger loading zone along Broadway capable of accommodating up to 50 vehicles at an off-site location.

Given existing and projected vehicle traffic, and the expected increase in traffic activity generated by the two sites, as well as the physical separation between the various passenger and commercial loading zones, potential conflicts between the two sites or with existing plus planned traffic circulation would not constitute a substantial traffic safety hazard. While the shared dead-end segment of Davis Street north of Broadway (and the connecting segment of Vallejo Street east of Front Street) would be adjacent to both sites, this street segment primarily functions as a low-volume collector roadway. There would generally be adequate space for vehicle traffic to safely bypass any temporary disruptions at the proposed passenger loading zones for the project (along the west side of Davis Street and south side of Vallejo Street) or the proposed commercial loading zone and off-street freight loading dock for the Seawall Lots 323/324 development (along the east side of Davis Street).

Furthermore, any potential effects on traffic safety and circulation associated with proposed passenger and commercial loading zones would not be substantially different from those associated with the

E. EVALUATION OF ENVIRONMENTAL IMPACTS

existing on-street parking spaces in these locations or on-street parking elsewhere in the study area. Due to its size, the proposed commercial loading zone associated with the Seawall Lots 323/324 development could potentially accommodate larger trucks that may require slightly more time to move into and out of the zone. Likewise, truck maneuvers reversing into or pulling out of the off-street freight dock at the Seawall Lots 323/324 development could result in temporary blockage of through traffic along Davis Street. However, these effects would be temporary and minor, dissipating quickly once the truck has cleared the travel lanes, and would not constitute substantial traffic hazards.

Neither of the two projects would conflict with traffic changes planned or proposed in the immediate vicinity of either site. Depending on the design option selected for implementation, the Embarcadero Enhancement Project could result in minor changes to lane geometry/configuration and signal timing/phasing. However, neither the proposed project nor the Seawall Lots 323/324 development are proposing any physical changes to the nearby segments of the Embarcadero, and the improvements proposed under the Embarcadero Enhancement Project would primarily be designed to improve bicycle safety and circulation, and would not constitute a substantial traffic safety hazard.

Both projects would propose streetscape changes including sidewalk widening and bulb-outs, but these features are primarily designed to enhance the pedestrian realm and improve pedestrian safety and walkability, and would have a negligible effect on traffic safety or circulation.

Given these considerations, the project would not combine with cumulative development projects to create or contribute to a cumulative transportation or circulation impact and cumulative impacts would be *less than significant*. **Improvement Measure I-TR-2a: Passenger Loading Zone Management**, would further minimize any less-than-significant effects on traffic conditions as a result of the project's proposed passenger loading zones.

Freight and Passenger Loading

None of the transportation changes above would substantially affect freight or passenger loading accommodations or activity in the immediate vicinity of the project site. Depending on the design option selected for implementation, the Embarcadero Enhancement Project could result in the removal or reconfiguration of some existing on-street parking spaces within the geographical extent of the proposed bikeway improvements. However, none of the existing on-street parking spaces along the west side of the Embarcadero fronting the Seawall Lots 323/ 324 site are designated for use as commercial or passenger loading zones.

None of the cumulative projects would involve uses generating an unusual amount of freight loading/service vehicle activity. In particular, uses proposed by the cumulative projects would include office, museum, hotel, and residential uses, which would not be substantially different from the mix of uses currently seen in the area and in many other neighborhoods in the Greater Downtown area. Furthermore, almost all of the identified projects in the development pipeline are small-site developments and many would only involve minor modifications to existing buildings or the renovation/reuse of existing buildings for other uses. The remainder of the projects would involve replacement of existing buildings and active uses, and would not involve development of vacant lots with no existing uses.

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While several of the foreseeable development projects involve large hotels or visitor attractions, which could generate passenger loading activity, these projects would generally be expected to provide some specific accommodation for commercial and passenger loading or make use of existing commercial and passenger loading accommodations. The Seawall Lots 323/324 development, for example, would establish new commercial and passenger loading zones as described above (e.g., valet program and off-street freight loading).

As discussed above, the proposed project would not generate a loading demand in excess of available and proposed on- or off-street accommodations such that substantial impacts to traffic, transit, bicycle, or pedestrian circulation could occur. Furthermore, project-generated freight loading/service vehicle activities, including those at the proposed on-street commercial loading zone, would result in less-than-significant impacts to traffic, transit, bicycle, and pedestrian circulation. Similarly, project-generated passenger loading activities would result in less-than-significant impacts to traffic, transit, bicycle, and pedestrian circulation. Because of the proximity between the proposed project and the proposed development on Seawall Lots 323/324, however, a focused discussion of the potential cumulative effects associated with these two projects is provided below.

The two projects combined would include on-street passenger and commercial loading zones and an off-street freight loading dock. However, both projects are anticipated to generate loading demands during the weekday PM peak hour that could be accommodated within the proposed passenger loading zones for the project (along the west side of Davis Street and south side of Vallejo Street) or the proposed commercial loading zone and off-street freight loading dock for the Seawall Lots 323/324 development (along the east side of Davis Street). In addition, given the expected volume of vehicle, transit, bicycle, and pedestrian activity and the physical separation between these proposed features, substantial conflicts between the two sites or with vehicle, transit, bicycle, and pedestrian circulation from future development projects are not expected.

Due to its size, the proposed commercial loading zone associated with the Seawall Lots 323/ 324 development could potentially accommodate larger trucks that may require slightly more time to move into and out of the zone. Likewise, truck maneuvers reversing into or pulling out of the off-street freight dock at the Seawall Lots 323/324 development could result in temporary blockage of vehicle, bicycle, and pedestrian circulation along Davis Street. While the shared dead-end segment of Davis Street north of Broadway (and the connecting segment of Vallejo Street east of Front Street) would be adjacent to both sites, this street segment primarily functions as a low-volume collector roadway. There would generally be adequate space for vehicle and bicycle traffic to safely bypass any temporary disruptions at the proposed passenger and commercial loading zones described above. These effects would be temporary and minor, dissipating quickly once the truck has cleared the travel lanes, and would not constitute substantial traffic, bicycle, or pedestrian safety hazards. In addition, there would be sufficient sidewalk width along these site frontages to allow pedestrians to easily bypass any obstructions created by passenger or commercial loading activities at the proposed on-street zones. As previously discussed, only transit services immediately adjacent to either site would be located along the Embarcadero and would be unaffected by freight or passenger loading activities associated with either site.

Furthermore, while the proposed project would include a proposed passenger loading zone along Davis Street, this zone would be located on the opposite side of Davis Street from the Seawall Lots 323/324

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development. The Seawall Lots 323/324 development would include a passenger loading zone along Broadway, separate from the commercial loading zone along the east side of Davis Street or the proposed project's passenger loading zone along the west side of Davis Street. Therefore, there would be sufficient physical separation between any simultaneous commercial and passenger loading activities at either site such that substantial conflicts between the two sites or with existing plus planned vehicle, transit, bicycle, and pedestrian circulation are not expected. Given these considerations, the proposed project would not combine with cumulative development projects to create or contribute to a cumulative impact related to freight and passenger loading activities and impacts would be *less than significant*.

Construction

Project-related construction activities would result in less-than-significant impacts to traffic, transit, bicycle, and pedestrian circulation. There are only a few foreseeable projects in the vicinity of the project site, and none of the identified projects—with the exception of the Seawall Lots 323/324 development—would be located immediately adjacent to the project site. Construction timelines for the proposed project, the Seawall Lots 323/324 development, and the other land use or transportation projects are dependent on project approval and entitlement, securing of financing/funding sources, and other factors, and cannot be known with certainty at this time. Construction of the proposed project is expected to take approximately 19 months and commence in August 2018, while construction of the Seawall Lots 323/324 development is anticipated to take approximately 22 months, beginning as early as winter 2018.

In general, however, construction related to other projects would be governed by the same provisions governing construction of the proposed project. Any temporary traffic and transportation changes would be coordinated through the SFMTA Interdepartmental Staff Committee on Traffic and Transportation and require a public meeting. Construction activities would be required to comply with *Regulations for Working in San Francisco Streets* (Blue Book), a manual published by the SFMTA for City agencies, utility crews, private contractors, and others doing work in San Francisco streets, and reimbursement would be provided to SFMTA for installation and removal of temporary striping and signage changes required during construction.

Construction trucks would be required to use designated freight traffic routes to access both sites, which would include major freeways (I-80 and I-280) and major arterials (Broadway, Embarcadero, Howard Street, Folsom Street, Harrison Street, Bryant Street, and King Street). The potential effects of construction truck traffic would generally be larger with overlap with construction at Seawall Lot 323/324 than without overlap, but would still not be frequent or substantial enough to constitute a significant impact given existing plus planned traffic levels and traffic generated by existing development in the area. Given the proximity to high-quality local and regional transit service, construction workers would be encouraged to access the area by transit or other sustainable modes, and no special travel arrangements would be necessary. Construction workers driving to or from the area would be expected to make their own parking arrangements. Additionally, although no construction impacts were identified for the proposed project, **Improvement Measure I-TR-2b, Construction Traffic Management**, has been identified to further minimize the less-than-significant impacts of project-related construction activities. Given these considerations, the proposed project would not combine with cumulative development projects to create or contribute to a cumulative impact related to construction activities and impacts would be *less than significant* and no mitigation measures are warranted.

E. EVALUATION OF ENVIRONMENTAL IMPACTS

Emergency Access

None of the cumulative land use and transportation projects identified would substantially affect emergency vehicle access in the vicinity of the project site. Vehicle traffic levels on the surrounding roadway network would likely increase by the cumulative horizon year (2040), which could result in an increase in response times for emergency vehicles traveling through the area. In general, however, non-emergency vehicles must yield to emergency vehicles, as required by California Vehicle Code section 21806, and emergency vehicles would have the option of using the transit-exclusive median along the Embarcadero to bypass any traffic congestion, if necessary. Additionally, none of the streets along major routes for emergency vehicles and none of the four streets fronting the project site (including the dead-end segment of Davis Street that connects to a segment of Vallejo Street and is shared by both the proposed project and the Seawall Lots 323/324 development) are unusually narrow or have features that make negotiating turns difficult for large emergency vehicles such as ladder trucks. Neither the proposed project nor Seawall Lots 323/324 proposes any modifications to the roadway network, nor is located in the immediate vicinity of any existing uses or facilities that generate unusually large amounts of emergency vehicle activity, such that activities generated at either site could result in potential disruptions to emergency vehicle response times. Given these considerations, the proposed project would not combine with cumulative development projects to create or contribute to a cumulative impacts to emergency vehicle access and impacts would be *less than significant*.

Transit

The analysis of cumulative transit utilization considers foreseeable changes in local and regional transit service in the future, such as Muni service changes due to the Transit Effectiveness Project (now Muni Forward) and the anticipated growth in ridership due to future development. Analysis of transit impacts across the Muni and regional screenlines was conducted to determine the extent to which an increase in transit trips associated with the proposed project would affect local and regional transit lines under 2040 cumulative conditions.

As shown on Table 11, the Northwest screenline; the California, Sutter/Clement, and Fulton/Hayes corridors in the Northwest screenline; and the Mission and San Bruno/Bayshore corridors in the Southeast screenlines would operate above Muni's established capacity utilization threshold (85 percent) by 2040. The proposed project would contribute 0.1 percent or less of the transit trips on these sub-corridors and the entire screenline. Thus, the proposed project's contribution to the overall ridership on corridors that would operate over the 85 percent capacity under 2040 conditions would be less than 5.0 percent.

E. EVALUATION OF ENVIRONMENTAL IMPACTS

TABLE 11 MUNI DOWNTOWN SCREENLINES: CUMULATIVE 2040 CONDITIONS

Screenline/Corridor	Cumulative Conditions: Weekday PM Peak Hour (Outbound)				Proposed Project Contribution
	Ridership		Capacity	Utilization	
	Added	Total			
Northeast Screenline					
Kearny / Stockton	2	6,295	8,329	75.6%	
Other	3	1,229	2,065	59.5%	
Subtotal	6	7,524	10,394	72.4%	
Northwest Screenline					
Geary	5	2,996	3,621	82.7%	
California	2	1,766	2,021	87.4%	0.1%
Sutter / Clement	1	749	756	99.1%	0.1%
Fulton / Hayes	2	1,762	1,878	93.8%	0.1%
Balboa	2	776	974	79.7%	
Subtotal	12	8,049	9,250	87.0%	0.1%
Southeast Screenline					
Third	1	2,300	5,712	40.3%	
Mission	2	2,673	3,008	88.9%	0.1%
San Bruno / Bayshore	2	1,817	2,134	85.1%	0.1%
Other	2	1,582	1,927	82.1%	
Subtotal	7	8,372	12,781	65.5%	
Southwest Screenline					
Subway	6	5,692	6,804	83.7%	
Haight / Noriega	2	1,265	1,596	79.3%	
Other	1	380	840	45.2%	
Subtotal	10	7,337	9,240	79.4%	
Total	34	31,282	41,665	75.1%	

Notes: Component values may not sum to total values due to rounding. **Bold** indicates capacity utilization of 85 percent or greater.

Source: AECOM, *88 Broadway Transportation Impact Study, San Francisco, CA*, June 20, 2017, Table 22.

As shown on Table 12, under 2040 conditions the, regional screenlines would operate below the 100 percent capacity utilization standard, with the exception of BART. However, the increase in regional transit trips generated by the proposed project would not measurably contribute to the BART regional screenline. Thus, the proposed project's contribution to the overall ridership on corridors that would operate over the 100 percent capacity under 2040 conditions would be less than 5.0 percent.

E. EVALUATION OF ENVIRONMENTAL IMPACTS

TABLE 12 REGIONAL TRANSIT SCREENLINES: CUMULATIVE 2040 CONDITIONS

Cumulative Conditions – Weekday PM Peak Hour (Outbound)					
Ridership					
Screenline/Corridor	Added	Total	Capacity	Utilization	Contribution
East Bay					
BART	14	36,000	32,100	112.1%	0.0%
AC Transit	3	7,000	12,000	58.3%	
Ferries	2	5,319	5,940	89.5%	
<i>Subtotal</i>	19	48,319	50,040	96.6%	
North Bay					
Golden Gate Transit Bus	2	2,070	2,817	73.5%	
Ferries	2	1,619	1,959	82.6%	
<i>Subtotal</i>	4	3,689	4,776	77.2%	
South Bay					
BART	15	20,000	28,808	69.4%	
Caltrain	1	2,529	3,600	70.3%	
SamTrans	0	150	320	46.9%	
Ferries	0	59	200	29.5%	
<i>Subtotal</i>	16	22,738	32,928	69.1%	
Total	40	74,746	87,744	85.2%	

Notes: Component values may not sum to total values due to rounding. Bold indicates capacity utilization of 85 percent or greater.

Source: AECOM, 88 Broadway Transportation Impact Study, San Francisco, CA, June 20, 2017, Table 23.

Therefore, the proposed project would not combine with cumulative development projects to create or contribute to a cumulative transit impact and impacts would be *less than significant*.

Bicycles and Pedestrians

No new sources of major conflict between vehicles and bicyclists and pedestrians are expected given the existing setting and nearby contributing cumulative projects. In particular, neither the proposed project nor the Seawall Lots 323/324 development, which is adjacent to the project site, would include on-site parking, and a sizeable portion of the automobile traffic associated with both sites would be distributed through the surrounding neighborhood to and from nearby on- and off-street parking facilities. Both sites would demolish existing automobile-oriented uses (surface parking) that already generate substantial amounts of vehicle traffic and replace them with active uses, while simultaneously reducing the number of curb cuts along site frontages. Therefore, conditions for bicyclists along street segments fronting either site would not be substantially worse than existing conditions.

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The two projects combined would include on-street passenger and commercial loading zones and an off-street freight loading dock, but given the expected volume of vehicle and bicycle activity and the physical separation between these proposed features, potential conflicts between the two sites or with existing plus projected bicycle circulation and pedestrian activity would not constitute a substantial safety hazard for bicyclists and pedestrians. While the shared dead-end segment of Davis Street north of Broadway (and the connecting segment of Vallejo Street east of Front Street) would be adjacent to both sites, this street segment primarily functions as a low-volume collector roadway. There would generally be adequate space for bicyclists and pedestrians to safely bypass any temporary disruptions at the proposed passenger loading zones for the proposed project (along the west side of Davis Street and south side of Vallejo Street) or the proposed commercial loading zone and off-street freight loading dock for the Seawall Lots 323/324 development (along the east side of Davis Street).

Any potential effects on bicycle and pedestrian safety and circulation associated with the proposed passenger and commercial loading zones would not be substantially different from those associated with the existing on-street parking spaces in these locations or on-street parking elsewhere in the study area. Due to its size, the proposed commercial loading zone associated with the Seawall Lots 323/324 development could potentially accommodate larger trucks that may require slightly more time to move into and out of the zone. Likewise, truck maneuvers reversing into or pulling out of the off-street freight dock at the Seawall Lots 323/324 development could result in temporary blockage of through traffic along Davis Street. However, these effects would be temporary and minor, dissipating quickly once the truck has cleared the travel lanes, and would not constitute substantial safety hazards for bicyclists and pedestrians.

Neither the proposed project or the Seawall Lots 323-324 development would conflict with any proposed or planned improvements to bikeway or pedestrian facilities, and the only identified bikeway improvements in the immediate vicinity of either project site would be those related to the Embarcadero Enhancement Project. However, neither project is proposing any physical changes to the nearby segments of the Embarcadero, and the level of additional vehicle and bicycle activity along the Embarcadero associated with the two projects is unlikely to substantially affect the overall safety or integrity of any of the potential bikeway design options being considered. Both projects would implement streetscape changes including sidewalk widening and bulb-outs that would enhance the pedestrian realm and improve pedestrian safety and walkability, further reducing any potential less-than-significant effects described above.

Given these considerations, the proposed project would not combine with cumulative development projects to create or contribute to a cumulative impact to bicycle and pedestrian conditions and impacts would be *less than significant*. **Improvement Measure I-TR-2, Passenger Loading Zone Management**, would further minimize any less-than-significant effects on bicycle and pedestrian conditions as a result of the proposed project's proposed passenger loading zones.

In summary, cumulative impacts related to transportation and circulation would be *less than significant*.

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E.5 NOISE

Topics:	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact	Not Applicable.
NOISE—					
Would the project:					
a) Result in exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Result in exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Result in a substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Result in a substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) For a project located within an airport land use plan area, or, where such a plan has not been adopted, in an area within 2 miles of a public airport or public use airport, would the project expose people residing or working in the area to excessive noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) For a project located in the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Be substantially affected by existing noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

The project site is not located within an airport land use plan area or in the vicinity of a private airstrip. Therefore, Questions 5e and 5f are not applicable to the proposed project.

CSDA Design Group conducted a two-part noise analysis for the proposed project that is presented in an Environmental Noise Study and a Project-Generated Noise Study. The analysis methods and results of these noise reports have been incorporated into this initial study and are included in the project case file.⁸² Noise impacts as they relate to traffic and construction activities also relied on data provided in the

⁸² CSDA Design Group, 2017. 88 Broadway/735 Davis, San Francisco, Environmental Noise Study. March 24, and CSDA Design Group, 2017. 88 Broadway/735 Davis, SF – Project-Generated Noise Study. September 6.

E. EVALUATION OF ENVIRONMENTAL IMPACTS

transportation impact study prepared by AECOM⁸³ and the preliminary geotechnical reports prepared by ENGEO Incorporated,⁸⁴ respectively.

Noise and Vibration Overview

Noise

Noise is a category of sound that annoys or disturbs people and potentially causes an adverse psychological or physiological effect on human health. Receptors that are particularly sensitive to noise include, but are not limited to, residences, hospitals, schools, and elderly housing facilities. Other land uses such as office space and commercial uses may still be affected by high-levels of noise; however, high levels of noise are not typically detrimental to the normal daytime operations associated with these land use types. Sound is mechanical energy (vibration) transmitted by pressure waves over a medium such as air or water. Sound is characterized by various parameters, including the rate of oscillation of sound waves (frequency), the speed of propagation, and the pressure level or energy content (amplitude). In particular, the sound pressure level is the most common descriptor for characterizing the loudness of an ambient (existing) sound level. A decibel (dB) is a unit of sound energy intensity. Sound waves, traveling outward from a source, exert a sound pressure level (commonly called "sound level"), which is measured in dB.

Although the dB scale, a logarithmic scale, is used to quantify sound intensity, it does not accurately describe how sound intensity is perceived by humans. The human ear is not equally sensitive to all frequencies in the entire spectrum, so noise measurements are weighted more heavily for frequencies to which humans are sensitive in a process called A-weighting, written as dBA and referred to as A-weighted decibels. Equivalent Sound Level (L_{eq}) is the equivalent steady-state sound level that, in a stated period of time, would contain the same acoustical energy. The 1-hour A-weighted equivalent sound level ($L_{eq} 1h$) is the energy average of A-weighted sound levels occurring during a 1-hour period. The maximum sound level (L_{max}) is the maximum sound level measured during a given measurement period.

In typical noisy environments, changes in noise of 1 to 2 dB are generally not perceptible. However, it is widely accepted that people are able to begin to detect sound level increases of 3 dB in typical noisy environments. Further, an increase of 5 dB is generally perceived as a distinctly noticeable increase, and an increase of 10 dB is generally perceived as a doubling of loudness.

Vibration

Construction activity can result in varying degrees of ground vibration depending on the equipment and method used. Equipment such as air compressors, light trucks, and hydraulic loaders generate little or no ground vibration. Dynamic construction equipment such as pile drivers can create vibrations that radiate along the surface and downward into the earth. However, no pile driving is proposed under this project.

⁸³ AECOM, 2017. *88 Broadway Transportation Impact Study*, San Francisco, CA, June 20.

⁸⁴ ENGEO Incorporated, 2017. *88 Broadway Family Housing San Francisco, California Geotechnical Exploration*, June 22; ENGEO Incorporated, 2017. *735 Davis Street Senior Housing San Francisco, California Geotechnical Exploration*, June 22.

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These surface waves can be felt as groundborne vibration. Vibration can result in effects ranging from annoying people to damaging structures. Variations in geology and distance result in different vibration levels comprising different frequencies and displacements. In all cases, vibration amplitudes will decrease with increasing distance from the vibration source.

Noise and Vibration Regulations

The proposed project would be required to comply with noise regulations during both the ongoing operation of the project and during the temporary construction phase as set forth in the San Francisco Noise Ordinance (Article 29 of the Police Code), and other noise standards as described below.

Operational Noise Regulations

San Francisco Noise Ordinance Limits

Mechanical equipment associated with residential uses is subject to Police Code section 2909(a) of the San Francisco Noise Ordinance, which establishes a noise limit from mechanical equipment sources, such as those from heating, ventilation, and air conditioning equipment, commonly referred to as “HVAC” systems, and testing emergency back-up diesel generators.⁸⁵ Mechanical building equipment cannot raise the ambient noise level for off-site sensitive receptors at the property line in excess of 5 dBA.

There are currently no standards in the San Francisco Noise Ordinance (Article 29 of the Police Code) that deal specifically with noise from outdoor play areas or rooftop terraces and community gardens. However, for the purpose of analyzing noise in these areas under CEQA, the Planning Department uses the noise limits provided in Police Code section 2909(b) of the San Francisco Noise Ordinance. Accordingly, the noise generated by activities at proposed childcare facility playground and rooftop terrace, deck, and community garden areas, should not result in noise level of 8 dBA in excess of the existing ambient noise levels at the property line, which is consistent with the property plane limits for commercial properties in established in Police Code section 2909 of the San Francisco Noise Ordinance.

Police Code section 2909(d)) of the San Francisco Noise Ordinance also includes noise level limits for fixed residential interior noise sources. Fixed residential interior noise sources cannot exceed 45 dBA between the hours of 10:00 p.m. to 7:00 a.m. or 55 dBA between the hours of 7:00 a.m. to 10:00 p.m. as measured inside any sleeping or living room in any dwelling unit located on residential property, with windows open, except where building ventilation is achieved through mechanical systems that allow windows to remain closed.

Noise Compatibility Standards

The Environmental Protection Element of the General Plan contains Land Use Compatibility Guidelines for Community Noise. These Land Use Compatibility Guidelines, which are similar to State guidelines promulgated by the Governor’s Office of Planning and Research, indicate maximum acceptable noise

⁸⁵ Note that the property line noise limits apply to emergency generator testing, but not to the operation of emergency generators during power outages or other emergency situations.

E. EVALUATION OF ENVIRONMENTAL IMPACTS

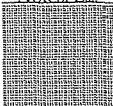
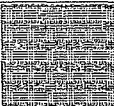
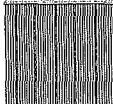

levels for various newly developed land uses. The proposed uses for this project correspond to the “residential” and “playground/parks” land use categories in the Land Use Compatibility Guidelines, recreated below, in Table 13.⁸⁶ For a residential land use, the maximum “satisfactory, with no special insulation requirements” exterior noise levels are approximately 60 dBA (L_{dn}).⁸⁷ Where exterior noise levels exceed 60 dBA (L_{dn}) for a new residential building, it is generally recommended that a detailed analysis of noise reduction requirements be conducted prior to final review and approval of the project, and that the needed noise insulation features be included in the project design. For a playground/parks land use, the maximum “satisfactory, with no special insulation requirements” exterior noise levels are approximately 70 dBA (L_{dn}). Where exterior noise levels exceed 70 dBA (L_{dn}) for a playground/parks land use, it is generally recommended that a detailed analysis of noise reduction requirements be conducted prior to final review and approval of the project, and that the needed noise insulation features be included in the project design.

⁸⁶ *San Francisco General Plan*. Environmental Protection Element, Land Use Compatibility Chart for Community Noise. Available at: http://generalplan.sfplanning.org/I6_Environmental_Protection.htm#ENV_TRA_9_1, accessed on March 28, 2017.

⁸⁷ The DNL or L_{dn} is the 24-hour, energy-averaged level (using the hourly L_{eq} noise levels) with a 10 dB penalty applied to noise levels between 10:00 p.m. to 7:00 a.m. L_{eq} is the level of a steady noise which would have the same energy as the fluctuating noise level integrated over the time period of interest.

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TABLE 13 GENERAL PLAN LAND USE COMPATIBILITY CHART FOR COMMUNITY NOISE

Land Use Category	Sound Levels and Land Use Consequences							
	L _{dn} Value in Decibels							
	55	60	65	70	75	80	85	
Residential: All Dwellings, Group Quarters								
Transient Lodging: Hotels and Motels								
Schools, Classrooms, Libraries, Churches, Hospitals, Nursing Homes, etc.								
Auditoriums, Concert Halls, Amphitheaters, Music Shells								
Sports Arena, Outdoor Spectator Sports								
Playgrounds, Parks								
Golf Courses, Riding Stables, Water-based Recreation Areas, Cemeteries								
Office Buildings: Personal Businesses and Professional Services								
Commercial: Retail, Movie Theaters, Restaurants								
Commercial: Wholesale and Some Retail, Industrial/Manufacturing, Transportation, Communications and Utilities								
Manufacturing Communications: Noise-Sensitive								
Notes: L _{dn} = day-night sound level								
	Satisfactory, with no special noise insulation requirements				New construction is discouraged. If new construction does not proceed, a detailed analysis of the noise reduction requirements must be made and needed noise insulation features included in the design.			
	New construction or development should be undertaken only after a detailed analysis of the noise reduction requirement is made and needed noise insulation features included in the design.				New construction or development should generally not be undertaken.			

Source: San Francisco General Plan Noise and Land Use Compatibility Guidelines.

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Other Relevant Regulations

Additional regulations include the California Building Code, California Code of Regulations, Title 24, Part 2, section 1207.4, which mandates that an interior noise level attributed to exterior sources shall not exceed 45 dBA L_{dn} for any habitable room in a multi-family building and the California Green Building Standards Code (CALGreen), which establishes noise criteria for commercial spaces, including the childcare space and community room. Per CALGreen section 5.50, for sites with noise levels above 65 dBA, interior noise levels must be no greater than 50 dBA L_{eq} during the noisiest hour of operation.

Construction Noise Regulations

San Francisco Noise Ordinance

Construction noise is regulated by the Police Code section 2907 of the San Francisco Noise Ordinance, which requires that noise levels from individual pieces of construction equipment, other than impact tools (e.g., jackhammers, hoe rams, impact wrenches), not exceed 80 dBA at a distance of 100 feet from the source. Impact tools must have manufacturer-recommended and City-approved mufflers for both intake and exhaust. Police Code section 2907 of the San Francisco Noise Ordinance exempts typical impact-driven pile installation methods – with appropriate permissions from the San Francisco Department of Building Inspection – from this noise level limitation.

Police Code section 2908 of the San Francisco Noise Ordinance prohibits construction work between 8:00 p.m. and 7:00 a.m., if noise would exceed the ambient noise level by 5 dBA at the project property line, unless a special permit is authorized by the Director of Public Works or the Director of Building Inspection.

Construction Noise from Pile Driving

The FTA standards for noise from pile driving and impact equipment used during construction are 90 dBA during the day and 80 dBA during the nighttime for sensitive receptors (e.g., residential), and 100 dBA at any time for non-sensitive receptors (e.g., commercial). No night construction or pile driving is proposed under this project.

Construction Vibration

Construction vibration impacts are assessed based on FTA standards for vibration. For occupant annoyance from construction vibration, an impact is defined as significant if it exceeds 78 vibration decibel level (VdB) during the day at a residential receiver, which is described as being “barely felt” or if it exceeds 84 VdB for commercial/office land uses, which is described as a “felt vibration”.⁸⁸

⁸⁸ Federal Transit Administration, May 2006. *Transit Noise and Vibration Impact Assessment*, Chapter 8, Table 8-3, Interpretation of Vibration Criteria for Detailed Analysis.

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The above standards inform the analysis of construction-related effects of a project and the significance of an impact also takes into consideration the duration and severity of noise levels and vibration effects exceeding the above criteria.

Existing Conditions

Existing Noise in the Project Vicinity

Ambient noise levels in the project vicinity are typical of noise levels found in San Francisco. The traffic flows along the roadways that surround the project site (Vallejo Street, Davis Street, Broadway, and Front Street) are the primary sources of noise at the project site. Secondly, traffic (both vehicular and rail) along the Embarcadero also contribute to the noise environment. General city noise including residential and commercial operations, people talking, and/or property maintenance may also influence the existing noise environment at the site.

To quantify the existing ambient noise levels (composite noise from all sources in the area) at the site and the project vicinity, four long-term continuous (48 hour) noise measurements were conducted from 3:30 p.m. on Wednesday, January 4 through 3:00 p.m. on Friday, January 6, 2017.

During this same time period one short-term (10-minute) measurement was conducted at 4:15 p.m. on January 4, 2017. Figure 18 shows the location of the long-term (LT) and short-term (ST) ambient noise measurement locations.

The results of the January 2017 ambient noise survey, included in Table 14 on the following page, shows existing day-night average sound (L_{dn}) at each noise measurement location. The L_{dn} was calculated using measured hourly noise levels. Table 14 also shows the lowest and highest L_{eq} and the highest and lowest noise level that was exceeded 90 percent of the time (L_{90}) at each noise measurement location. As shown on Table 14, the existing ambient noise levels on Davis Street and Front Street is 68 dBA, while Broadway and Vallejo Street are higher at 72 dBA and 70 dBA, respectively.

Noise and Vibration Receptors in the Project Vicinity

The project site is in close proximity to various sensitive and non-sensitive noise receptors that would receive noise from operation and construction of the proposed project. There are noise-sensitive residential uses to the north, northwest, west, southwest, and south of the project site. To the east lie various non-sensitive commercial and industrial uses adjacent to the San Francisco Bay. Non-sensitive noise receptors (office uses) at 777 Davis Street to the east of the project site and 60 Broadway to the south of the project site are as close as 5 to 20 feet from the nearest proposed building locations.

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TABLE 14 RESULTS OF EXISTING AMBIENT NOISE MONITOR MEASUREMENTS IN THE PROJECT VICINITY

Location	L _{dn} (Average), dBA ^a	Lowest Noise Level			Highest Noise Level	
		Hourly L _{eq} , dBA ^b	Hourly L ₉₀ , dBA ^c	Hourly L ₉₀ , dBA (7 am to 10 pm) ^d	Hourly L _{eq} , dBA	Hourly L ₉₀ , dBA
Davis Street (LT-1)	68	55	47	53	66	58
Broadway (LT-2)	72	58	46	55	73	61
Front Street (LT-4/ST-1)	68	53	45	51	70	68
Vallejo Street (LT-4)	70	55	52	56	67	61

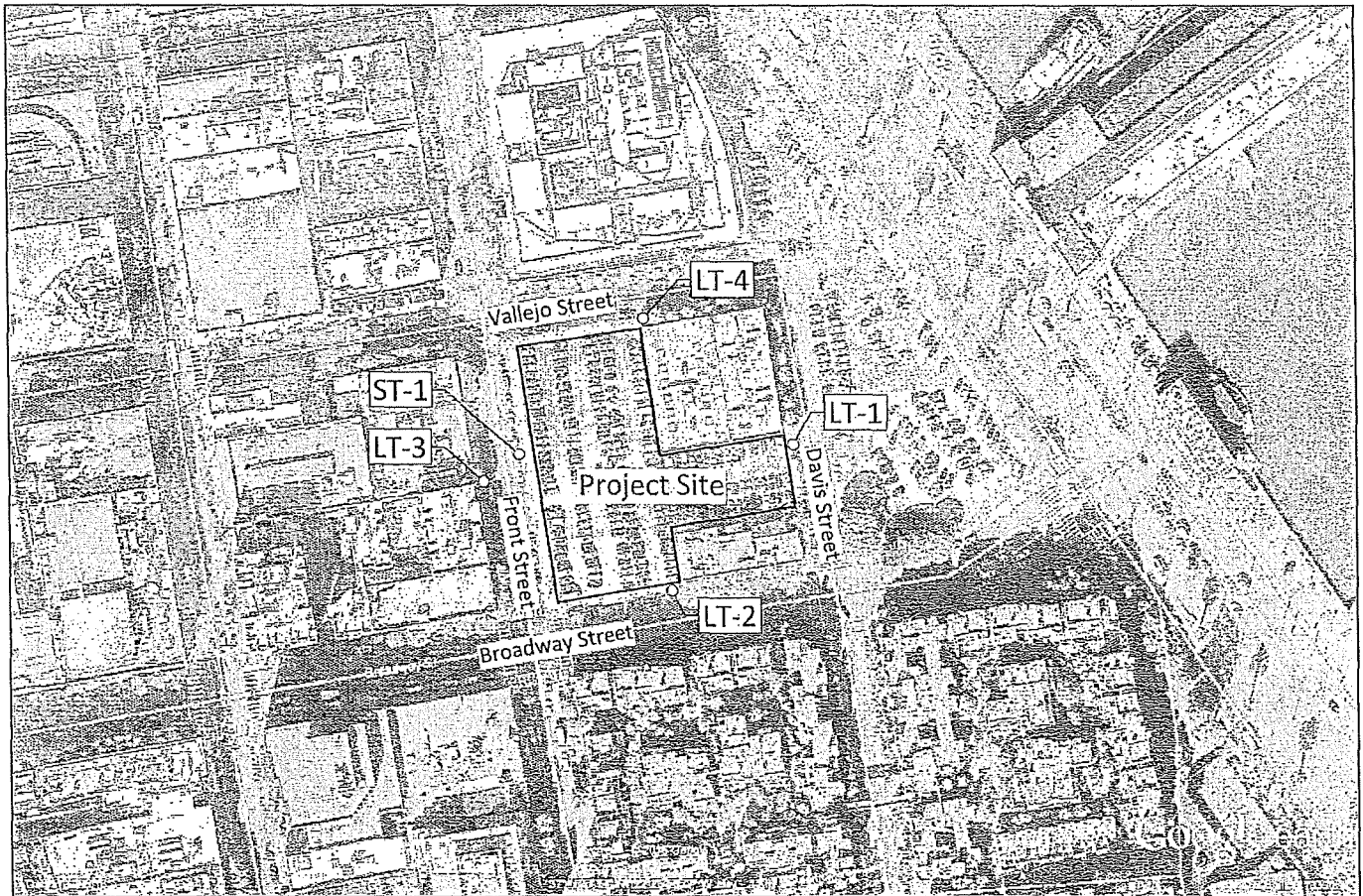
Notes:

- a. L_{dn}: The average day-night sound level with a 10 decibel (dB) applied to noise occurring during the nighttime hours (10:00 p.m. to 7:00 a.m.) to account for the increased sensitivity of people during sleeping hours. A 10 dB increase in sound level is perceived by people to be twice as loud.
- dBA: The A-weighted decibel refers to a scale of noise measurement that approximates the range of sensitivity of the human ear to sounds of different frequencies.
- b. L_{eq}: The equivalent continuous sound level that would contain the same sound energy as the sound level over the 48-hour measured period.
- c. L₉₀: The sound level that was equaled or exceeded 90 percent of the time during the measured period. Per the of the San Francisco Noise Ordinance (Police Code Article 29) the ambient noise level should be established because short-term, noisy events (*e.g.*, sirens) are excluded. Increases of 5 dBA over the lowest L₉₀ noise level within a 48-hour period is the metric that is used to determine the significance of ambient noise increase for the mechanical equipment in the impact discussions below.
- d. Increases of 8 dBA over the lowest L₉₀ between 7:00 a.m. to 10:00 p.m. over is the metric used to determine the significance of ambient noise increase for the proposed outdoor use areas in the impact discussion below.

Source: CSDA Design Group, 2017. *88 Broadway/735 Davis, SF – Project-Generated Noise Study*. September 6. Table 4.

As shown in Figure 19, the closest noise-sensitive land uses that would receive noise caused by the operation and construction of the proposed project are the residential buildings at 825 Front Street (approximately 70 feet to the west of the project site) and 75 Broadway (approximately 85 feet to the south of the project site). These sensitive receptors (SR) are shown on Figure 2 and denoted as SR-1 and SR-2.

There are four locations with structures that would be sensitive to the effects of vibration from large construction equipment (*e.g.*, bulldozer and loaded trucks). These four locations include the two noise-sensitive receptors discussed above. These structures are located at 753 Davis Street, 75 Broadway, 825 Front Street, and 60 Broadway. These sensitive construction vibration (CV) locations are shown on Figure 20 and denoted as locations CV-1 through CV-4. These CV locations include the commercial buildings at the northeast and southeast corners of the project site (locations CV-1 and CV-2), the residences south of the project site (location CV-3), and the residences to the west (location CV-4). Locations CV-1 and CV-2 are 2-story structures of masonry construction and appear to be in good condition. Location CV-3 is a mixed-use building built in the 1980s that is steel construction clad with brick veneer. The building has commercial space on the bottom and residential on the top two floors (3rd and 4th floors). Location CV-4 is framed construction (likely wood frame). Because locations CV-1, CV-2, and CV-4 are considered to be historic resources, potential damage to these historic buildings caused by construction vibration is considered a cultural resource impact under CEQA. Therefore, vibration-related impacts to these buildings with respect to physical damage to an adjacent historic resources is also addressed under Impact CR-2 in section C.3, Cultural Resources.



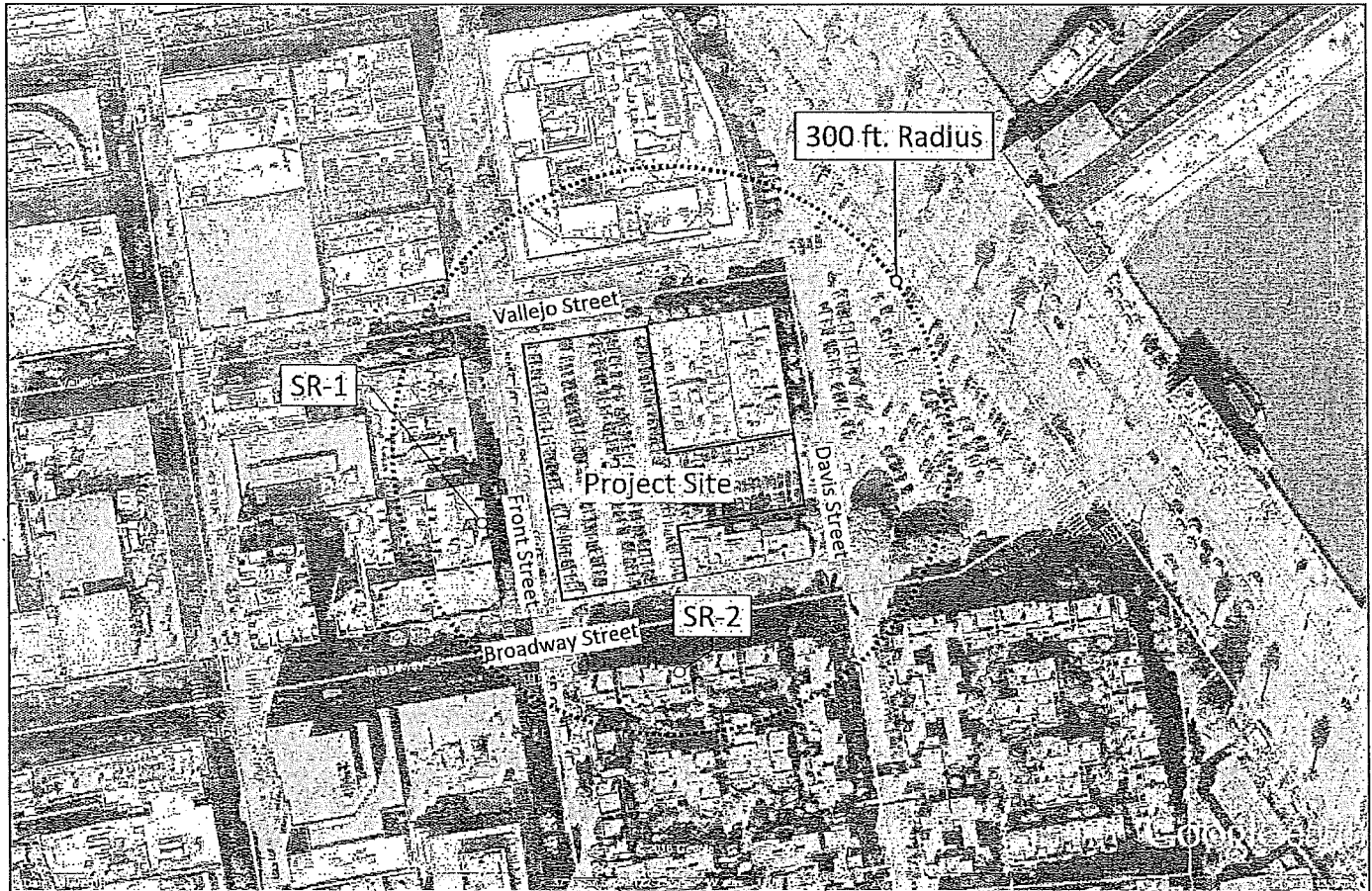
Source: City of San Francisco, 2017; CSDA Design Group, June 23, 2017; PlaceWorks, 2018.

88 BROADWAY & 735 DAVIS STREET PROJECT INITIAL STUDY

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FIGURE 18

Long Term (LT) and Short Term (ST) Measurement Locations



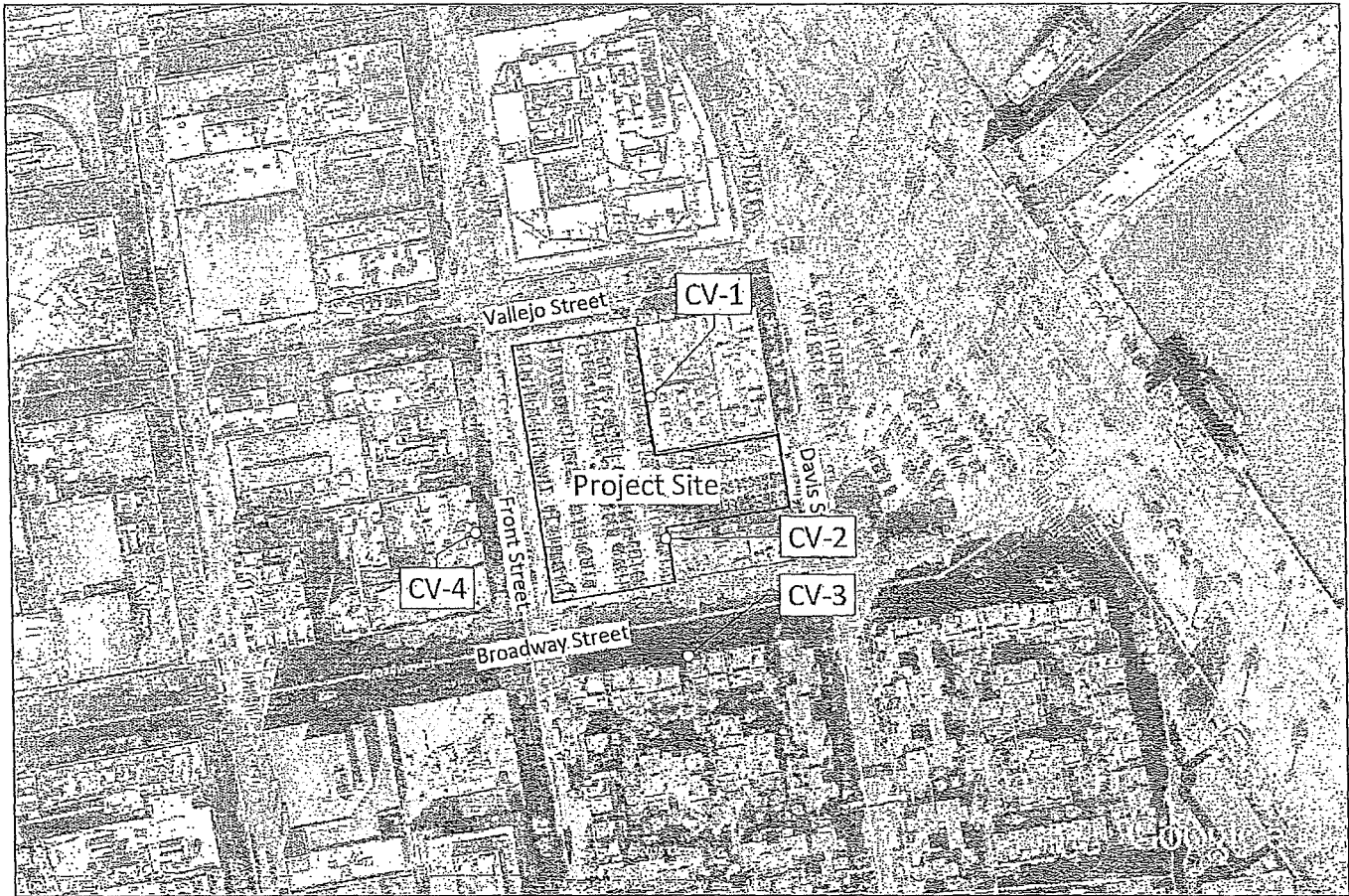
Source: City of San Francisco, 2017; CSDA Design Group, June 23, 2017; PlaceWorks, 2018.

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Case No. 2016-007850ENV

FIGURE 19

Sensitive Receptor (SR) Locations



Source: City of San Francisco, 2017; CSDA Design Group, June 23, 2017; PlaceWorks, 2018.

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FIGURE 20

Sensitive Construction Vibration (CV) Receptor Locations

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Impact NO-1: The proposed project would result in a substantial permanent increase in ambient noise levels, expose persons to or generate noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies, and would not be substantially affected by existing noise levels. (Less than Significant)

Analysis under this criterion addresses potential noise generated impacts to nearby sensitive noise receptors from operation of the proposed project. In the *California Building Industry Association (CBIA) v. Bay Area Air Quality Management District (BAAQMD)* case decided in 2015 (herein referred to as *CBIA v. BAAQMD*)⁸⁹ the California Supreme Court held that CEQA does not generally require lead agencies to consider how existing environmental conditions might impact a project's occupant, except with certain types of specified projects or where the project would significantly exacerbate an existing environmental condition.

Accordingly, the significance criteria above related to substantial permanent increase in ambient noise levels and exposure of people to noise levels in excess of standards specified in the City's General Plan or the San Francisco Noise Ordinance (Article 29 of the Police Code) or applicable standards of other agencies are relevant only to the extent that the project significantly exacerbates the existing noise and vibration environment. Thus, the analysis below evaluates whether the proposed project could exacerbate the existing or future noise environment. An impact is considered significant if implementation of the proposed project would exacerbate existing or future noise and vibration levels above the thresholds described in the Noise and Vibration Regulations subsection above.

Because the mechanical equipment would operate over a 24-hour period, the standard of significance for mechanical equipment is 5 dBA over the lowest L_{90} existing ambient noise levels taken over the 48-hour period. The proposed outdoor use areas are not anticipated to generate sound over a 24-hour period; therefore, the standard of significance applied to this use is 8 dBA over the lowest L_{90} ambient noise levels taken between 7:00 am to 10:00 pm. Although the City does not have quantitative criteria for project-generated traffic noise, the following criteria is often applied by the Planning Department. In general, traffic noise increases of less than L_{dn} 3 dBA are barely perceptible to people, while a L_{dn} 5 dBA increase is readily noticeable. Therefore, permanent increases in ambient noise levels of more than L_{dn} 5 dBA are considered to be a significant noise impact in any existing or resulting noise environment. However, in places where the existing or resulting noise environment is "Conditionally Acceptable," "Conditionally Unacceptable," or "Unacceptable" based on the San Francisco Land Use Compatibility Chart for Community Noise shown in Table 13 above, for sensitive noise receptors any noise increase greater than L_{dn} 3 dBA is considered a significant noise impact. Table 15 shows these standards of significance applied to the impact discussion below.

⁸⁹ *California Building Industry Association v. Bay Area Air Quality Management District*, December 17, 2015, Case No. S213478. Available at: <http://www.courts.ca.gov/opinions/documents/S213478.PDF>.

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TABLE 15 MECHANICAL EQUIPMENT, OUTDOOR-USE AREAS, AND ROADWAY NOISE STANDARDS OF SIGNIFICANCE

Location	Mechanical Equipment Standard		Outdoor Use Area Standard		Roadway Noise Standard	
	Existing Hourly L ₉₀ , dBA	Existing +5 dBA Criteria	Existing Hourly L ₉₀ , dBA (7 am to 10 pm)	Existing + 8 dBA Criteria	Existing L _{dn} (Average), dBA ^a	Existing + 3 dBA Criteria
Davis Street (LT-1)	47	52	53	61	68	71
Broadway (LT-2)	46	51	55	63	72	75
Front Street (LT-4/ST-1)	45	50	51	59	68	71
Vallejo Street (LT-4)	52	57	56	64	70	73

Notes: dBA: The A-weighted decibel refers to a scale of noise measurement that approximates the range of sensitivity of the human ear to sounds of different frequencies. For a point of reference, a 10 dB increase in sound level is perceived by people to be twice as loud.; L₉₀: The sound level that was equaled or exceeded 90 percent of the time during the measured period of time. Per the San Francisco Noise Ordinance (Police Code Article 29) the ambient noise level should be established because short-term, noisy events (e.g., sirens) are excluded.

a. L_{dn}: The average day-night sound level with a 10 decibel (dB) applied to noise occurring during the nighttime hours (10:00 p.m. to 7:00 a.m.) to account for the increased sensitivity of people during sleeping hours.

Source: CSDA Design Group, 2017. *88 Broadway/735 Davis, SF – Project-Generated Noise Study*. September 6. Table 4.

Mechanical Equipment Noise

As described above, Police Code section 2909(a) of the San Francisco Noise Ordinance establishes a noise limit for the proposed project's rooftop mechanical equipment (e.g., HVAC systems, emergency back-up generators) at the property line of off-site receptors. These noise limits are based on the quietest existing L₉₀ noise level (see Table 14) plus 5 dBA. Based upon the existing ambient noise levels at the project site shown in Table 15, noise from the proposed project's mechanical equipment should not exceed 52 dBA at the Davis Street property line, 51 dBA at the Broadway property line, 50 dBA at the Front Street property line, and 57 dBA at the Vallejo Street property line. In addition, Police Code section 2909(d) of the San Francisco Noise Ordinance specifies a separate fixed-source noise limit for off-site residential interiors of 45 dBA between the hours of 10:00 p.m. to 7:00 a.m. or 55 dBA between the hours of 7:00 a.m. to 10:00 p.m. The nearest sensitive receptor to the proposed project's mechanical equipment is located at 825 Front Street (see Figure 20 above).

It is expected that rooftop HVAC equipment and emergency generators for the proposed project would be similar to such equipment being used at the existing buildings surrounding the project site and would generate typical noise levels for standard HVAC systems and emergency generators that are suitable for the project's proposed services and operations. However, while the mechanical equipment design for the proposed project is not yet complete, it is anticipated that the project would construct standard noise reduction elements (e.g. screening walls, parapet barriers) to screen the projects HVAC equipment that would meet Police Code section 2909(a) of the San Francisco Noise Ordinance fixed source noise requirements. In order to comply with the San Francisco Noise Ordinance, the proposed project's HVAC

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equipment would need to meet specific sound power levels (PWL)⁹⁰ and sound pressure levels (SPL)⁹¹. The following performance values are based upon a rooftop HVAC unit height of 5 feet while conservatively incorporating minimum shielding provided by the building edge (and not including more typical enclosure or parapet shielding):

- Davis Street: PWL 94 dBA or SPL 73 dBA at a distance of 10 feet
- Broadway: PWL 93 dBA or SPL 72 dBA at a distance of 10 feet
- Front Street: PWL 92 dBA or SPL 71 dBA at a distance of 10 feet
- Vallejo Street: PWL 99 dBA or SPL 78 dBA at a distance of 10 feet

As shown in Table 16, implementation of these performance values would ensure that the project's HVAC system equipment is sufficiently rated to attain property line noise limits in compliance with Police Code section 2909(a) of the San Francisco Noise Ordinance, once the location and specifications of the required mechanical equipment are selected.

TABLE 16 ROOFTOP HEATING, VENTILATION, AND AIR CONDITIONING EQUIPMENT NOISE LEVEL AT PROPERTY LINE

Property Line	Maximum Equipment Sound Power Level (dBA)	Maximum Equipment Sound Level at 10 feet	Meets Noise Limit (Ambient + 5 dBA) ^a
Davis Street	94	73	52
Broadway Street	93	72	51
Front Street	92	71	50
Vallejo Street	99	78	57

Notes:

a. Police Code section 2909(a) of the San Francisco Noise Ordinance establishes a noise limit for the proposed project's rooftop mechanical equipment at the property line. These noise limits are based on the quietest existing L₉₀ noise level (shown in Table 13 of this section) plus 5 dBA.

Source: CSDA Design Group, 2017. *88 Broadway/735 Davis, SF – Project-Generated Noise Study*. September 6, Table 12.

In order to comply with the San Francisco Noise Ordinance, the proposed project's emergency generators would need to meet the following performance standards:

- The generators shall be screened on all four sides.
- The screening materials shall be equal in height to the generator.
- The generator shall be located at least 30 feet from the nearest property line.
- The generator shall have a maximum noise level of 81 dBA at 21 feet from the nearest property line.

⁹⁰ PWL is the common industry abbreviation for Sound Power Level.

⁹¹ SPL is the common industry abbreviation for Sound Pressure Level.

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TABLE 17 PROJECT-GENERATED ROOFTOP MECHANICAL EQUIPMENT NOISE LEVEL AT INTERIOR OF CLOSEST OFF-SITE RESIDENTIAL NOISE RECEPTOR

Receiver Location		Rooftop Equipment Noise Level at Residence (dBA)	Building Facade Noise Reduction (dBA)	Calculated Interior Noise Level (dBA)	Criterion (dBA)	Below Criterion?
825 Front Street	Rooftop HVAC	55	15 ^a	40	≤45 ^b	Yes
825 Front Street	Rooftop HVAC + Emergency Generator	64	15 ^a	49	≤55 ^b	Yes

Notes:

a. The 825 Front Street building's façade typically reduces noise by 15 dBA with windows open.

b. Section 2909(d) of the San Francisco Noise Ordinance specifies a fixed-source noise limit for residential interiors of 45 dBA between the hours of 10:00 p.m. to 7:00 a.m.

c. Per section 2909(d) criterion is 55 dBA for HVAC + emergency generator scenario, as generators will only be tested during the daytime hours.

Source: CSDA Design Group, 2017. *88 Broadway/735 Davis, SF – Project-Generated Noise Study*. September 6. Table 13.

As shown in Table 17, with the industry standard 15 dBA noise reduction provided by a typical building's façade, the proposed project's rooftop mechanical equipment design is sufficient to attain interior noise levels at off-site sensitive noise receptors at 825 Front Street in compliance with Police Code section 2909(d) of the San Francisco Noise Ordinance, once the location and specifications of the required mechanical equipment is available.

The proposed project would be required to comply with the San Francisco Noise Ordinance. With the noise reduction provided by the building façade of the nearest sensitive receptor (825 Front Street) the proposed project would achieve the noise thresholds set by Police Code sections 2909(a) and 2909(d) of the San Francisco Noise Ordinance and performance standards described above. Therefore, noise impacts from the project's mechanical equipment would be *less than significant*.

Outdoor Play Area, Courtyard, and Roof Deck/Terrace Noise

As described above, the San Francisco Noise Ordinance (Article 29 of the Police Code) does not establish a noise limit from activities in school/daycare play yards, courtyard, and rooftop open space areas at the property line. However, the Planning Department uses the noise limits provided in Police Code section 2909(b) of the San Francisco Noise Ordinance to analyze impacts from these types of uses. These noise limits are based on the quietest existing L₉₀ noise level between the hours of 7:00 am and 10:00 p.m. (previously shown on Table 14) plus 8 dBA, as required by the Police Code section 2909(b) of the San Francisco Noise Ordinance for primarily residential buildings. Based upon the existing ambient noise levels at the project site shown previously in Table 14, noise from the proposed project's outdoor play area and rooftop open spaces should not exceed 59 dBA at the Front Street property line, 61 dBA at the Davis Street property line, 64 dBA at the Vallejo Street property line, and 63 dBA at the Broadway property line in order to meet the requirement of the Police Code section 2909(b) of the San Francisco

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Noise Ordinance. There are no noise criteria to the buildings closest to the project's outdoor play area, courtyard, and rooftop open spaces, 753 Davis Street and 60 Broadway, as these are commercial buildings and not considered noise-sensitive uses for the analysis of noise impacts from these outdoor spaces. The expected noise level generated by future occupants using open space areas planned at the project site, including play areas for the childcare center, a courtyard (for the senior housing portion), and rooftop gathering areas on both buildings, has been calculated at the project site property lines. The location of these various open spaces is shown in Figure 16 in section A, Project Description above. As shown on Figure 16, the family building would have a community garden and a rooftop terrace, which would have the capacity for up to 20 and 40 occupants, respectively.

The childcare play area was assumed to be used during the hours of operation of the childcare center between 7:00 a.m. and 6:00 p.m., and the other outdoor spaces were assumed to be in use between the hours of 7:00 a.m. and 10:00 p.m. The calculation of project-generated property line noise incorporated the existing buildings around the project site, proposed project buildings, and noise reflected off of both existing and proposed project buildings. Table 18 summarizes the results of the calculations at the property lines for off-site sensitive noise receptors.

TABLE 18 PROJECT-GENERATED PROPERTY LINE NOISE LEVELS FROM OUTDOOR USE AREAS

Property Line	Noise Level from Occupants at Outdoor Use Spaces, dBA	Criterion, +8 dB Over Ambient L ₉₀ , dBA	Complies?
Front Street	46	59	Y
Broadway	41	63	Y
Vallejo Street	<55	64	Y
Davis Street	<55	61	Y

Notes:

Source: CSDA Design Group, 2017. 88 Broadway/735 Davis, SF – Project-Generated Noise Study. September 6. Table 14 and Figure 7.

As shown in Table 18, noise from the outdoor use areas would not exceed the Police Code section 2909(b) of the San Francisco Noise Ordinance limit of 8 dBA above the existing ambient L₉₀ noise level at the proposed project's property lines. Accordingly, impacts would be *less than significant* and no mitigation measures are required.

Project-Related Roadway Noise

As previously stated, for sensitive noise receptors, a traffic noise increase greater than L_{dn} 3 dBA is considered a significant noise impact. Generally, a doubling of traffic flows would be needed for traffic-generated noise levels to increase to a 3 dBA above the existing L_{dn} ambient noise levels. As shown in Table 19, since the roadways adjacent to the project site currently experience high traffic volumes, the additional daily vehicle trips on these roadways would be expected to be marginal and would not double traffic volumes. Table 19 summarizes the results of the traffic noise calculations.

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TABLE 19 PROJECT-GENERATED TRAFFIC NOISE CALCULATIONS

Street	Existing PM Peak Hour Traffic Volumes ^a	Existing L _{dn} (Average), dBA ^b	Project- Generated Traffic, Peak Hour Vehicles ^a	Project- Generated Traffic L _{dn} , dBA	Existing + Project L _{dn} , dBA	Increase, dBA	> 3 dBA
Davis Street	219	68	111	53	68	0	N
Broadway	1,024	72	36	48	72	0	N
Front Street	330	68	96	53	68	0	N
Vallejo Street	186	70	119	54	70	0	N

Notes:

a. Project generated PM peak hour traffic trips from Table 9 of Traffic Impact Study (TIS) multiplied by the trip apportionment percentages used in the TIS as follows: 15% of trips will occur on Broadway; 47% of trips will occur on Davis Street; 50% of trips will occur on Vallejo Street; and 40% of trips will occur on Front Street.

b. The L_{dn} is the average ambient level calculated using measured hourly noise levels over a 48-hour period. Traffic noise increases of less than L_{dn} 3 dBA over the average ambient noise level are considered significant.

Source: CSDA Design Group, 2017. *88 Broadway/735 Davis, SF – Project-Generated Noise Study*, September 6, Table 5.

As is shown in Table 19, project-generated traffic is not expected to increase overall noise levels in the project's vicinity. Therefore, permanent noise increases due to project-related traffic would be *less than significant* and no mitigation measures are required.

Impact NO-2: During construction, the proposed project would result in a substantial temporary or periodic increase in ambient noise levels and vibration in the project vicinity above levels existing without the project. (Less than Significant)

Analysis under this criterion addresses potential noise and vibration impacts to nearby sensitive noise receptors during construction of the proposed project.

The primary noise impacts from construction would occur from noise generated by the operation of heavy equipment on the project site and pile drilling. Noise impacts would also result from construction trucks arriving to and departing from the site, which would be an intermittent source of construction noise. Construction activities associated with the project would include demolition of existing pavement, grading, installation of utilities, landscaping, and erection of the buildings. Equipment typically used in these activities includes bulldozers, excavators, graders, backhoes, concrete trucks, loaders, pile drillers, and heavy-duty trucks. As shown above in Figure 19, the closest noise-sensitive land uses that would receive noise caused by the construction of the proposed project are the residences at 75 Broadway (approximately 85 feet to the south of the project site) and residences at 825 Front Street (approximately 70 feet to the west of the project site). Demolition, excavation, and building construction would cause a temporary increase in noise levels within the project vicinity. Construction equipment would generate noise and vibrations to nearby properties that could be considered an annoyance by occupants and potentially cause damage to historic architectural structures. Impacts to historic architectural resources is discussed in Impact CR-2 in section C.3, Cultural Resources.

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The proposed project would include excavation of approximately 4,000 cubic yards of material to a maximum depth of approximately 4 feet below grade to accommodate building foundations and between 70 to 100 feet below grade to accommodate the required piles.⁹² According to the project sponsor, the construction period would occur over an approximately 19-month period with both buildings being constructed concurrently. The construction of the family building (the larger building) would occur over the full 19-month period and construction of the senior building (the smaller building) would take place over the first 16 months. Construction of the two buildings, includes the following: demolition (1 month), shoring and excavation (1 month), foundation (1 to 3 months), building construction (10 to 12 months), and installation of facades (3 to 4 months). Construction noise levels would fluctuate depending on the construction phase, equipment type and duration of use, the distance between the noise source(s) and the affected receptor(s), and the presence (or absence) of barriers. Impacts would generally be limited to demolition and the periods during which new foundations and exterior structural and façade elements would be constructed. Interior construction noise would be substantially reduced by exterior walls. However, there would be times when noise could interfere with indoor activities in nearby residences and other businesses near the project site.

During the foundation phase (1 to 3 months), a deep foundation system with pile and grade beams would be installed. The project sponsor proposes to use drilled piles, which are installed by drilling a hole in the soil rather than impact driven piles. Tubex or Giken drilled piles, or similar drilled piles consisting of a steel pipe casing attached to a drill tip, would be installed in bedrock and filled with concrete. Bedrock varies from 50 to 80 feet below the ground surface, and piles would be installed to these depths plus the required embedment (10 to 20 feet), for a maximum depth of 90 to 100 feet below ground surface.⁹³

The family building (88 Broadway) would require 123 piles plus an allowance for an additional three piles, for a total of approximately 126 piles. The senior building (735 Davis Street) would require 47 piles plus an additional for two piles, for a total of approximately 49 piles. Collectively, construction of the entire project site would require installation of approximately 175 piles.

Table 20 (on the following page) shows typical noise levels associated with the types of construction-related machinery planned for this project, as well as the calculated construction noise level at the closest commercial and residential noise receptors (*i.e.*, 753 Davis Street at 10 feet away and 825 Front Street at 70 feet away).

As stated above, construction noise is regulated by the San Francisco Noise Ordinance (Article 29 of the Police Code). Police Code section 2907 of the San Francisco Noise Ordinance requires that noise levels from individual pieces of construction equipment, other than impact tools, not exceed 80 dBA at a

⁹² ENGEO Incorporated, 2017. *88 Broadway Family Housing San Francisco, California Geotechnical Exploration*, June 22; ENGEO Incorporated, 2017. *735 Davis Street Senior Housing San Francisco, California Geotechnical Exploration*, June 22.

⁹³ ENGEO Incorporated, 2017. *88 Broadway Family Housing San Francisco, California Geotechnical Exploration*, June 22; ENGEO Incorporated, 2017. *735 Davis Street Senior Housing San Francisco, California Geotechnical Exploration*, June 22.

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distance of 100 feet. Section 2908 of the Noise Ordinance prohibits construction work between 8:00 p.m. and 7:00 a.m., if noise would exceed the ambient noise level by 5 dBA at the project property line, unless a special permit is authorized by the Director Public Works or the Director of Building Inspection. The proposed project would be required to comply with regulations set forth in Police Code section 2907 of the San Francisco Noise Ordinance. As shown in Table 20, noise generated by the planned construction equipment would comply with Police Code section 2907 of the San Francisco Noise Ordinance limits at a distance of 100 feet from the source would meet these standards. Accordingly, noise impacts in this respect are considered *less than significant* and no mitigation is required.

TABLE 20 NOISE LEVELS FROM PROPOSED CONSTRUCTION EQUIPMENT

Equipment	Noise Level at 100 feet (dBA)	Complies with 80 dBA criterion? ^a
Air Compressor	74	Y
Backhoe	74	Y
Concrete Mixer	79	Y
Concrete Pump Truck	75	Y
Crane	79	Y
Dozer	79	Y
Dump Truck	70	Y
Excavator	75	Y
Forklift ^b	69	Y
Generator	76	Y
Grader	79	Y
Paver	79	Y
Roller	79	Y
Shotcrete Pump Truck ^c	75	Y
Water Truck ^d	79	Y
Giken Drilled Piler ^e	52	Y
Tubex Drilled Piler ^e	75	Y

Notes: n/a = not applicable; Noise levels measured with a "slow" (1 second) time constant.

a. San Francisco Noise Ordinance (Article 29 of the Police Code) requires that noise levels from individual pieces of construction equipment, other than impact tools, not exceed 80 dBA at a distance of 100 feet from the source.

b. Forklift noise levels assumed to be equivalent to pickup truck.

c. Shotcrete pump truck noise levels assumed to be equivalent to concrete pump truck.

d. Water truck noise level assumed equivalent to vacuum excavator truck, which is conservative; actual water truck noise level is likely to be lower.

e. Giken drilled piler installation equipment could be used; however, impact significance conclusions are based on the noisier Tubex drilled piler installation equipment (e.g., Tubex Drilled Pile). These types of pile installation equipment are not considered impact tools and do not cause vibration.

Sources: CSDA Design Group, 2017. *88 Broadway/735 Davis, SF – Project-Generated Noise Study*. September 6. Table 7.

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Impact-Tool Construction Noise

Installation of piles can cause substantial noise, especially if impact equipment, such as pile drivers, is used to install the piles. However, as shown in Table 20, the use of impact equipment would not be used during project construction. The type of pile installation equipment that would be used would rely on “drilling” the piles and not “driving” the piles, and as such are not considered impact tools. The noise study prepared for the project considered two types of pile drilling equipment: Giken Drilled Piler and Tubex Drilled Piler (see Table 20). The use of the Giken drilled piler would be 55 dBA at the closest sensitive receptor and 72 dBA at the closest non-sensitive receptor. The Tubex drilled piler would be 78 dBA at the closest sensitive receptor and 95 dBA at the closest non-sensitive receptor. Although neither are considered impact causing equipment, the use of either type of drilled pile installation equipment would meet the Noise Ordinance (Article 29 of the Police Code) noise level criteria of 80 dBA at a distance of 100 feet from the source. Accordingly, there would be a *less-than-significant* impact from the use of impact tools and no mitigation measures are required.

The nearest noise-sensitive uses would experience temporary and intermittent noise associated with demolition and construction activities (including pile drilling) and from construction trucks traveling to and from the project site. As identified in the transportation impact study prepared for the project, daily truck trips during construction of the project would include approximately 55 truck trips during grading, 15 truck trips during building construction, 10 truck trips during architectural coatings, and 10 truck trips during paving over the course of 19 months.⁹⁴ Therefore, the construction noise effects are considered temporary and intermittent, and would result in a *less-than-significant* noise impact. **Improvement Measure I-NO-2, Construction Noise Reduction**, would further reduce this less-than-significant impact from construction.

Improvement Measure I-NO-2: Construction Noise Reduction

The project sponsor will incorporate the following practices into the construction contract agreement documents to be implemented by the construction contractor during the entire construction phase of the proposed project:

- Conduct noise monitoring at the beginning of major construction phases (e.g., demolition, excavation) to determine the need and the effectiveness of noise-attenuation measures. The project sponsor and contractor will apply as many mitigating features as needed to reduce noise from the simultaneous operation of multiple pieces of construction equipment to meet the noise criteria of 90 dBA during the day at sensitive (residential) receptors and 100 dBA at any time for non-sensitive (commercial) receptors, and should not exceed 10 dBA above the ambient noise conditions at either sensitive or non-sensitive receptors at any time. Mitigating features could include, but are not limited to plywood barriers, suspended construction blankets, or other screening devices to break line of sight to noise-sensitive receivers.
- At least 90 days prior to the start of construction activities, all offsite businesses and residents within 300 feet of the project site will be notified of the planned construction activities. The

⁹⁴ AECOM, 2017. *88 Broadway Transportation Impact Study, San Francisco, CA*, June 20. Table 19, Estimate of Construction Activity by Construction Phase, page 55.

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notification will include a brief description of the project, the activities that would occur, the hours when construction would occur, and the construction period's overall duration. The notification should include the telephone numbers of the City's and contractor's authorized representatives that are assigned to respond in the event of a noise or vibration complaint.

- The project sponsor and contractors will prepare a Construction Noise and Vibration Control Plan. The details of the Construction Noise and Vibration Control Plan, including those details listed herein, will be included as part of the permit application drawing set and as part of the construction drawing set.
- At least 10 days prior to the start of construction activities, a sign will be posted at the entrance(s) to the job site, clearly visible to the public, which includes permitted construction days and hours, as well as the telephone numbers of the City's and contractor's authorized representatives that are assigned to respond in the event of a noise or vibration complaint. If the authorized contractor's representative receives a complaint, he/she will investigate, take appropriate corrective action, and report the action to the City.
- During the entire active construction period, equipment and trucks used for project construction will utilize the best available noise control techniques (*e.g.*, improved mufflers, equipment re-design, use of intake silencers, ducts, engine enclosures, and acoustically attenuating shields or shrouds), wherever feasible.
- During the entire active construction period, stationary noise sources will be located as far from sensitive receptors as possible, and they will be muffled and enclosed within temporary sheds, or insulation barriers or other measures will be incorporated to the extent feasible.
- During the entire active construction period, "quiet" air compressors and other stationary noise sources will be used where such technology exists.
- During the entire active construction period, noisy operations will be combined so that they occur in the same time period as the total noise level produced would not be significantly greater than the level produced if the operations were performed separately (and the noise would be of shorter duration).
- Signs will be posted at the job site entrance(s), within the on-site construction zones, and along queueing lanes (if any) to reinforce the prohibition of unnecessary engine idling. All other equipment will be turned off if not in use for more than 5 minutes.
- During the entire active construction period and to the extent feasible, the use of noise producing signals, including horns, whistles, alarms, and bells will be for safety warning purposes only. The construction manager will use smart back-up alarms, which automatically adjust the alarm level based on the background noise level, or switch off back-up alarms and replace with human spotters.

Construction Vibration Impacts

Construction equipment used at the project site would result in construction vibration as shown in Table 21. While the proposed project would require the installation of piles for the deep foundation system, impact-driven piles that create groundborne vibration would not be used. The project sponsor plans to use drilled piles to install the foundation system. Table 21 shows the reference vibration level (L_v) in

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vibration decibel (VdB) and peak particle velocities (PPV) from the proposed construction equipment that would cause groundborne vibration.

TABLE 21 TYPICAL CONSTRUCTION VIBRATION LEVELS

Equipment		PPV at 25 feet (inches/second)	Approximate Lv at 25 feet (VdB)	Approximate Lv at 50 feet (VdB)	Approximate Lv at 100 feet (VdB)
Clam shovel drop		0.202	94	85	76
Hydromill (slurry wall)	in soil	0.008	66	57	48
	in rock	0.017	75	66	57
Vibratory Roller		0.210	94	85	76
Hoe Ram		0.089	87	78	69
Large Bulldozer		0.089	87	78	69
Caisson Drilling		0.089	87	78	69
Loaded Trucks		0.076	86	77	68
Jackhammer		0.035	79	70	61
Small Bulldozer		0.003	58	49	40
Giken Drilled Piler		0.024	76	67	57
Tubex Drilled Piler		0.050	82	73	64

Notes: Lv = vibration level; PPV = Peak Particle Velocity; Vdb = vibration decibel level

Source: CSDA Design Group, 2017. *88 Broadway/735 Davis, SF – Project-Generated Noise Study*. September 6. Table 9.

As previously described and shown on Figure 20, there are four structures that would be sensitive to the effects of construction vibration (CV). While each of the CV locations are sensitive to vibration annoyance for residential and commercial uses and architectural damage, the buildings at locations CV-1, CV-2, and CV-4 are also historic resources. Therefore, any architectural damage to these three locations as a result of vibration from construction equipment could also result in an historical architectural resource impact under CEQA. As shown previously on Table 3 in section E.3, Cultural Resources, the FTA establishes an architectural-damage vibration limit of 0.2 PPV for non-engineered timber and masonry buildings, 0.3 PPV for engineered concrete and masonry (no plaster) buildings, and 0.5 PPV for reinforced concrete, steel, or timber for architectural damage. See Impact CR-2 in section E.3, Cultural Resources for a discussion on impacts related to architectural damage from construction vibration.

As described above in the Noise and Vibration Regulations section, the FTA defines an occupant-annoyance vibration impact as significant if it exceeds 78 vibration decibel level (VdB) during the day at a sensitive (residential) receiver or if it exceeds 84 VdB for non-sensitive (commercial/office) land uses. Table 22 below shows the anticipated construction vibration levels from construction activities, based on the distance between the location of construction activity and the receiver (*i.e.*, CV-1, CV-2, CV-3, and CV-4).

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TABLE 22 CALCULATED CONSTRUCTION VIBRATION LEVELS FOR OCCUPANT ANNOYANCE AT ADJACENT RECEIVERS

Receiver	Equipment	Average Distance to Construction Activity ^a (feet)	Calculated Avg. Vibration Level, VdB (re: 10 ⁻⁶ in/sec)	Criteria, VdB (re: 10 ⁻⁶ in/sec)	Below VdB criteria?
CV-1: Commercial	Large Bulldozer	50	78	84	Y
753 Davis Street ^c	Loaded Trucks	50	77		Y
CV-2: Commercial	Large Bulldozer	50	78	84	Y
60 Broadway ^c	Loaded Trucks	50	77		Y
CV-3: Residential	Large Bulldozer	200	60	78	Y
75 Broadway	Loaded Trucks	200	59		Y
CV-4: Residential	Large Bulldozer	180	61	78	Y
825 Front Street	Loaded Trucks	180	60		Y

Notes:

a. For occupant annoyance, distance estimates are from center of site as annoyance is calculated on a long-term basis (i.e., for the entire duration of pile driving, rather than just when it occurs closest to a receiver).

Source: CSDA Design Group, 2017. *88 Broadway/735 Davis, SF – Project-Generated Noise Study*. September 6. Table 10.

Occupant-Annoyance Vibration Impacts to Off-site Residential Buildings

The closest residential vibration-sensitive receiver's locations are the residents of 75 Broadway and 825 Front Street (CV-3 and CV-4). The building at 75 Broadway is a steel building clad in brick veneer building, and is therefore subject to the 0.5 PPV standard for architectural damage. The building at 825 Front Street is framed construction (likely wood frame) and is therefore subject to 0.2 PPV standard for architectural damage. Since vibration intensive activities would occur during the planned hours of construction that are consistent with the San Francisco Noise Ordinance (7:00 a.m. to 8:00 p.m.), the residential land uses would be subject to the FTA daytime-residential annoyance criterion of 78 VdB. As shown in Table 22, the proposed project would not exceed the occupant-annoyance vibration criteria at 75 Broadway and 825 Front Street. Therefore, impacts to the residents of these residential buildings would be *less than significant*.

Occupant-Annoyance Vibration Impacts to Off-site Commercial Buildings

The closest commercial vibration-sensitive receivers are occupants of 753 Davis Street and 60 Broadway (locations CV-1 and CV-2). The building at 753 Davis Street and 60 Broadway are of masonry construction and are therefore subject to the 0.3 PPV standard for architectural damage. These locations are subject to the 84 VdB for commercial occupant annoyance. As shown in Table 22, the proposed project would not exceed the occupant-annoyance vibration criteria at 753 Davis Street and 60 Broadway. Therefore, impacts to the occupants of these commercial buildings would be *less than significant*.

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Impact C-NO-1: The proposed project, in combination with past, present, and reasonably foreseeable future projects, would result in a cumulatively considerable contribution to cumulative impacts related to noise. (Less than Significant)

The geographic context for an analysis of cumulative impacts related to noise is the immediate project area. As shown in Table 2 and mapped on Figure 17 in section B.2, Cumulative Projects, reasonably foreseeable projects within a 0.25-mile radius of the project site includes new residential, museum, hotel, and theater development as well as space for community, retail, and office uses.

Operational Noise

Localized traffic noise would increase in conjunction with foreseeable residential and commercial growth in the project vicinity. As noted, vehicle traffic is the dominant source of noise in the project vicinity. Related projects would be expected to add additional vehicular trips, increasing the level of ambient noise potentially to a cumulatively significant level. As shown in Table 20 under Impact NO-1, there would be a minimal increase in the ambient noise levels along all surrounding roadways under the existing plus project conditions. Therefore, the project would not result in a substantial increase in traffic noise levels relative to existing conditions. In addition, because the proposed project would not raise noise levels along surrounding roadways, even if the proposed project in combination past, present, and reasonably foreseeable projects resulted in cumulative vehicle traffic noise in the vicinity reaching a significant level, the project-related contribution to traffic noise under cumulative conditions would not be considerable because it would represent a minor proportion of the overall traffic volume in the site vicinity and traffic noise from the project would not be perceptible. As such, the proposed project would not combine with cumulative development projects to create or contribute to a cumulative impact to roadway noise impacts.

The proposed project would include new fixed noise sources that would produce operational noise on the project site. Similar new fixed noise sources would produce noise for projects within 0.25-mile radius of the project site. This could result in a permanent increase in ambient noise above levels existing without the projects. However, operation of all mechanical equipment would be subject to Police Code section 2909 of the San Francisco Noise Ordinance. Reasonably foreseeable projects would also be required to comply with the San Francisco Noise Ordinance (Article 29 of the Police Code), and therefore, would not exceed limits for fixed noise sources set forth in San Francisco Noise Ordinance (Article 29 of the Police Code). Therefore, the proposed project would not combine with cumulative development projects to create or contribute to a cumulative long-term noise impact from fixed noise sources. Based on the foregoing, cumulative operational noise impacts would be *less than significant*.

Construction Noise & Vibration

Construction activities associated with other projects in the vicinity of the project site would occur on a temporary and intermittent basis, similar to the proposed project. Like the proposed project, all projects would be required to comply with the San Francisco Noise Ordinance (Police Code section 2909) requirements as described above. Project construction noise and vibration would be temporary, intermittent and localized, limited to a few hundred feet from the project site. Construction noise would attenuate due to distance and the presence of barriers, such as buildings and structures. As shown on

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Figure 17 in section B.2, Cumulative Projects, there are two development projects planned in the project vicinity that are close enough (within 500 feet) to have the potential to result in cumulative construction noise contributions, depending on approval and scheduling, including Seawall Lots 323/324 and 940 Battery Street. The 940 Battery Street project site is separated from the proposed project by multiple buildings that would provide shielding of construction noise and would be unlikely to noticeably combine with project construction noise at the nearest receptor locations, even if they were to be constructed simultaneously. However, both projects would be required to comply with the San Francisco Noise Ordinance Police Code Section 2909 regarding construction noise levels. In light of the above, the proposed project would not combine with cumulative development projects to create or contribute to cumulative noise and vibration impacts, and therefore, impacts are *less than significant*. Implementation of **Improvement Measure I-NO-2, Construction Noise Reduction** would further reduce the proposed project's less-than-significant contribution to cumulative construction noise impacts by establishing noise and vibration reduction performance standards.

E.6 AIR QUALITY

Topics:	Potentially Significant Impact	<i>Less Than Significant with Mitigation Incorporated</i>	<i>Less Than Significant Impact</i>	No Impact	Not Applicable
AIR QUALITY—					
Would the project:					
a) Conflict with or obstruct implementation of the applicable air quality plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal, state, or regional ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Expose sensitive receptors to substantial pollutant concentrations?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Create objectionable odors affecting a substantial number of people?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

OVERVIEW

The BAAQMD is the regional agency with jurisdiction over the nine-county San Francisco Bay Area Air Basin (SFBAAB), which includes San Francisco, Alameda, Contra Costa, Marin, San Mateo, Santa Clara, and Napa Counties and portions of Sonoma and Solano Counties. The BAAQMD is responsible for attaining and maintaining air quality in the SFBAAB within federal and State air quality standards, as established by the federal Clean Air Act and the California Clean Air Act, respectively. Specifically, the BAAQMD has the responsibility to monitor ambient air pollutant levels throughout the SFBAAB and to

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develop and implement strategies to attain the applicable federal and State standards. The federal and State Clean Air Acts require plans to be developed for areas that do not meet air quality standards, generally. The Bay Area's current Clean Air Plan, titled *2017 Spare the Air, Cool the Climate: A Blueprint for Clean Air and Climate Protection in the Bay Area* (2017 Clean Air Plan), serves as an update to the Bay Area 2010 Clean Air Plan and continues in providing the framework for SFBAAB to achieve attainment of the California and National ambient air quality standards. The 2017 Clean Air Plan updates the Bay Area's ozone plan, which is based on the "all feasible measures" approach to meet the requirements of the California Clean Air Act. Additionally, it sets a goal of reducing health risk impacts to local communities by 20 percent by 2020. Furthermore, the 2017 Clean Air Plan also lays the groundwork for reducing GHG emissions in the Bay Area to meet the state's 2030 GHG reduction target and 2050 GHG reduction goal. It also includes a vision for the Bay Area in a postcarbon year 2050 that encompasses the following:⁹⁵

- Construct buildings that are energy efficient and powered by renewable energy.
- Walk, bicycle, and use public transit for the majority of trips and use electric-powered autonomous public transit fleets.
- Incubate and produce clean energy technologies.
- Live a low-carbon lifestyle by purchasing low-carbon foods and goods in addition to recycling and putting organic waste to productive use.

The 2017 Clean Air Plan represents the most current applicable air quality plan for the SFBAAB. Consistency with this plan is the basis for determining whether the proposed project would conflict with or obstruct implementation of air quality plans.

Criteria Air Pollutants

In accordance with the federal and State Clean Air Acts, air pollutant standards are identified for the following six criteria air pollutants: ozone, carbon monoxide (CO), particulate matter (PM), nitrogen dioxide (NO₂), sulfur dioxide (SO₂), and lead. These air pollutants are termed criteria air pollutants because they are regulated by developing specific public health- and welfare-based criteria as the basis for setting permissible levels. In general, the SFBAAB experiences low concentrations of most pollutants when compared to federal or State standards. The SFBAAB is designated as either in attainment⁹⁶ or unclassified for most criteria pollutants with the exception of ozone, PM_{2.5}, and PM₁₀, for which these pollutants are designated as non-attainment for either the State or federal standards. By its very nature, regional air pollution is largely a cumulative impact in that no single project is sufficient in size to, by itself, result in non-attainment of air quality standards. Instead, a project's individual emissions

⁹⁵ Bay Area Air Quality Management District. 2017, April 19. *Final 2017 Clean Air Plan, Spare the Air, Cool the Climate: A Blueprint for Clean Air and Climate Protection in the Bay Area*. Available at: <http://www.baaqmd.gov/plans-and-climate/air-quality-plans/plans-under-development>.

⁹⁶ "Attainment" status refers to those regions that are meeting federal and/or State standards for a specified criteria pollutant. "Non-attainment" refers to regions that do not meet federal and/or State standards for a specified criteria pollutant. "Unclassified" refers to regions where there is not enough data to determine the region's attainment status for a specified criteria air pollutant.

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contribute to existing cumulative air quality impacts. If a project's contribution to cumulative air quality impacts is considerable, then the project's impact on air quality would be considered significant.⁹⁷

Land use projects may contribute to regional criteria air pollutants during the construction and operational phases of a project. Table 23 identifies air quality significance thresholds followed by a discussion of each threshold. Projects that would result in criteria air pollutant emissions below these significance thresholds would not violate an air quality standard, contribute substantially to an air quality violation, or result in a cumulatively considerable net increase in criteria air pollutants within the SFBAAB.

TABLE 23 CRITERIA AIR POLLUTANT SIGNIFICANCE THRESHOLDS

Pollutant	Construction Thresholds	Operational Thresholds	
	Average Daily Emissions (lbs./day)	Average Daily Emissions (lbs./day)	Maximum Annual Emissions (tons/year)
ROG	54	54	10
NO _x	54	54	10
PM ₁₀	82 (exhaust)	82	15
PM _{2.5}	54 (exhaust)	54	10
Fugitive Dust	Construction Dust Ordinance or other Best Management Practices	Not Applicable	

Source: BAAQMD, Revised Draft Options and Justification Report, California Environmental Quality Act Thresholds of Significance, October 2009.

Ozone Precursors

As discussed previously, the SFBAAB is currently designated as non-attainment for ozone and particulate matter. Ozone is a secondary air pollutant produced in the atmosphere through a complex series of photochemical reactions involving reactive organic gases (ROG) and oxides of nitrogen (NO_x). The potential for a project to result in a cumulatively considerable net increase in criteria air pollutants, which may contribute to an existing or projected air quality violation, are based on the State and federal Clean Air Act's emissions limits for stationary sources. To ensure that new stationary sources do not cause or contribute to a violation of an air quality standard, BAAQMD Regulation 2, Rule 2 requires that any new source that emits criteria air pollutants above a specified emissions limit must offset those emissions. For ozone precursors ROG and NO_x, the offset emissions level is an annual average of 10 tons per year (or 54 pounds (lbs.) per day).⁹⁸ These levels represent emissions below which new sources are not anticipated to contribute to an air quality violation or result in a considerable net increase in criteria air pollutants.

Although this regulation applies to new or modified stationary sources, land use development projects result in ROG and NO_x emissions as a result of increases in vehicle trips, architectural coating and

⁹⁷ Bay Area Air Quality Management District, *California Environmental Quality Act Air Quality Guidelines*, May 2017, page 2-1.

⁹⁸ Bay Area Air Quality Management District, *Revised Draft Options and Justification Report*, California Environmental Quality Act Thresholds of Significance, October 2009, page 17.

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construction activities. Therefore, the above thresholds can be applied to the construction and operational phases of land use projects and those projects that result in emissions below these thresholds, would not be considered to contribute to an existing or projected air quality violation or result in a considerable net increase in ROG and NOx emissions. Due to the temporary nature of construction activities, only the average daily thresholds are applicable to construction phase emissions.

Particulate Matter (PM₁₀ and PM_{2.5})⁹⁹

The BAAQMD has not established an offset limit for PM_{2.5}. However, the emissions limit in the federal New Source Review (NSR) for stationary sources in nonattainment areas is an appropriate significance threshold. For PM₁₀ and PM_{2.5}, the emissions limit under NSR is 15 tons per year (82 lbs. per day) and 10 tons per year (54 lbs. per day), respectively. These emissions limits represent levels below which a source is not expected to have an impact on air quality.¹⁰⁰ Similar to ozone precursor thresholds identified above, land use development projects typically result in particulate matter emissions as a result of increases in vehicle trips, space heating and natural gas combustion, landscape maintenance, and construction activities. Therefore, the above thresholds can be applied to the construction and operational phases of a land use project. Again, because construction activities are temporary in nature, only the average daily thresholds are applicable to construction-phase emissions.

Fugitive Dust

Fugitive dust emissions are typically generated during construction phases. Studies have shown that the application of best management practices at construction sites significantly control fugitive dust¹⁰¹ and individual measures have been shown to reduce fugitive dust by anywhere from 30 to 90 percent.¹⁰² The BAAQMD has identified a number of best management practices to control fugitive dust emissions from construction activities.¹⁰³ The City's Construction Dust Control Ordinance (Ordinance 176-08, effective July 30, 2008) requires a number of measures to control fugitive dust and the best management practices employed in compliance with the City's Construction Dust Control Ordinance is an effective strategy for controlling construction-related fugitive dust.

Other Criteria Pollutants

Regional concentrations of CO in the Bay Area have not exceeded the State standards in the past 11 years and SO₂ concentrations have never exceeded the standards. The primary source of CO emissions from

⁹⁹ PM₁₀ is often termed "coarse" particulate matter and is made of particulates that are 10 microns in diameter or smaller. PM_{2.5}, termed "fine" particulate matter, is composed of particles that are 2.5 microns or less in diameter.

¹⁰⁰ Bay Area Air Quality Management District, *Revised Draft Options and Justification Report, California Environmental Quality Act Thresholds of Significance*, October 2009, page 16.

¹⁰¹ Western Regional Air Partnership (WRAP). 2006. *WRAP Fugitive Dust Handbook*. September 7, 2006. Available at: http://www.wrapair.org/forums/dej/f/fdh/content/FDHandbook_Rev_06.pdf, accessed on February 16, 2012.

¹⁰² Bay Area Air Quality Management District, *Revised Draft Options and Justification Report, California Environmental Quality Act Thresholds of Significance*, October 2009, page 27.

¹⁰³ Bay Area Air Quality Management District, *California Environmental Quality Act Air Quality Guidelines*, May 2017.

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development projects is vehicle traffic. Construction-related SO₂ emissions represent a negligible portion of the total basin-wide emissions and construction-related CO emissions represent less than five percent of the Bay Area total basin-wide CO emissions. As discussed previously, the Bay Area is in attainment for both CO and SO₂. Furthermore, the BAAQMD has demonstrated, based on modeling, that to exceed the California ambient air quality standard of 9.0 ppm (8-hour average) or 20.0 ppm (1-hour average) for CO, project traffic in addition to existing traffic would need to exceed 44,000 vehicles per hour at affected intersections (or 24,000 vehicles per hour where vertical and/or horizontal mixing is limited). Therefore, given the Bay Area's attainment status and the limited CO and SO₂ emissions that could result from a development projects, development projects would not result in a cumulatively considerable net increase in CO or SO₂, and quantitative analysis is not required.

Local Health Risks and Hazards

In addition to criteria air pollutants, individual projects may emit toxic air contaminants (TACs). TACs collectively refer to a diverse group of air pollutants that are capable of causing chronic (*i.e.*, of long-duration) and acute (*i.e.*, severe but short-term) adverse effects to human health, including carcinogenic effects. Human health effects of TACs include birth defects, neurological damage, cancer, and mortality. There are hundreds of different types of TACs with varying degrees of toxicity. Individual TACs vary greatly in the health risk they present; at a given level of exposure, one TAC may pose a hazard that is many times greater than another.

Unlike criteria air pollutants, TACs do not have ambient air quality standards but are regulated by the BAAQMD using a risk-based approach to determine which sources and pollutants to control as well as the degree of control. A health risk assessment is an analysis in which human health exposure to toxic substances is estimated, and considered together with information regarding the toxic potency of the substances, to provide quantitative estimates of health risks.¹⁰⁴

Air pollution does not affect every individual in the population in the same way, and some groups are more sensitive to adverse health effects than others. Land uses such as residences, schools, children's day care centers, hospitals, and nursing and convalescent homes are considered to be the most sensitive to poor air quality because the population groups associated with these uses have increased susceptibility to respiratory distress or, as in the case of residential receptors, their exposure time is greater than that for other land uses. Therefore, these groups are referred to as sensitive receptors. Exposure assessment guidance typically assumes that residents would be exposed to air pollution 24 hours per day, 350 days per year, for 30 years. Therefore, assessments of air pollutant exposure to residents typically result in the greatest adverse health outcomes of all population groups.

¹⁰⁴ In general, a health risk assessment is required if the Bay Area Air Quality Management District concludes that projected emissions of a specific air toxic compound from a proposed new or modified source suggest a potential public health risk. The project sponsor is then subject to a health risk assessment for the source in question. Such an assessment generally evaluates chronic, long-term effects, estimating the increased risk of cancer as a result of exposure to one or more TACs.

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Exposures to fine particulate matter (PM_{2.5}) are strongly associated with mortality, respiratory diseases, and lung development in children, and other endpoints such as hospitalization for cardiopulmonary disease.¹⁰⁵ In addition to PM_{2.5}, diesel particulate matter (DPM) is also of concern. The California Air Resources Board (ARB) identified DPM as a TAC in 1998, primarily based on evidence demonstrating cancer effects in humans.¹⁰⁶ The estimated cancer risk from exposure to diesel exhaust is much higher than the risk associated with any other TAC routinely measured in the region.

In an effort to identify areas of San Francisco most adversely affected by sources of TACs, San Francisco partnered with the BAAQMD to conduct a citywide health risk assessment based on an inventory and assessment of air pollution and exposures from mobile, stationary, and area sources within San Francisco. Areas with poor air quality, termed the "Air Pollutant Exposure Zone," were identified based on health-protective criteria that considers estimated cancer risk, exposures to fine particulate matter, proximity to freeways, and locations with particularly vulnerable populations. Each of the Air Pollutant Exposure Zone criteria is discussed below.

Excess Cancer Risk

The Air Pollutant Exposure Zone includes all areas where excess cancer risk from known sources exceeds 100 per one million persons. This criterion is based on United States Environmental Protection Agency (USEPA) guidance for conducting air toxic analyses and making risk management decisions at the facility and community-scale level.¹⁰⁷ As described by the BAAQMD, the USEPA considers a cancer risk of 100 per one million persons to be within the "acceptable" range of cancer risk. Furthermore, in the 1989 preamble to the benzene *National Emissions Standards for Hazardous Air Pollutants* (NESHAP) rulemaking,¹⁰⁸ the USEPA states that it "...strives to provide maximum feasible protection against risks to health from hazardous air pollutants by (1) protecting the greatest number of persons possible to an individual lifetime risk level no higher than approximately one in one million and (2) limiting to no higher than approximately one in ten thousand (i.e., 100 per one million persons) the estimated risk that a person living near a plant would have if he or she were exposed to the maximum pollutant concentrations for 70 years." The 100 per one million persons excess cancer cases is also consistent with the ambient cancer risk in the most pristine portions of the Bay Area based on BAAQMD regional modeling.¹⁰⁹

¹⁰⁵ San Francisco Department of Public Health, *Assessment and Mitigation of Air Pollutant Health Effects from Intra-Urban Roadways: Guidance for Land Use Planning and Environmental Review*, May 2008.

¹⁰⁶ California Air Resources Board, Fact Sheet, *The Toxic Air Contaminant Identification Process: Toxic Air Contaminant Emissions from Diesel-fueled Engines*, October 1998.

¹⁰⁷ Bay Area Air Quality Management District, *Revised Draft Options and Justification Report, California Environmental Quality Act Thresholds of Significance*, October 2009, page 67.

¹⁰⁸ 54 Federal Register 38044, September 14, 1989.

¹⁰⁹ Bay Area Air Quality Management District, *Revised Draft Options and Justification Report, California Environmental Quality Act Thresholds of Significance*, October 2009, page 67.

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Fine Particulate Matter

In April 2011, the USEPA published *Policy Assessment for the Particulate Matter Review of the National Ambient Air Quality Standards*, "Particulate Matter Policy Assessment." In this document, USEPA staff concludes that the then current federal annual PM_{2.5} standard of 15 µg/m³ should be revised to a level within the range of 13 to 11 µg/m³, with evidence strongly supporting a standard within the range of 12 to 11 µg/m³. The Air Pollutant Exposure Zone for San Francisco is based on the health protective PM_{2.5} standard of 11 µg/m³, as supported by the USEPA's Particulate Matter Policy Assessment, although lowered to 10 µg/m³ to account for uncertainty in accurately predicting air pollutant concentrations using emissions modeling programs.

Proximity to Freeways

According to ARB, studies have shown an association between the proximity of sensitive land uses to freeways and a variety of respiratory symptoms, asthma exacerbations, and decreases in lung function in children. Siting sensitive uses in close proximity to freeways increases both exposure to air pollution and the potential for adverse health effects. As evidence shows that sensitive uses in an area within a 500-foot buffer of any freeway are at an increased health risk from air pollution,¹¹⁰ lots that are within 500 feet of freeways are included in the Air Pollutant Exposure Zone.

Health Vulnerable Locations

Based on the BAAQMD's evaluation of health vulnerability in the Bay Area, those zip codes (94102, 94103, 94105, 94124, and 94130) in the worst quintile of Bay Area Health vulnerability scores as a result of air pollution-related causes were afforded additional protection by lowering the standards for identifying lots in the Air Pollutant Exposure Zone to: (1) an excess cancer risk greater than 90 per one million persons exposed, and/or (2) PM_{2.5} concentrations in excess of 9 µg/m³.¹¹¹

The above citywide health risk modeling was also used as the basis in approving a series of amendments to the San Francisco Building and Health Codes, generally referred to as the Enhanced Ventilation Required for Urban Infill Sensitive Use Developments or Health Code, Article 38 (Ordinance 224-14, effective December 8, 2014) (Article 38). The purpose of Article 38 is to protect the public health and welfare by establishing an Air Pollutant Exposure Zone and imposing an enhanced ventilation requirement for all urban infill sensitive use development within the Air Pollutant Exposure Zone. In addition, projects within the Air Pollutant Exposure Zone require special consideration to determine whether the project's activities would add a substantial amount of emissions to areas already adversely affected by poor air quality. The project site is not located within the Air Pollutant Exposure Zone.¹¹²

¹¹⁰ California Air Resources Board, *Air Quality and Land Use Handbook: A Community Health Perspective*. April 2005. Available at: <http://www.arb.ca.gov/ch/landuse.htm>, accessed on April 7, 2017.

¹¹¹ San Francisco Planning Department and San Francisco Department of Public Health, 2014 Air Pollutant Exposure Zone Map (Memo and Map), April 9, 2014. These documents are part of San Francisco Board of Supervisors File No. 14806, Ordinance No. 224-14, Amendment to Health Code Article 38.

¹¹² San Francisco Planning Department. San Francisco Property Information Map, Version 3.4.4 Map. 2016. Available at: <http://propertymap.sfplanning.org/?dept=planning>, accessed on September 29, 2016.

IMPACT DISCUSSION

Project-related air quality impacts fall into two categories: short-term impacts from construction and long-term impacts from project operation.

CONSTRUCTION AIR QUALITY IMPACTS

The following addresses construction-related air quality impacts resulting from the proposed project. The proposed project would require construction activities for the approximate 19-month construction period. For the purposes of the environmental analysis, it is assumed the project construction would take place starting at the beginning of August 2018 and be completed by March 2020 (approximately 413 workdays).

Impact AQ-1: Proposed project construction activities would generate fugitive dust and criteria air pollutants, but would not violate an air quality standard, contribute substantially to an existing or projected air quality violation, or result in a cumulatively considerable net increase in criteria air pollutants. (Less than Significant)

Construction activities (short-term) typically result in emissions of ozone precursors and particulate matter (PM₁₀ and PM_{2.5}) in the form of dust (fugitive dust) and exhaust (e.g., vehicle tailpipe emissions). Emissions of ozone precursors and PM are primarily a result of the combustion of fuel from on-road and off-road vehicles. However, ROG_s are also emitted from activities that involve painting, other types of architectural coatings, or asphalt paving. The proposed project would involve the demolition of two existing surface parking lots and the construction of two new 65-foot-tall (up to 75 feet with roof top appurtenances), 6-story mixed-use residential buildings with up to 178 affordable dwelling units (125 family units and 53 senior units). The buildings would include approximately 6,400 square feet of commercial space and an approximately 4,300-square-foot childcare facility for public use. During the project's approximately 19-month construction period, construction activities would have the potential to result in emissions of ozone precursors and PM, as discussed below.

Fugitive Dust

Project-related demolition, excavation, grading, and other construction activities may cause wind-blown dust that could contribute particulate matter into the local atmosphere. Although there are federal standards for air pollutants and implementation of State and regional air quality control plans, air pollutants continue to have impacts on human health throughout the country. California has found that particulate matter exposure can cause health effects at lower levels than national standards. The current health burden of particulate matter demands that, where possible, public agencies take feasible available actions to reduce sources of particulate matter exposure. According to the ARB, reducing particulate matter PM_{2.5} concentrations to State and federal standards of 12 µg/m³ in the San Francisco Bay Area would prevent between 200 and 1,300 premature deaths.¹¹³

¹¹³ California Air Resources Board, *Methodology for Estimating Premature Deaths Associated with Long-term Exposure to Fine Airborne Particulate Matter in California*, Staff Report, Table 4c, October 24, 2008.

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Dust can be an irritant causing watering eyes or irritation to the lungs, nose, and throat. Demolition, excavation, grading, and other construction activities can cause wind-blown dust that adds particulate matter to the local atmosphere. Depending on exposure, adverse health effects can occur due to this particulate matter in general and also due to specific contaminants such as lead or asbestos that may be constituents of soil.

In response, the San Francisco Board of Supervisors approved a series of amendments to the San Francisco Building and Health Codes generally referred hereto as the Construction Dust Control Ordinance (Ordinance 176-08, effective July 30, 2008) with the intent of reducing the quantity of dust generated during site preparation, demolition and construction work to protect the health of the general public and of onsite workers, minimize public nuisance complaints, and to avoid orders to stop work by the DBI.

The Ordinance requires that all site preparation work, demolition, or other construction activities within San Francisco that have the potential to create dust or to expose or disturb more than 10 cubic yards or 500 square feet of soil comply with specified dust control measures whether or not the activity requires a permit from DBI.

In compliance with the Construction Dust Control Ordinance, the project sponsor and the contractor responsible for construction activities at the project site would be required to use the following practices to control construction dust on the site or other practices that result in equivalent dust control that are acceptable to the Director. Dust suppression activities may include watering all active construction areas sufficiently to prevent dust from becoming airborne; increased watering frequency may be necessary whenever wind speeds exceed 15 mph. During excavation and dirt-moving activities, contractors shall wet sweep or vacuum the streets, sidewalks, paths, and intersections where work is in progress at the end of the workday. Inactive stockpiles (where no disturbance occurs for more than seven days) greater than 10 cubic yards or 500 square feet of excavated material, backfill material, import material, gravel, sand, road base, and soil shall be covered with a 10 millimeters (0.01 inch) polyethylene plastic (or equivalent) tarp, braced down, or use other equivalent soil stabilization techniques. City and County of San Francisco Ordinance 175-91 restricts the use of potable water for soil compaction and dust control activities undertaken in conjunction with any construction or demolition project occurring within the boundaries of San Francisco, unless permission is obtained from the San Francisco Public Utilities Commission (SFPUC). Non-potable water must be used for soil compaction and dust control activities during project construction and demolition. The SFPUC operates a recycled water truck-fill station at the Southeast Water Pollution Control Plant that provides recycled water for these activities at no charge.

For projects over one half-acre, such as the proposed project, the Dust Control Ordinance requires that the project sponsor submit a Dust Control Plan for approval by the San Francisco Department of Public Health. DBI would not issue a building permit without written notification from the Director of Public Health that the project sponsor has an approved site-specific Dust Control Plan.

The site-specific Dust Control Plan required by the Dust Control Ordinance would require the project sponsor to: submit a map to the Director of Public Health showing all sensitive receptors within 1,000 feet of the site; wet down areas of soil at least three times per day; provide an analysis of wind direction and install upwind and downwind particulate dust monitors; record particulate monitoring results; hire

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an independent, third-party to conduct inspections and keep a record of those inspections; establish shut-down conditions based on wind, soil migration, etc.; establish a hotline for surrounding community members who may be potentially affected by project-related dust; limit the area subject to construction activities at any one time; install dust curtains and windbreaks on the property lines, as necessary; limit the amount of soil in hauling trucks to the size of the truck bed and securing with a tarpaulin; enforce a 15 mph speed limit for vehicles entering and exiting construction areas; sweep affected streets with water sweepers at the end of the day; install and utilize wheel washers to clean truck tires; terminate construction activities when winds exceed 25 mph; apply soil stabilizers to inactive areas; and sweep off adjacent streets to reduce particulate emissions. The project sponsor would be required to designate an individual to monitor compliance with these dust control requirements. Compliance with the regulations and procedures set forth by the San Francisco Dust Control Ordinance would ensure that potential dust-related air quality impacts would be reduced to a less-than-significant level.

Criteria Air Pollutants

As discussed above, construction activities would result in emissions of criteria air pollutants from the use of off- and on-road vehicles and equipment. A quantitative analysis of the proposed project's construction emissions was conducted using the California Emissions Estimator Model (CalEEMod), Version 2016.3.1. The model was developed, including default data (*e.g.*, emission factors, meteorology, etc.), in collaboration with California air districts' staff. Default assumptions were used where project-specific information was unknown.

The proposed project would demolish two existing surface parking lots and generate approximately 365 tons of asphalt demolition debris and 4,000 cubic yards of soil export. Construction on the 1.12-acre site is estimated to take approximately 19 months. To determine potential construction-related air quality impacts, the average daily criteria air pollutants emissions generated by the proposed project-related construction activities are compared to the significance thresholds in Table 24. Average daily emissions are based on the annual construction emissions divided by the total number of active construction days.

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TABLE 24 CONSTRUCTION-RELATED CRITERIA AIR POLLUTANT EMISSIONS ESTIMATES

Year	Criteria Air Pollutants (tons/year) ^a			
	ROG	NO _x	Exhaust PM ₁₀	Exhaust PM _{2.5} ^b
2018	<1	1	<1	<1
2019	<1	2	<1	<1
2020	1	<1	<1	<1
Total	2	4	<1	<1

Criteria Air Pollutants (average lbs/day) ^a				
Average Daily Emissions ^c	8	19	1	1
Significance Threshold	54	54	82	54
Exceeds Average Daily Threshold	No	No	No	No

Note: Emissions may not total to 100 percent due to rounding.

a. Construction information is based on the preliminary information provided by the project sponsor. Where specific information regarding project-related construction activities was not available, construction assumptions were based on CalEEMod defaults, which are based on construction surveys conducted by South Coast Air Quality Management District of construction equipment and phasing for comparable projects.

b. Includes implementation of best management practices for fugitive dust control required by BAAQMD as mitigation, including watering disturbed areas a minimum of two times per day, reducing speed limit to 15 miles per hour on unpaved surfaces, and replacing ground cover.

c. Average daily emissions are based on the total construction emissions divided by the total number of active construction days. The total number of construction days is estimated to be 413.

Source: CalEEMod 2016.3.1.

As shown in Table 24, criteria air pollutant emissions from construction equipment exhaust would not exceed the average daily thresholds and impacts from project-related construction activities on regional air quality would be *less than significant*. No mitigation measures are necessary.

Impact AQ-2: Proposed project construction activities would not generate toxic air contaminants, including diesel particulate matter, that may expose sensitive receptors to substantial pollutant concentrations. (Less than Significant)

The nearest sensitive off-site receptors to the project site are the residents at 825 Front Street and 75 Broadway. Other nearby off-site sensitive receptors include the residences farther to the west at 810 Battery Street and the residences at 733 Front Street and at the Gateway Apartments to the south.

As previously stated, the project site is not within an Air Pollutant Exposure Zone, as mapped and defined by Health Code Article 38. With regard to construction emissions, off-road equipment (which

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includes construction-related equipment) is a large contributor to DPM emissions in California, although since 2007, the ARB has found the emissions to be substantially lower than previously expected.¹¹⁴ Newer and more refined emission inventories have substantially lowered the estimates of DPM emissions from off-road equipment such that off-road equipment is now considered the sixth largest source of DPM emissions in California.¹¹⁵ For example, revised PM emission estimates for the year 2010, which DPM is a major component of total PM, have decreased by 83 percent from previous 2010 emissions estimates for the SFBAAB.¹¹⁶

Additionally, a number of federal and State regulations are requiring cleaner off-road equipment. Specifically, both the USEPA and California have set emissions standards for new off-road equipment engines, ranging from Tier 1 to Tier 4. Tier 1 emission standards were phased in between 1996 and 2000 and Tier 4 Interim and Final emission standards for all new engines were phased in between 2008 and 2015. To meet the Tier 4 emission standards, engine manufacturers are required to produce new engines with advanced emission-control technologies. Although the full benefits of these regulations would not be realized for several years, the USEPA estimates that by implementing the federal Tier 4 emission standards, NOx and PM emissions would be reduced by more than 90 percent.¹¹⁷

In addition, construction activities do not lend themselves to analysis of long-term health risks because of their temporary and variable nature. As explained in the BAAQMD's CEQA Air Quality Guidelines:

*"Due to the variable nature of construction activity, the generation of TAC emissions in most cases would be temporary, especially considering the short amount of time such equipment is typically within an influential distance that would result in the exposure of sensitive receptors to substantial concentrations. Concentrations of mobile-source diesel PM emissions are typically reduced by 70 percent at a distance of approximately 500 feet (ARB 2005). In addition, current models and methodologies for conducting health risk assessments are associated with longer-term exposure periods of 9, 40, and 70 years, which do not correlate well with the temporary and highly variable nature of construction activities. This results in difficulties with producing accurate estimates of health risk."*¹¹⁸

Therefore, project-level analyses of construction activities have a tendency to produce overestimated assessments of long-term health risks.

¹¹⁴ California Air Resources Board, *Staff Report: Initial Statement of Reasons for Proposed Rulemaking, Proposed Amendments to the Regulation for In-Use Off-Road Diesel-Fueled Fleets and the Off-Road Large Spark-Ignition Fleet Requirements*, p.1 and p. 13 (Figure 4), October 2010.

¹¹⁵ California Air Resources Board, *Staff Report: Initial Statement of Reasons for Proposed Rulemaking, Proposed Amendments to the Regulation for In-Use Off-Road Diesel-Fueled Fleets and the Off-Road Large Spark-Ignition Fleet Requirements*, October 2010.

¹¹⁶ California Air Resources Board, *In-Use Off-Road Equipment, 2011 Inventory Model*, Query. Available at: http://www.arb.ca.gov/msei/categories.htm#inuse_or_category, accessed on April 2, 2012.

¹¹⁷ United States Environmental Protection Agency, *Clean Air Nonroad Diesel Rule: Fact Sheet*, May 2004.

¹¹⁸ Bay Area Air Quality Management District, *California Environmental Quality Act Air Quality Guidelines*, May 2017, page 8-6.

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Although on-road heavy-duty diesel vehicles and off-road equipment would be used during the 19-month construction duration, emissions would be temporary and variable in nature and would not be expected to expose sensitive receptors to substantial air pollutants. Furthermore, the proposed project would be subject to California regulations limiting idling to no more than five minutes,¹¹⁹ which would further reduce nearby sensitive receptor exposure to temporary and variable DPM emissions. Therefore, because the project site is not within the Air Pollutant Exposure Zone and construction activities would be temporary and variable over the 19-month construction period, TAC emissions would result in a *less-than-significant impact* to sensitive receptors. No mitigation measures are necessary.

OPERATIONAL AIR QUALITY IMPACTS

Land use projects typically result in emissions of criteria air pollutants and toxic air contaminants primarily from an increase in motor vehicle trips. However, land use projects may also result in criteria air pollutants and toxic air contaminants from combustion of natural gas, landscape maintenance, use of consumer products, and architectural coating. The following discussion addresses operation-related air quality impacts.

Impact AQ-3: The proposed project would result in emissions of criteria air pollutants, but not at levels that would violate an air quality standard, contribute to an existing or projected air quality violation, or result in a cumulatively considerable net increase in criteria air pollutants. (Less than Significant)

The BAAQMD, in its CEQA Air Quality Guidelines (May 2017), has developed screening criteria to determine whether a project requires an analysis of project-generated criteria air pollutants. If all the screening criteria are met by a proposed project, then the lead agency or project sponsor does not need to perform a detailed air quality assessment. BAAQMD's CEQA Air Quality Guidelines identifies screening criteria for operation-related criteria air pollutant emissions for an "apartment, mid-rise" development at 494 dwelling units and a "strip mall" at 99,000 square feet.¹²⁰ The proposed project falls substantially below the operational criteria pollutant screening criteria for mid-rise apartment developments (178 dwelling units are proposed compared to the screening criterion of 494 dwelling units) and strip malls (6,436 square feet are proposed compared to the screening criterion of 99,000 square feet). Thus, quantification of project-generated criteria air pollutant emissions is not required, and the proposed project would not exceed any of the significance thresholds for criteria air pollutants, and would result in *less than significant* impact with respect to criteria air pollutants. No mitigation measures are necessary.

Additionally, the proposed project would include solar panels and green roofs. New buildings are required to comply with the current Building Energy Efficiency Standards and CALGreen.

¹¹⁹ California Code of Regulations, Title 13, Division 3, section 2485 (on-road) and section 2449(d)(2) (off-road).

¹²⁰ "Strip mall" is used as a proxy to capture the amount of commercial businesses on the first floor. This land use is the closest default land use to the type of commercial uses proposed under the project.

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Impact AQ-4: The proposed project would not generate substantial amounts of toxic air contaminants or expose sensitive receptors to substantial air pollutant concentrations. (Less than Significant)

As discussed above, the project site is not within an Air Pollutant Exposure Zone. Residential land uses, such as the proposed project do not use substantial quantities of TACs on-site and typically do not exacerbate existing health risk hazards. However, the proposed project would include a two emergency back-up diesel generators (*i.e.*, a stationary source of TAC emissions) that would require a permit from BAAQMD. Additionally, off-site sensitive receptors are located in close proximity to the project site, including the residents at 825 Front Street and 75 Broadway. Other nearby off-site sensitive receptors include the residences farther to the west at 810 Battery Street and the residences at 733 Front Street and at the Gateway Apartments to the south.

The following evaluates the proposed project's potential to expose sensitive receptors to substantial pollutant concentrations.

Sources of Toxic Air Contaminants

Vehicle Trips

Individual projects result in emissions of toxic air contaminants primarily as a result of an increase in vehicle trips. The BAAQMD considers roads with less than 10,000 vehicles per day "minor, low-impact" sources that do not pose a significant health impact even in combination with other nearby sources and recommends that these sources be excluded from the environmental analysis. The proposed project would generate new vehicle-trips on the surrounding roadway network, but would also demolish existing automobile-oriented uses (surface parking) that already generate substantial amounts of vehicle traffic and replace them with active uses with no accessory off-street parking. Therefore, the proposed project would not result in vehicle traffic levels on the street segments immediately adjacent to the project site that would be substantially worse than existing conditions. Furthermore, the proposed project's 1,211 daily vehicle trips¹²¹ would be well below the 10,000 vehicle per day level and would be distributed among the local roadway network. Therefore, the proposed project would not generate a substantial amount of TAC emissions from vehicles that could affect nearby sensitive receptors.

On-Site Backup Diesel Generators

The proposed project would include two emergency backup generators. Emergency generators are regulated by the BAAQMD through its New Source Review (Regulation 2, Rule 5) permitting process. The project sponsor would be required to obtain applicable permits to operate the emergency generators from the BAAQMD. Although emergency generators are intended only to be used in periods of power outages, monthly testing of the generator would be required. The BAAQMD limits testing to no more than 50 hours per year. Additionally, as part of the permitting process, the BAAQMD limits the excess

¹²¹ AECOM, 2017. *88 Broadway Transportation Impact Study*, San Francisco, CA, June 20. Table 9, Project Travel Demand – New Trips by Mode (Weekday PM Peak Hour), page 35.

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cancer risk from any facility to no more than ten per one million population and requires any source that would result in an excess cancer risk greater than one per one million population to install Best Available Control Technology for Toxics (TBACT). Compliance with the BAAQMD permitting process would ensure that project-generated TAC emissions from the proposed generators would not expose sensitive receptors to substantial air pollutant concentrations, and TAC emissions would be less than significant.

Siting Sensitive Receptors

The proposed project would include development of 178 residential units and a childcare facility, which are considered a sensitive land use for the purposes of air quality evaluation. However, as discussed above the project would not generate substantial levels of TACs and would not site sensitive land uses within an Air Pollutant Exposure Zone. Therefore, the proposed project would not expose sensitive receptors to substantial levels of air pollution. While a recent California Supreme Court decision in *CBLA v. BAAQMD* held that impacts of the environment on a project generally are not within the purview of the CEQA statutes, this finding is nevertheless identified for the purpose of informing decision makers.¹²² In light of the above, the proposed project would not generate substantial amounts of TACs or expose sensitive receptors to substantial air pollutant concentrations. Therefore this impact is *less than significant*. No mitigation measures are necessary.

Impact AQ-5: The proposed project would not conflict with, or obstruct implementation of, the 2017 Clean Air Plan. (Less than Significant)

The most recently adopted air quality plan for the SFBAAB is the 2017 Clean Air Plan. The 2017 Clean Air Plan is a road map that demonstrates how the San Francisco Bay Area would achieve compliance with the State ozone standards as expeditiously as practicable and how the region would reduce the transport of ozone and ozone precursors to neighboring air basins. In determining consistency with the 2017 Clean Air Plan, this analysis considers whether the project would: (1) support the primary goals of the 2017 Clean Air Plan, (2) include applicable control measures from the 2017 Clean Air Plan, and (3) avoid disrupting or hindering implementation of control measures identified in the 2017 Clean Air Plan.

The primary goals of the 2017 Clean Air Plan are to: (1) attain all State and national air quality standards, (2) eliminate disparities among Bay Area communities in cancer health risk from toxic air contaminants, and (3) reduce Bay Area GHG emissions 40 and 80 percent below 1990 levels by 2030 and 2050,

¹²² In a decision issued on December 17, 2015, the California Supreme Court held that CEQA does not generally require an agency to consider the effects of existing environmental conditions on a proposed project's future users or residents except with certain types of specified projects or where a project or its residents may exacerbate existing environmental hazards (*California Building Industry Association v. Bay Area Air Quality Management District*, December 17, 2015, Case No. S213478. Available at: <http://www.courts.ca.gov/opinions/documents/S213478.PDF>). Thus, the analysis herein focuses on whether the proposed project would exacerbate existing or future air quality emissions in the project area. It is noted that existing local regulations, including Article 38, would reduce exposure of new sensitive uses to air pollutant concentrations.

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respectively.¹²³ To meet the primary goals, the 2017 Clean Air Plan recommends specific control measures and actions. These control measures are grouped into various sectors such as agriculture, buildings, energy, natural and working lands, stationary source, transportation, waste, and water. The 2017 Clean Air Plan recognizes that to a great extent, community design dictates individual travel mode, and that a key long-term control strategy to reduce emissions of criteria pollutants, air toxics, and greenhouse gases from motor vehicles is to channel future Bay Area growth into vibrant urban communities where goods and services are close at hand, and people have a range of viable transportation options. To this end, the 2017 Clean Air Plan includes 85 control measures aimed at reducing air pollution in the SFBAAB.

The proposed project's impact with respect to GHGs are discussed below in section E.7, Greenhouse Gas Emissions, which demonstrates that the proposed project would comply with the applicable provisions of the City's GHG Reduction Strategy and therefore not conflict with the 2017 Clean Air Plan.

The compact development of the proposed project and high availability of viable transportation options ensure that residents could bicycle, walk, and ride transit to and from the project site instead of taking trips via private automobile. These features ensure that the project would avoid substantial growth in automobile trips and VMT. The proposed project's anticipated 1,211 vehicle trips¹²⁴ that would replace the existing on-site automobile-oriented uses (surface parking) that already generate substantial amounts of vehicle traffic and replace them with active uses with no accessory off-street parking, would result in negligible air pollutant emissions. Control measures that are identified in the 2017 Clean Air Plan are implemented by the General Plan and the Planning Code, for example, through the City's Transit First Policy, bicycle parking requirements, and transit impact development fees. Compliance with these requirements would ensure the project includes relevant transportation control measures specified in the 2017 Clean Air Plan. Therefore, the proposed project would include applicable control measures identified in the 2017 Clean Air Plan to meet the 2017 Clean Air Plan's primary [goals.]

Examples of a project that could cause the disruption or delay of 2017 Clean Air Plan control measures are projects that would preclude the extension of a transit line or bike path, or projects that propose excessive parking beyond parking requirements. The proposed project consists of construction of two new 65 feet tall, 6-story mixed-use residential buildings with up to 178 affordable dwelling units (125 family units and 53 senior units). The buildings would include approximately 6,400 square feet of commercial space and a 4,300-square-foot childcare facility for public use. The proposed project would be located within a dense, walkable urban area near a concentration of regional and local transit service. It would not preclude the extension of a transit line or a bike path or any other transit improvement, would not include off-street vehicle parking, and thus would not disrupt or hinder implementation of control measures identified in the 2017 Clean Air Plan.

For the reasons described above, the proposed project would not interfere with implementation of the 2017 Clean Air Plan, and because the proposed project would be consistent with the applicable air quality

¹²³ The goal is consistent with the greenhouse gas emissions reduction target of Senate Bill 32 and the reduction goal of Executive Order S-03-05.

¹²⁴ AECOM, 2017. *88 Broadway Transportation Impact Study*, San Francisco, CA, June 20. Table 9, Project Travel Demand – New Trips by Mode (Weekday PM Peak Hour), page 35.

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plan that demonstrates how the region would improve ambient air quality and achieve the State and federal ambient air quality standards, the impact would be *less than significant*. No mitigation measures are necessary.

Impact AQ-6: The proposed project would not create objectionable odors that would affect a substantial number of people. (Less than Significant)

Typical odor sources of concern include wastewater treatment plants, sanitary landfills, transfer stations, composting facilities, petroleum refineries, asphalt batch plants, chemical manufacturing facilities, fiberglass manufacturing facilities, auto body shops, rendering plants, and coffee roasting facilities. During construction, diesel exhaust from construction equipment would generate some odors. However, construction-related odors would be temporary and would not persist upon project completion. Observation indicates that the project site is not substantially affected by sources of odors.¹²⁵ Additionally, the proposed project includes up to 178 affordable dwelling units with approximately 6,400 square feet of commercial space and an approximately 4,300-square-foot childcare facility for public use, and would not create a significant source of new odors. Therefore, odor impacts would be *less than significant*. No mitigation measures are necessary.

Impact C-AQ-1: The proposed project, in combination with past, present, and reasonably foreseeable future development in the project area, would not contribute to cumulative air quality impacts. (Less than Significant)

The geographic context for an evaluation of cumulative air quality impacts is the SFBAAB, as governed by the BAAQMD. Emissions from past, present, and future projects contribute to the region's adverse air quality on a cumulative basis. No single project by itself would be sufficient in size to result in regional nonattainment of ambient air quality standards. Instead, a project's individual emissions contribute to existing cumulative adverse air quality impacts. The project-level thresholds for criteria air pollutants are based on levels by which new sources are not anticipated to contribute to an air quality violation or result in a considerable net increase in criteria air pollutants. Therefore, because the proposed project's criteria air emissions would not exceed the project-level thresholds for criteria air pollutants (Impact AQ-1 and AQ-3), the proposed project would not result in a cumulatively considerable contribution to regional air quality impacts.

Although the project would add new sensitive land uses and new sources of TACs (e.g., new vehicle trips and two backup generators), the project site is not located within an Air Pollutant Exposure Zone. The project's incremental increase in localized TAC emissions resulting from the project's 1,211 project-generate daily vehicle trips¹²⁶ and two backup generators would be minor and would not contribute substantially to cumulative TAC emissions that could affect adjacent or proposed sensitive land uses.

¹²⁵ Reconnaissance of project site and environs conducted by PlaceWorks staff of March 1, 2017.

¹²⁶ AECOM, 2017. *88 Broadway Transportation Impact Study*, San Francisco, CA, June 20. Table 9, Project Travel Demand – New Trips by Mode (Weekday PM Peak Hour), page 35.

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Therefore, cumulative health risk impacts would be considered *less than significant*. No mitigation measures are necessary.

E.7 GREENHOUSE GAS EMISSIONS

Topics:	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact	Not Applicable
GREENHOUSE GAS EMISSIONS—					
Would the project:					
a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Conflict with any applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of greenhouse gases?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Greenhouse gas (GHG) emissions and global climate change represent cumulative impacts. GHG emissions cumulatively contribute to the significant adverse environmental impacts of global climate change. No single project could generate enough GHG emissions to noticeably change the global average temperature; instead, the combination of GHG emissions from past, present, and future projects have contributed and would continue to contribute to global climate change and its associated environmental impacts.

The BAAQMD has prepared guidelines and methodologies for analyzing GHGs. These guidelines are consistent with CEQA Guidelines sections 15064.4 and 15183.5, which address the analysis and determination of significant impacts from a proposed project's GHG emissions. CEQA Guidelines section 15064.4 allows lead agencies to rely on a qualitative analysis to describe GHG emissions resulting from a project. CEQA Guidelines section 15183.5 allows for public agencies to analyze and mitigate GHG emissions as part of a larger plan for the reduction of GHGs and describes the required contents of such a plan. Accordingly, San Francisco has prepared GHG Reduction Strategy¹²⁷ which presents a comprehensive assessment of policies, programs, and ordinances that collectively represent San Francisco's qualified GHG reduction strategy in compliance with the CEQA guidelines. These GHG reduction actions have resulted in a 23.3 percent reduction in GHG emissions in 2012 compared to 1990 levels,¹²⁸ exceeding the year 2020 reduction goals outlined in the BAAQMD's Bay Area 2017 Clean Air

¹²⁷ San Francisco Planning Department, Strategies to Address Greenhouse Gas Emissions in San Francisco, 2010. Available at: <http://www.sf-planning.org/index.aspx?page=2627>.

¹²⁸ ICF International, Technical Review of the 2012 Community-wide GHG Inventory for the City and County of San Francisco, January 21, 2015. Available at: http://sfenvironment.org/sites/default/files/fliers/files/icf_verificationmemo_2012sfecommunityinventory_2015-01-21.pdf, accessed on March 16, 2015.

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Plan, Executive Order (EO) S-3-05, and Assembly Bill (AB) 32 (also known as the Global Warming Solutions Act).¹²⁹

Given that the City has met the State and region's 2020 GHG reduction targets and San Francisco's GHG reduction goals are consistent with, or more aggressive than, the long-term goals established under EO S-3-05¹³⁰, EO B-30-15,^{131,132} and Senate Bill (SB) 32^{133,134} the City's GHG reduction goals are consistent with EO S-3-05, EO B-30-15, AB 32, SB 32 and the Bay Area 2017 Clean Air Plan. Therefore, proposed projects that are consistent with the City's GHG Reduction Strategy would be consistent with the aforementioned GHG reduction goals, would not conflict with these plans or result in significant GHG emissions, and would therefore not exceed San Francisco's applicable GHG threshold of significance.

The following analysis of the proposed project's impact on climate change focuses on the project's contribution to cumulatively significant GHG emissions. Because no individual project could emit GHGs at a level that could result in a significant impact on the global climate, this analysis is in a cumulative context, and this section does not include an individual project-specific impact statement.

Impact C-GG-1: The proposed project would generate greenhouse gas emissions, but not at levels that would result in a significant impact on the environment or conflict with any

¹²⁹ Executive Order S-3-05, Assembly Bill 32, and the *Bay Area 2017 Clean Air Plan* set a target of reducing GHG emissions to below 1990 levels by year 2020.

¹³⁰ Office of the Governor, Executive Order S-3-05, June 1, 2005. Available at: <http://www.pcl.org/projects/2008symposium/proceedings/Coatsworth12.pdf>, accessed March 16, 2016. Executive Order S-3-05 sets forth a series of target dates by which statewide emissions of GHGs need to be progressively reduced, as follows: by 2010, reduce GHG emissions to 2000 levels (approximately 457 million metric tons of carbon dioxide equivalents (MTCO_{2e})); by 2020, reduce emissions to 1990 levels (approximately 427 million MTCO_{2e}); and by 2050 reduce emissions to 80 percent below 1990 levels (approximately 85 million MTCO_{2e}). Because of the differential heat absorption potential of various GHGs, GHG emissions are frequently measured in "carbon dioxide-equivalents," which present a weighted average based on each gas's heat absorption (or "global warming") potential.

¹³¹ Office of the Governor, Executive Order B-30-15, April 29, 2015. Available at: <https://www.gov.ca.gov/news.php?id=18938>, accessed March 3, 2016. Executive Order B-30-15, issued on April 29, 2015, sets forth a target of reducing GHG emissions to 40 percent below 1990 levels by 2030 (estimated at 2.9 million metric tons of carbon dioxide equivalent [MTCO_{2e}]).

¹³² San Francisco's GHG reduction goals are codified in section 902 of the Environment Code and include: (i) by 2008, determine City GHG emissions for year 1990; (ii) by 2017, reduce GHG emissions by 25 percent below 1990 levels; (iii) by 2025, reduce GHG emissions by 40 percent below 1990 levels; and by 2050, reduce GHG emissions by 80 percent below 1990 levels.

¹³³ Senate Bill 32 amends California Health and Safety Code Division 25.5 (also known as the California Global Warming Solutions Act of 2006) by adding section 38566, which directs that statewide greenhouse gas emissions to be reduced by 40 percent below 1990 levels by 2030.

¹³⁴ Senate Bill 32 was paired with Assembly Bill 197, which would modify the structure of the State Air Resources Board; institute requirements for the disclosure of greenhouse gas emissions criteria pollutants, and toxic air contaminants; and establish requirements for the review and adoption of rules, regulations, and measures for the reduction of greenhouse gas emissions.

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policy, plan, or regulation adopted for the purpose of reducing greenhouse gas emissions. (Less than Significant)

Individual projects contribute to the cumulative effects of climate change by directly or indirectly emitting GHGs during construction and operational phases. Direct operational emissions include GHG emissions from new vehicle trips and area sources (natural gas combustion). Indirect emissions include emissions from electricity providers; energy required to pump, treat, and convey water; and emissions associated with waste removal, disposal, and landfill operations.

The proposed project would increase the intensity of use of the site by demolishing two surface parking lots and developing the site with 178 affordable dwelling units, approximately 6,400 square feet of commercial space, and an approximately 4,300-square-foot childcare facility. Therefore, the proposed project would contribute to annual long-term increases in GHGs as a result of increased vehicle trips (mobile sources) and residential and commercial operations that result in an increase in energy use, water use, wastewater treatment, and solid waste disposal. Construction activities would also result in temporary increases in GHG emissions.

The proposed project would be subject to regulations adopted to reduce GHG emissions as identified in the GHG Reduction Strategy. As discussed below, compliance with the applicable regulations would reduce the project's GHG emissions related to transportation, energy use, waste disposal, wood burning, and use of refrigerants.

The proposed project would not provide any vehicular parking. This combined with compliance with the bicycle parking requirements that promote alternative forms of transportation, would reduce the proposed project's transportation-related emissions. These regulations reduce GHG emissions from single-occupancy vehicles by promoting the use of alternative transportation modes with zero or lower GHG emissions on a per capita basis.

The proposed project would be required to comply with the energy efficiency requirements of the City's Green Building Code, Stormwater Management Ordinance, Water Conservation and Irrigation ordinances, and Energy Conservation Ordinance, which would promote energy and water efficiency, thereby reducing the proposed project's energy-related GHG emissions.¹³⁵ Additionally, as previously described, the proposed project would include solar panels and green roofs, which would meet the renewable energy criteria of the Green Building Code, further reducing the project's energy-related GHG emissions.

The proposed project's waste-related emissions would be reduced through compliance with the City's Recycling and Compositing Ordinance, Construction and Demolition Debris Recovery Ordinance, and Green Building Code requirements. These regulations reduce the amount of materials sent to a landfill,

¹³⁵ Compliance with water conservation measures reduce the energy (and GHG emissions) required to convey, pump and treat water required for the project.

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reducing GHGs emitted by landfill operations. These regulations also promote reuse of materials, conserving their embodied energy¹³⁶ and reducing the energy required to produce new materials.

The proposed project would plant 18 trees, and compliance with the City's Street Tree Planting requirements would serve to increase carbon sequestration. Although the proposed project would fall short of meeting the street tree requirement, the project would increase the number of street trees from zero to 18 trees. Other regulations, including those limiting refrigerant emissions and the Wood Burning Fireplace Ordinance would reduce emissions of GHGs and black carbon, respectively. Regulations requiring low-emitting finishes would reduce volatile organic compounds (VOCs).¹³⁷ Thus, the proposed project was determined to be consistent with San Francisco's GHG Reduction Strategy.¹³⁸

The project sponsor is required to comply with these regulations, which have proven effective as San Francisco's GHG emissions have measurably decreased by 28 percent as of 2015¹³⁹ when compared to 1990 emissions levels, demonstrating that the City has met and exceeded EO S-3-05, AB 32, and the *Bay Area 2017 Clean Air Plan* GHG reduction goals for the year 2020. Other existing regulations, such as those implemented through AB 32, would continue to reduce a proposed project's contribution to climate change. In addition, San Francisco's local GHG reduction targets are consistent with the long-term GHG reduction goals of EO S-3-05, EO B-30-15, AB 32, SB 32 and the 2017 Clean Air Plan. Therefore, because the proposed projects is consistent with the City's GHG Reduction Strategy, it is also consistent with the GHG reduction goals of EO S-3-05, EO B-30-15, AB 32, SB 32 and the 2017 Clean Air Plan, would not conflict with these plans, and would therefore not exceed San Francisco's applicable GHG threshold of significance. As such, the proposed project would result in a *less-than-significant* impact with respect to GHG emissions. No mitigation measures are necessary.

¹³⁶ Embodied energy is the total energy required for the extraction, processing, manufacture and delivery of building materials to the building site.

¹³⁷ While not a greenhouse gas, volatile organic compounds (VOCs) are precursor pollutants that form ground level ozone. Increased ground level ozone is an anticipated effect of future global warming that would result in added health effects locally. Reducing VOC emissions would reduce the anticipated local effects of global warming.

¹³⁸ San Francisco Planning Department, *Greenhouse Gas Analysis: Compliance Checklist for 88 Broadway/735 Davis Street Project*, October 11, 2017.

¹³⁹ San Francisco Office of the Environment, *San Francisco's Carbon Footprint*, Available at: <https://sfenvironment.org/carbon-footprint>, accessed September 16, 2017.

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E.8 WIND AND SHADOW

Topics:	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact	Not Applicable
WIND AND SHADOW--					
Would the project:					
a) Alter wind in a manner that substantially affects public areas?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Create new shadow in a manner that substantially affects outdoor recreation facilities or other public areas?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Impact WS-1: The proposed project would not alter wind in a manner that would substantially affect public areas (Less than Significant)

A proposed project's wind impacts are directly related to its height, orientation, design, location, and surrounding development context. Based on wind analyses for other development projects in San Francisco, a building that does not exceed a height of 85 feet generally has little potential to cause substantial changes to ground-level wind conditions. At a height of 65 feet (with an additional 10 feet for rooftop appurtenances), the proposed project would be about the same height as existing adjacent or nearby buildings. Given its height, orientation, design, location, and surrounding development context, the proposed 65-foot-tall building (plus 10-foot-tall mechanical equipment and elevator penthouse) has little potential to cause substantial changes to ground-level wind conditions adjacent to and near the project site. For these reasons, the proposed project would not alter wind in a manner that substantially affects public areas. This impact would be *less than significant*, and no mitigation measures are necessary.

Impact WS-2: The proposed project would not create new shadow in a manner that substantially affects outdoor recreation facilities or other public areas. (Less than Significant)

Planning Code section 295 was adopted to protect certain public open spaces under the jurisdiction of the San Francisco Recreation and Parks Department (SFRPD) from shadowing by new and altered structures during the period between 1 hour after sunrise and 1 hour before sunset, year round. Planning Code section 295 restricts new shadow upon public open spaces under the jurisdiction of SFRPD by any structure exceeding 40 feet in height, unless the Planning Commission finds that any adverse impact on use of the open space caused by the shadow would be insignificant. In 1989, to implement section 295 and Proposition K, the Planning Commission and Recreation and Park Commission jointly adopted a memorandum (1989 Memorandum) establishing qualitative criteria for evaluating shadow impacts as well as Absolute Cumulative Limits (ACL) for certain parks. ACLs are "shadow" budgets that establish absolute cumulative limits for additional shadows, expressed as a percentage of Theoretically Available Annual Sunlight (TAAS) on a park with no adjacent structures present.

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The 1989 Memorandum sets forth qualitative criteria under Planning Code section 295 to determine when a shadow would be significant as well as information on how to quantitatively measure shadow impacts. Qualitatively, shadow impacts are evaluated based on (1) existing shadow profiles, (2) important times of day, (3) important seasons in the year, (4) location of the new shadow, (5) size and duration of new shadows, and (6) public good served by buildings casting a new shadow. Quantitatively, new shadows are to be measured by the additional annual amount of shadow-square foot-hours as a percent of TAAS. Where an ACL has not been adopted for a park, the Planning Commission's decision on whether a structure has an impact on property under the jurisdiction of the Recreation and Park Department is based on a review of qualitative and quantitative factors.

Because the proposed project includes construction of a structure greater than 40 feet in height, a preliminary shadow fan analysis under Planning Code section 295 was required. The preliminary shadow fan prepared by the Planning Department. The preliminary shadow fan indicated that the proposed project would not shade any properties under the jurisdiction of SFRPD including Maritime Plaza, Sue Bierman Park, Justin Herman-Embarcadero Plaza, Portsmouth Square, Washington Square, and Telegraph Hill-Pioneer Park, and thus the proposed project is not subject to the provisions of Planning Code section 295.

However, it was determined that the proposed project has the potential to shade other public recreation and open spaces. Therefore, further shadow analysis was required to evaluate shadow impacts on non-section 295 properties. There are not any privately owned public outdoor spaces in the vicinity of the project site. Therefore, the potentially impacted non-section 295 properties include the Sydney G. Walton Square and the Embarcadero sidewalks shown on Figure 21 and described as follows:

- **Sydney G. Walton Square:** This open space is privately owned and is located approximately 0.1 miles south of the project site and is bounded by mixed use buildings to the north, Front Street to the east, Jackson Street to the south, and Davis Street to the west.
- **The Embarcadero Sidewalks:** These waterfront sidewalks are located along the eastern portion of the Port of San Francisco. The sidewalks are along a 3-mile stretch of the seawall that features piers, sidewalks, restaurants, parks and other attractions.

CADP prepared a shadow analysis to quantify the amount of net new shadow that would be cast by the proposed project on Sydney G. Walton Square and the Embarcadero sidewalks. This report is included in the project case file of this initial study. The shadow analysis shows that the existing shadow at Sydney G. Walton Square is from existing surrounding buildings and that the proposed project would not contribute net new shadow at any time through the year due to both the distance from the proposed project as well as its location directly south of the proposed building.



Source: City of San Francisco, 2017; CADP, June 21, 2017; PlaceWorks, 2018.

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FIGURE 21
Non-Section 295 Properties

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For the Embarcadero sidewalks, very minimal shadow impact is expected to occur only during the late evening hours in the Fall months of October to December, and mirrored winter months of December to early March. During these days of impact, the net new shadow never lasts longer than 17 minutes, and only occurs directly before sunset.¹⁴⁰ The new shadow load on the sidewalks would be 448.52 square foot hours. This net new shadow would not be expected to affect the use or enjoyment of the Embarcadero Sidewalk.

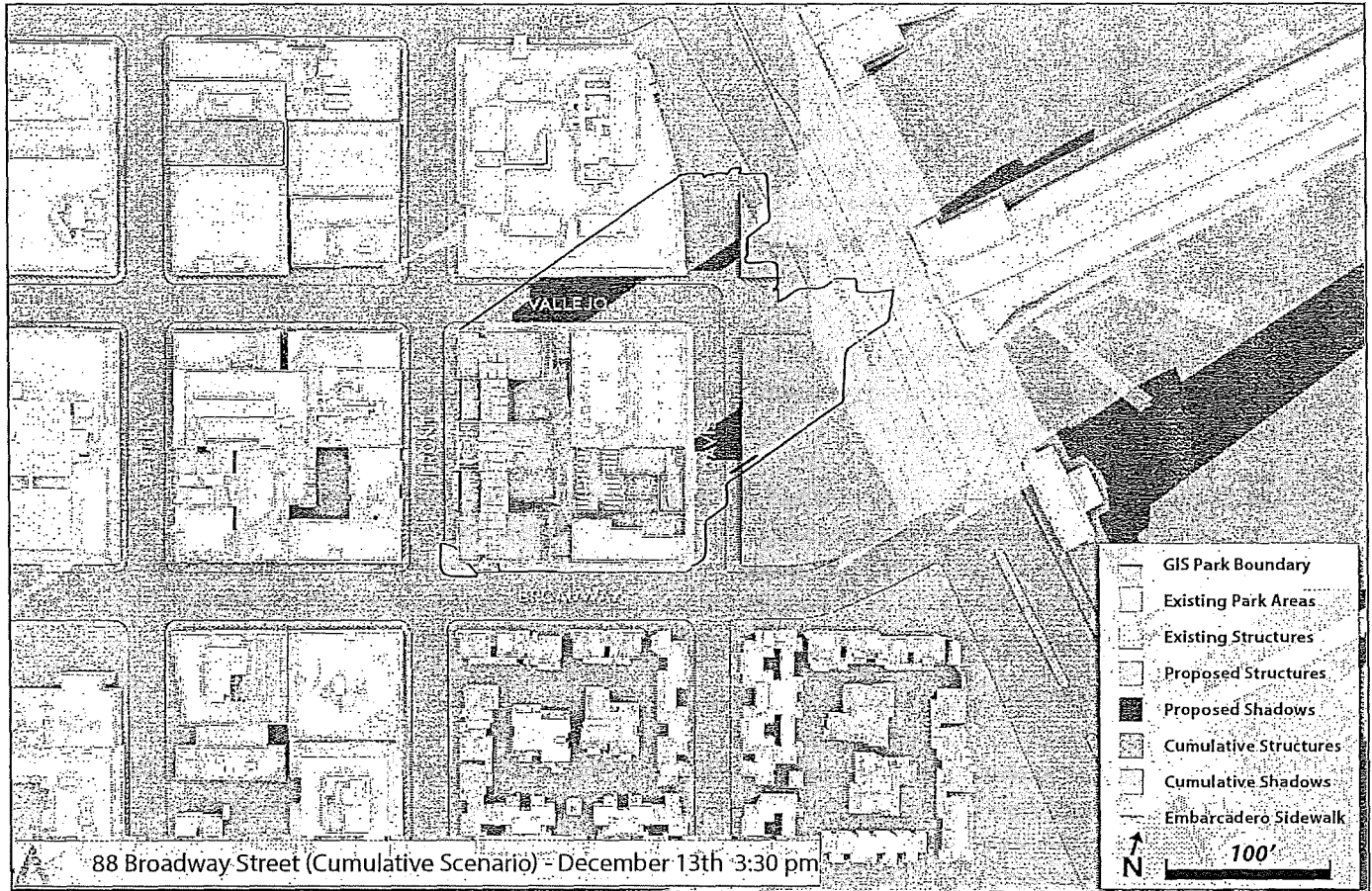
The proposed project would also shadow portions of other nearby streets and sidewalks and private property at times within the project vicinity. Shadows upon streets and sidewalks would not exceed levels commonly expected in urban areas and would be considered a less-than-significant effect under CEQA. Although occupants of nearby properties may regard the increase in shadow as undesirable, the limited increase in shading of private properties, as a result of the proposed project would not be considered a significant impact under CEQA. For the reasons discussed above, shadow impacts would be *less than significant*. No mitigation measures are necessary.

Impact C-WS-1: The proposed project, in combination with other past, present, and reasonably foreseeable projects, would not result in cumulative impacts related to wind and shadow. (Less than Significant)

As discussed above, buildings shorter than 85 feet have little potential to cause substantial changes to ground-level wind conditions. Given that the height limit in the project vicinity is 65 feet, none of the nearby cumulative development projects would be tall enough to alter wind in a manner that substantially affects public areas. For these reasons, the proposed project would not combine with cumulative development projects to create or contribute to a cumulative wind impact.

As described above, the proposed project would not cast any net new shadow on any park protected by Planning Code section 295, and would not add net new shadow to Sydney G. Walton Square. Therefore the proposed project has no potential to result in cumulative impacts to section 295 Recreation and Park open spaces or on Sydney G. Walton Square. However, the proposed project would add new shadow to the Embarcadero sidewalks under cumulative conditions. Cumulative shadows are shown on Figures 22 through 24. The adjacent Seawall Lot 323/324 proposed development in the area to the west of the project site could also increase shadows on the Embarcadero sidewalk. Therefore, a cumulative analysis was also prepared to analyze the potential shadow impact on the Embarcadero sidewalk's open space from both proposed developments. Due to the proximity of the Seawall Lot 323/324 project to the east of the proposed project, the new shade from the proposed Seawall Lot 323/324 project would completely subsume any shade generated by the proposed project and new shadow generated by the proposed project would no longer impact the area during the winter months. Accordingly, the proposed project would not combine with cumulative development projects, including the Seawall Lot 323/324 project, to create or contribute to a cumulative shadow impact. Based on the evidence provided above, cumulative effect with respect to shadow impacts would be *less than significant*. No mitigation measures are necessary.

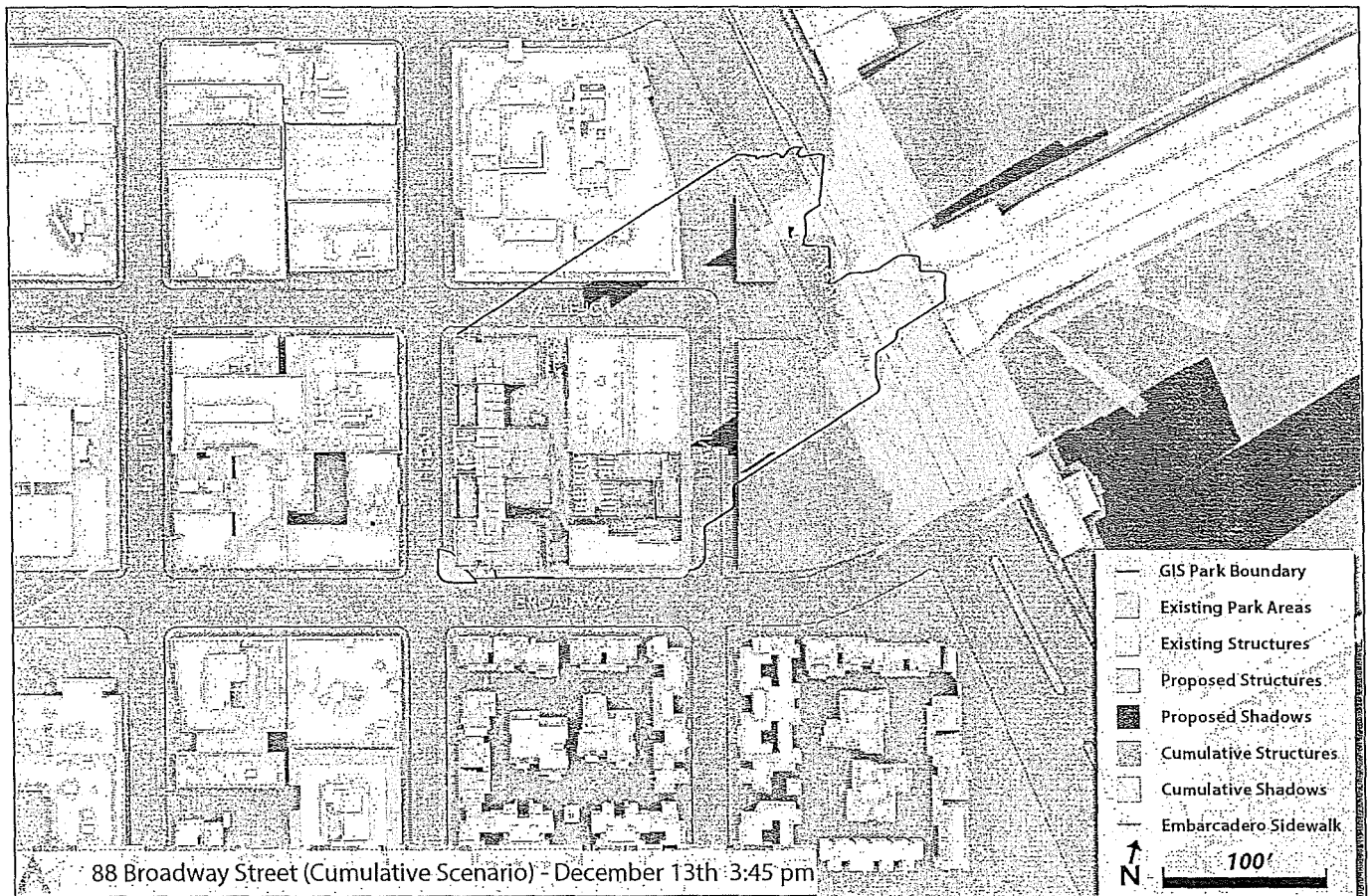
¹⁴⁰ CADP, 2017. *88 Broadway Shadow Analysis*, March 16.



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FIGURE 22
Shadow Fan of Cumulative Projects at 3:30PM

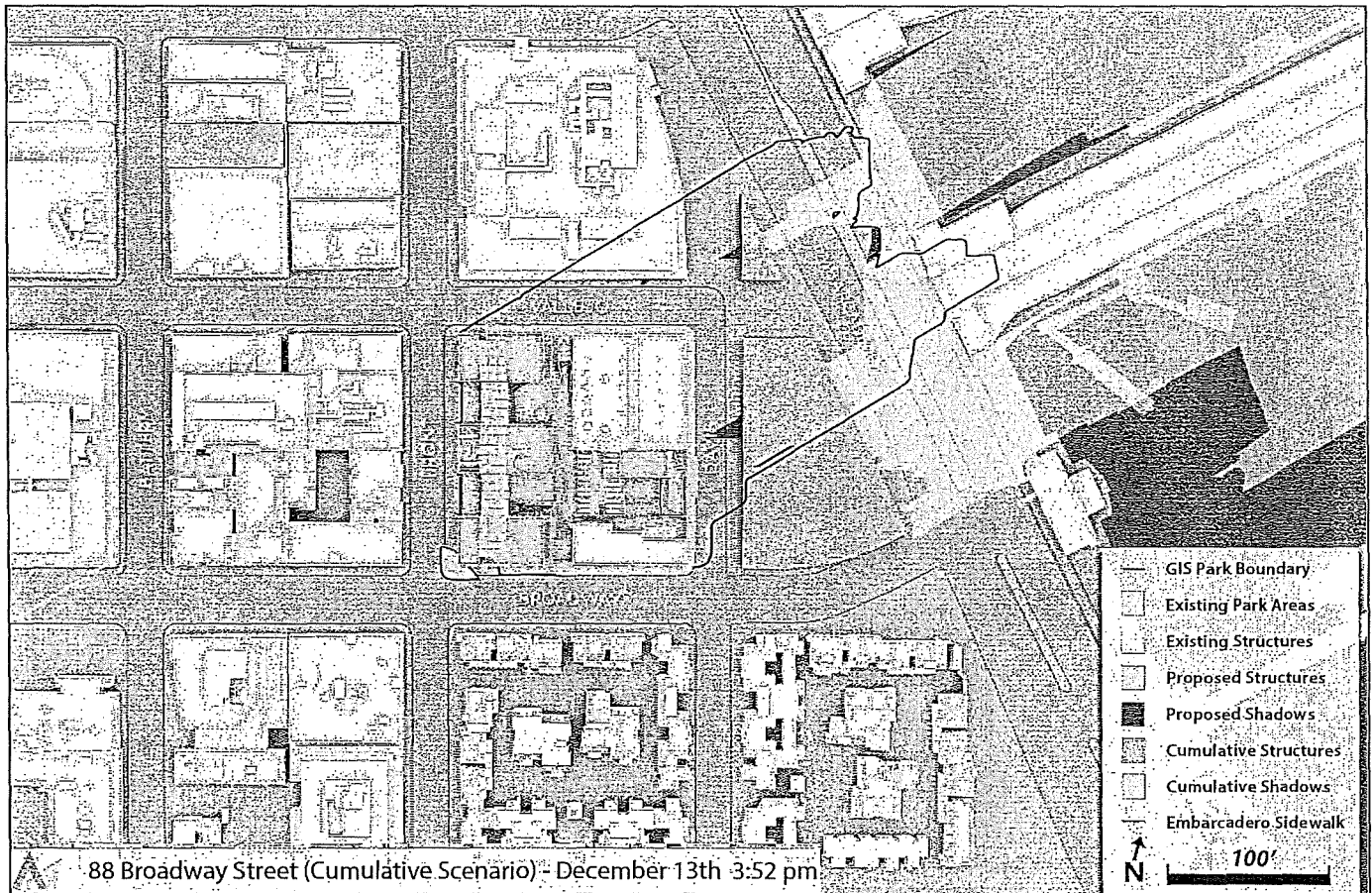


Source: City of San Francisco, 2017; CADP, June 21, 2017; PlaceWorks, 2018.

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FIGURE 23
Shadow Fan of Cumulative Projects at 3:45PM



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FIGURE 24
Shadow Fan of Cumulative Projects at 3:52PM

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E.9 RECREATION

<i>Topics:</i>	<i>Potentially Significant Impact</i>	<i>Less Than Significant with Mitigation Incorporated</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>	<i>Not Applicable</i>
RECREATION—					
Would the project:					
a) Increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facilities would occur or be accelerated?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Include recreational facilities or require the construction or expansion of recreational facilities that might have an adverse physical effect on the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Physically degrade existing recreational resources?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Impact RE-1: The proposed project would not result in a substantial increase in the use of existing parks and recreational facilities, the deterioration of such facilities, include recreation facilities, or require the expansion of recreational facilities the construction of which could affect the environment, or physically degrade existing recreational resources. (Less than significant)

The new residents of the proposed project would be served by the San Francisco Recreation and Parks Department (SFRPD), which administers more than 220 parks, playgrounds, and open spaces throughout the city, as well as recreational facilities, including recreation centers, swimming pools, golf courses, and athletic fields, tennis courts, and basketball courts.¹⁴¹ The project site is in an intensely developed urban neighborhood that does not contain large regional park facilities, but includes a number of neighborhood parks and open spaces, as well as other recreational facilities. The San Francisco General Plan Recreation and Open Space Element (ROSE) identifies areas throughout the city having a “High Need” for open space. High Need areas are defined as those with high population densities, high concentrations of seniors and youth, and lower income populations that are located outside of existing parking service areas.¹⁴² Although neighboring areas to the west of the project site, are classified as High Need areas, the proposed project is located within parcels classified as having a lesser need for open space.

There are several recreation and open space facilities managed by the SFRPD near the project site:

¹⁴¹ *San Francisco General Plan, Recreation and Open Space Element (ROSE)*, 2014. Available at: http://www.sf-planning.org/ftp/General_Plan/Recreation_OpenSpace_Element_ADOPTED.pdf, April, accessed on January 18, 2017.

¹⁴² *San Francisco Planning Department, Recreation and Open Space Element (ROSE)*, 2014. Available at: http://www.sf-planning.org/ftp/General_Plan/Recreation_OpenSpace_Element_ADOPTED.pdf, April, accessed on January 18, 2017.

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- **Maritime Plaza** (at 285 Washington Street): An approximately 2.01-acre landscaped plaza connected by pedestrian bridges to Golden Gateway and Embarcadero Center, located approximately 0.22 miles south of the project site.
- **Sue Bierman Park** (at the intersection of Washington and Drumm Streets): An approximately 4.41-acre park containing a playground and reservable picnic areas, located approximately 0.30 miles southeast of the project site.
- **Justin Herman-Embarcadero Plaza** (at the intersection of Steuart and Market Streets): An approximately 4.43-acre park containing fountain, winter ice skating rink, reservable picnic areas, and a bocce ball court, located approximately 0.37 miles southeast of the project site.
- **Portsmouth Square** (at the intersection of Washington Street and Walker Lum Place): An approximately 1.29-acre park containing benches and a children's play area, located approximately 0.43 miles southwest of the project site.
- **Washington Square** (at the intersection of Filbert and Stockton Streets): An approximately 2.26-acre park containing benches, located approximately 0.58 miles northwest of the project site.
- **Telegraph Hill-Pioneer Park** (at Telegraph Hill Boulevard): An approximately 4.89 -acre park containing Coit Tower, located approximately 0.43 miles northwest of the project site.

In addition to the facilities managed by SFRPD, Sydney G. Walton Square is the nearest public open space to the project site that is not owned or managed by SFRPD. The park is located a block away, occupying half of the block south from the project site and is bounded by Front Street to the east, Jackson Street to the south, and Davis Street to the west. The approximately 2-acre park is known for its public art and is a popular lunchtime spot for nearby employees and residents. Project residents also have close access (one block to the east) to the Embarcadero sidewalks, which are waterfront sidewalks located along the eastern portion of the Port of San Francisco. The sidewalks are along a 3-mile stretch of seawall that features piers, sidewalks, restaurants, parks and other attractions.

The proposed family housing building includes common open space for resident-use only and is comprised of an approximately ~~1,100~~1,250-square-foot terrace on the ~~fifth~~sixth floor, an second approximately ~~1,200~~2,550-square-foot deck on the sixth floor, an approximately ~~3,200~~3,650-square-foot family roof deck, and an approximately 1,400-square-foot family community garden on the roof. The proposed total ~~6,900~~8,850 square feet of common open space would exceed the City's open space requirements by approximately ~~900~~2,850 square feet. The senior housing building includes common open space available to residents only on an approximately 2,100-square-foot senior roof deck and community garden, which would exceed the City's open space requirements by approximately 800 square feet. Other open space areas not credited towards the City's open space requirement include the approximately ~~3,200~~2,270-square-foot playground on the ground floor, the approximately ~~700~~620-square-foot colonnade (for the commercial space) on the ground floor, and the approximately ~~2,000~~1,900-square-foot family courtyard on the second floor of the family housing building, as well as the approximately ~~1,300~~730-square-foot senior courtyard on the ground floor of the senior housing building. The private open space and common open space would provide passive recreational opportunities for residents and their guests. In addition, residents at the project site would be within walking distance to a variety of parks and open space areas listed above, which include Embarcadero Sidewalks, Sydney G. Walton Square, Maritime Plaza, Sue Bierman Park, Justin Herman-Embarcadero Plaza, Portsmouth Square, Washington Square, and Telegraph Hill-Pioneer Park.

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Although the proposed project would introduce a new permanent population (approximately 402 residents) to the project site, the number of new residents projected would not be large enough to substantially increase demand for, or use of the previously described neighborhood parks and recreational facilities, or citywide facilities, such as Golden Gate Park, such that substantial physical deterioration would be expected. The permanent residential population at the site and the incremental on-site temporary daytime population that would result from retail uses would not require the construction of new recreational facilities or the expansion of existing facilities.

For the previously described reasons, the proposed project would have a *less-than-significant* impact on recreational facilities and resources. No mitigation measures are necessary.

Impact C-RE-1: The proposed project, in combination with other past, present, or reasonably foreseeable projects would result in less-than-significant impacts to recreational resources. (Less than Significant)

Past, present, and reasonably foreseeable future projects located within a 0.25-mile radius of the project site are identified in Table 2 and mapped on Figure 17 in section B.2, Cumulative Projects. As discussed under section E.2, Population and Housing, these projects would add approximately 20 new residents within nine dwelling units in the project vicinity. Overall, these approved and proposed projects, when combined with the proposed project, would add 422 new residents in the project vicinity, which would represent a residential population increase in the vicinity of 6 percent. The proposed retail space and childcare space would add approximately 31 employees to the daytime population. Thus, recreational facility use in the project area would most likely increase with the development of the proposed project, as well as the past, present, and reasonably foreseeable future projects identified in Table 2 and mapped on Figure 17. However, it is not anticipated that this added population would increase the use of existing neighborhood and regional parks or other recreational facilities to such an extent that substantial physical deterioration of those facilities would occur.

Moreover, the added residential population and daytime employee population as a result of development of the proposed and cumulative projects also would not require the construction or expansion of recreational facilities, nor would it physically degrade existing recreational resources. Each project identified in Table 2 and mapped on Figure 17 would be subject to compliance with the City's open space requirements, as defined in section 135 of the Planning Code, regarding provision of public and/or private open space and would partially meet the demand for recreational resources from future residents of those projects. Also, in June 2016, San Francisco voters approved Proposition B, which extends until 2046 a funding set-aside in the City budget for SFRDP and also provides for annual increases through 2026-2027 in General Fund monies provided to SFRPD, meaning that, going forward, SFRPD would have additional funding for programming and park maintenance.¹⁴³ For these reasons, the proposed project would not combine with cumulative development projects to create or contribute to a cumulative impact

¹⁴³ Unofficial election results from the San Francisco Registrar of Voters website. Available at: <http://www.sfelections.org/results/20160607/>, accessed on January 20, 2017.

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on recreation resources and impacts would be *less than significant*. No mitigation measures are necessary.

E.10 UTILITIES AND SERVICE SYSTEMS

<i>Topics:</i>	<i>Potentially Significant Impact</i>	<i>Less Than Significant with Mitigation Incorporated</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>	<i>Not Applicable</i>
UTILITIES AND SERVICE SYSTEMS—					
Would the project:					
a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Have sufficient water supply available to serve the project from existing entitlements and resources, or require new or expanded water supply resources or entitlements?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Result in a determination by the wastewater treatment provider that would serve the project that it has inadequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g) Comply with federal, state, and local statutes and regulations related to solid waste?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The project site is within an urban area that is served by utility service systems, including water, wastewater and storm water collection and treatment, and solid waste collection and disposal. The proposed project would add new daytime and nighttime population to the site that would increase the demand for utilities and service systems on the site. However, as discussed under section E.2, Population and Housing, the growth associated with the proposed project would not be in excess of growth planned for the city.

Impact UT-1: The proposed project would not exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board, would not exceed the capacity of the wastewater treatment provider serving the project site, or require construction of new

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stormwater drainage facilities, wastewater treatment facilities, or expansion of existing facilities. (Less than Significant)

The project site is served by San Francisco's combined sewer system, which handles both sewage and stormwater runoff. The Southeast Water Pollution Control Plant provides wastewater and stormwater treatment and management for the east side of the city, including the project site. As described in Impact PH-1 under section E.2, Population and Housing, the proposed project would add 402 new residents and 30 employees to the project site, which would increase the amount of wastewater generated at the project site by approximately 19,576 gallons per capita per day (gpcd).¹⁴⁴ This increase would not be substantial and would represent only a 0.03 percent increase in the Southeast Water Pollution Control Plant's average daily treatment capacity of 60,000,000 gallons per day.¹⁴⁵ In addition, the proposed project would incorporate water-efficient fixtures, as required by Title 24 of the California Code of Regulations and the San Francisco Green Building Ordinance. Specifically, the project must comply with:

- Title 24, Part 11 (2016 CALGreen Code), Residential Mandatory Measures, Division 4.3 Water Efficiency and Conservation; and
- Title 24, Part 11 (2016 CALGreen Code), Nonresidential Mandatory Measures, Division 5.3 Water Efficiency and Conservation.

Compliance with these regulations would reduce wastewater flows and the amount of potable water used for building functions. The incorporation of water-efficient fixtures into new development is also accounted for by the SFPUC in their projections of water demand (*i.e.*, 2015 Urban Water Management Plan), because widespread adoption can lead to more efficient use of existing capacity.

The proposed project would also meet the wastewater pre-treatment requirements of the SFPUC, as required by the San Francisco Industrial Waste Ordinance to meet Regional Water Quality Control Board (regional board) requirements (see discussion under Impact HYD-1, under section E.14, Hydrology and Water Quality, for additional stormwater management requirements).¹⁴⁶ Although the proposed project would add new residents and employees to the project site, this additional population is not beyond the growth projections included in long range plans. Therefore, the incremental increase in the demand for

¹⁴⁴ The 95 percent of water use (see Impact UT-2) assumed to be discharged to the combined sewer system is consistent with the San Francisco Public Utilities Commission (SFPUC) standard assumption for multi-family residential buildings, "Wastewater Service Charge Appeal" Available at: <http://www.sfwater.org/index.aspx?page=132>; reviewed February 10, 2017). The SFPUC assumes that non-residential (and single-family residential) uses discharge 90 percent of water used to the combined sewer. The 95 percent figure is used here for a conservative assessment of combined sewer system demand. 20,606 gallons per capita per day (gpcd) x 95 percent = 19,575.7 gpcd. The calculation for the project's water demand is shown in Impact UT-2.

¹⁴⁵ San Francisco Public Utilities Commission, San Francisco's Wastewater Treatment Facilities, June, 2014. Available at: <http://sfwater.org/modules/showdocument.aspx?documentid=5801>, accessed on February 10, 2017.

17,858 gallons per day / 60,000,000 gallons per day = 0.03%

¹⁴⁶ City and County of San Francisco, Ordinance No. 19-92, San Francisco Municipal Code (Public Works), Part II, Chapter X, Article 4.1 (amended), January 13, 1992.

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wastewater would not require construction of new wastewater treatment facilities or expansion of existing facilities.

The project site is currently covered with impervious surfaces and the proposed project would not create any additional impervious surfaces; therefore, the proposed project would not result in an increase in stormwater runoff. Compliance with the City's Stormwater Management Ordinance, adopted in 2010 and amended in 2016, and the 2016 Stormwater Management Requirements and Design Guidelines would require the proposed project to reduce or eliminate the existing volume and rate of stormwater runoff discharged from the project site. The proposed project is located on a site that has more than 50 percent impervious surface at present, the proposed project would create or replace more than 5,000 square feet of impervious surface, and the project site is served by the combined sewer system. Thus, the stormwater management approach for the proposed project must reduce the existing runoff flow rate and volume by 25 percent for a 2-year, 24-hour design storm. The Stormwater Management Requirements set forth a hierarchy of best management practices to meet the stormwater runoff requirements. First priority best management practices involve reduction in stormwater runoff through approaches such as rainwater harvesting and reuse (*e.g.*, for toilets and urinals and/or irrigation); infiltration through a rain garden, swale, trench, or basin; or through the use of permeable pavement or a green roof. Second priority best management practices include biotreatment approaches such as the use of flow-through planters or, for large sites, constructed wetlands. Third priority best management practices, only permitted under special circumstances, involve use of a filter to treat stormwater.

To achieve compliance with the Stormwater Management Requirements, the proposed project would implement and install appropriate stormwater management systems, such as Low Impact Design approaches, rainwater reuse, cistern, and green roofs that would manage stormwater on-site and limit demand on both the collection system and wastewater facilities resulting from stormwater discharges. A Stormwater Control Plan would be designed for review and approval by the SFPUC. The Stormwater Control Plan would also include a maintenance agreement that must be signed by the project sponsor to ensure proper care of the necessary stormwater controls. Therefore, the proposed project would not substantially increase the amount of stormwater runoff to the extent that existing facilities would need to be expanded or new facilities would need to be constructed; as such, the impact to the stormwater system would be less than significant.

Overall, while the proposed project would add to sewage flows in the area, it would not cause collection treatment capacity of the sewer system in the city to be exceeded. The proposed project also would not exceed wastewater treatment requirements of the regional board, and would not require the construction of new wastewater/stormwater treatment facilities or expansion of existing ones. Therefore, since the proposed project would not require the construction of new or expanded wastewater or stormwater collection, conveyance or treatment facilities that could have a significant impact on the environment, the impact would be *less than significant*. No mitigation measures are necessary.

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Impact UT-2: The SFPUC has sufficient water supply available to serve the project from existing entitlements and resources, and the proposed project would not require expansion or construction of new water supply resources or facilities. (Less than Significant)

As noted above, the proposed project would add residential and retail uses to the project site, which would increase the demand for water on the site, but not in excess of amounts planned and provided for in the project area. The SFPUC provides water to both retail and wholesale customers. Approximately two-thirds of the SFPUC's water supply is delivered to wholesale customers, and the remaining one-third is delivered to retail customers. Retail customers include the residents, businesses, and industries located within city limits, referred to as the in-city retail service area. Wholesale customers include other municipalities in California. In 2015, the SFPUC delivered approximately 196 million gallons of water per day (mgd) to its entire water service area (wholesale and retail customers), with an additional 2 mgd in local groundwater and recycled water to retail customers.¹⁴⁷ Of the 196 mgd provided, approximately 65 mgd was delivered to in-city retail customers.

Existing gross (all sectors) per capita water use and residential-only sector per capita water use by in-city retail customers are 77 and 45 gallons per capita per day (gpcd), respectively.¹⁴⁸ Assuming, conservatively, that future project residents and employees use the same amount of water, the proposed project's 402 new residents and 31 employees would use an estimated 20,654 gallons of water per day or 0.0206 mgd.¹⁴⁹ The SFPUC's 2015 *Urban Water Management Plan* (2015 UWMP) uses growth projections of a set of models that rely on household and employment forecasts that were prepared by the Planning Department Land Use Allocation (LUA) 2012. The LUA 2012 forecasts are a City-specific refinement of ABAG's growth forecasts, *ABAG Projections 2013*, which reflect the growth that is assumed in *Plan Bay Area 2040* and Sustainable Communities Strategy Jobs-Housing Connections Scenario.¹⁵⁰ The 2015 UWMP estimates current and planned future supplies will be sufficient to meet future retail demand through 2035 under normal, dry and multiple dry years; however, in 2040 a 1.1 mgd shortfall of water is estimated for the City and County of San Francisco during the second and third year of multiple dry year conditions. Water use and supply reductions would be implemented in a projected shortfall situation through implementation of a drought response plan and a corresponding retail water shortage allocation

¹⁴⁷ San Francisco Public Utilities Commission, *2015 Urban Water Management Plan for the City and County of San Francisco*, April 2016, p. 4-1. Available at: <http://www.sfwater.org/Modules/ShowDocument.aspx?documentID=8839>

¹⁴⁸ San Francisco Public Utilities Commission, *2015 Urban Water Management Plan for the City and County of San Francisco*, April 2016, p. 4-2. Available at: <http://www.sfwater.org/Modules/ShowDocument.aspx?documentID=8839>.

¹⁴⁹ San Francisco Public Utilities Commission, *2015 Urban Water Management Plan for the City and County of San Francisco*, April 2016. Available at: <http://www.sfwater.org/Modules/ShowDocument.aspx?documentID=8839>, page 4-2 and Appendix D. Available at: <http://www.sfwater.org/Modules/ShowDocument.aspx?documentID=8838>, page 135. The anticipated new residential population of 402 residents plus 31 employees (433 total) multiplied by 45 gpcd yields a total of 19,485 gpcd. A 6.0 percent water loss factor is also included in the total water usage per the 2015 UWMP's projected water loss rate for 2040 (see UWMP Table 4-1). Therefore, anticipated total gallons per day usage for the proposed project would be 19,485 plus 1,169.1 (6.0 percent of 19,485) equals 20,654.1 gpcd or 0.0206 million gpcd.

¹⁵⁰ San Francisco Public Utilities Commission, *2015 Urban Water Management Plan for the City and County of San Francisco*, April 2016, p. 4-4. Available at: <http://www.sfwater.org/Modules/ShowDocument.aspx?documentID=8839>

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plan.¹⁵¹ These plans are designed to ensure water demand could be accommodated within anticipated water use and planned supply. The 2015 UWMP estimates a projected water demand of 89.9 mgd for 2040.¹⁵² The population generated by the proposed project would account for 0.02 percent of this projected demand.¹⁵³ Therefore, while the proposed project would incrementally increase the demand for water in San Francisco, the estimated increase would not be in excess of amounts expected and provided for in the project area and the increase in demand is not significant compared to the projected demand in 2040.

The proposed project would also be designed to incorporate water-conserving measures, such as low-flush toilets and urinals, as required by the San Francisco Green Building Ordinance. The project site is located within a designated recycled water use area, as defined in the Recycled Water Ordinance 390-91 and 393-94, which requires projects of new construction totaling 40,000 square feet or more to install recycled water systems for all uses authorized by the State of California, including landscape irrigation and toilet and urinal flushing. Pursuant to the Non-potable Water Ordinance (Ordinance 109-15, approved July 2, 2015), projects that are greater than 250,000 square are required to install a recycled water system and to use non-potable water (Rainwater, Graywater, Foundation Drainage, and/or treated Blackwater) for toilet and urinal flushing;¹⁵⁴ however, since the project site is less than 250,000 square feet the project sponsor would not be required to install an onsite non-potable water system. The project sponsor would have to submit a water budget application because it is greater than 40,000 square feet. Since the project contains 500 square feet or more of landscape area through the community open space, street trees, and green roof, the project sponsor would be required to comply with San Francisco's Water Efficient Irrigation Ordinance, adopted as Chapter 63 of the San Francisco Administrative Code and the SFPUC Rules & Regulations Regarding Water Service to Customers. The project's landscape and irrigation plans shall be reviewed and approved by the SFPUC prior to installation. City and County of San Francisco Ordinance 175-91 restricts the use of potable water for soil compaction and dust control activities undertaken in conjunction with any construction or demolition project occurring within the boundaries of San Francisco, unless permission is obtained from the SFPUC. Non-potable water must be used for soil compaction and dust control activities during project construction and demolition. The SFPUC operates a recycled water truck-fill station at the Southeast Water Pollution Control Plant that provides recycled water for these activities at no charge.

Furthermore, to ensure the welfare and safety of people and structures in the City and County of San Francisco, the project sponsor will be required to design all applicable water facilities, including potable,

¹⁵¹ San Francisco Public Utilities Commission, *2015 Urban Water Management Plan for the City and County of San Francisco*, April 2016, p. 8-3. Available at: <http://www.sfwater.org/Modules/ShowDocument.aspx?documentID=8839>.

¹⁵² San Francisco Public Utilities Commission, *2015 Urban Water Management Plan for the City and County of San Francisco*, April 2016, Table 7-4, pages 7-10 and 7-11. Available at: <http://www.sfwater.org/Modules/ShowDocument.aspx?documentID=8839>.

¹⁵³ $20,606.4 \text{ gpd} / 89.9 \text{ mgd} = 0.023 \text{ percent}$.

¹⁵⁴ Graywater is wastewater from bathtubs, showers, bathroom sinks, lavatories, clothes washing machines, laundry tubs, and the like. Blackwater is wastewater containing bodily or other biological wastes, such as from toilets, dishwashers, kitchen sinks, and utility sinks.

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fire-suppression, and non-potable water systems, to conform to the current SFPUC City Distribution Division and San Francisco Fire Department (SFFD) standards and practices.

In addition, a hydraulic analysis would be required to confirm adequacy of water distribution system for both potable, non-potable and fire use at the time of building permit review. If current distribution system pressures and flows are inadequate, the project sponsor would be responsible for any capital improvements required to meet the proposed project's water demands. Depending upon the size and complexity of the proposed project, the project sponsor may be required to pay for the hydraulic analysis.

Since the proposed project's water demand could be accommodated by the existing and planned supply and conveyance infrastructure, no expansion or construction of new water supply resources or facilities would be required and the proposed project would result in *less-than-significant* water supply impacts. No mitigation measures are necessary.

Impact UT-3: The proposed project would be served by a landfill with sufficient permitted capacity to accommodate the proposed project's solid waste disposal needs. (Less than Significant)

In September 2015, the City entered into a landfill disposal agreement with Recology Incorporated for disposal of all solid waste collected in San Francisco at the Recology Hay Road Landfill in Solano County for 9 years or until 3.4 million tons have been disposed, whichever occurs first. The City would have an option to renew the agreement for a period of 6 years or until an additional 1.6 million tons have been disposed, whichever occurs first.¹⁵⁵ The Recology Hay Road Landfill is permitted to accept up to 2,400 tons per day of solid waste, at that maximum rate the landfill would have capacity to accommodate solid waste until approximately 2034. At present, the landfill receives an average of approximately 1,850 tons per day from all sources, with approximately 1,200 tons per day from San Francisco; at this rate landfill closure would occur in 2041.¹⁵⁶ The proposed project would be required to comply with the city's mandatory recycling and composting ordinance requiring separation of compost and recyclables from landfill waste (see section E. 7, Greenhouse Gas Emissions). Therefore, the proposed project would be served by landfills with sufficient permitted capacity to accommodate its solid waste disposal needs, and would have a *less-than-significant* impact related to solid waste disposal. No mitigation measures are necessary.

¹⁵⁵ San Francisco Planning Department, *Agreement for Disposal of San Francisco Municipal Solid Waste at Recology Hay Road Landfill in Solano County Final Negative Declaration*, Planning Department Case No. 2014.0653, May 21, 2015. Available at: http://sfmea.sfplanning.org/2014.0653E_Revised_FND.pdf, accessed on February 10, 2017.

¹⁵⁶ San Francisco Planning Department, *Agreement for Disposal of San Francisco Municipal Solid Waste at Recology Hay Road Landfill in Solano County Final Negative Declaration*, Planning Department Case No. 2014.0653, May 21, 2015. Available at: http://sfmea.sfplanning.org/2014.0653E_Revised_FND.pdf, accessed on February 10, 2017.

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Impact UT-4: The construction and operation of the proposed project would comply with all applicable statutes and regulations related to solid waste. (Less than Significant)

The California Integrated Waste Management Act of 1989 requires municipalities to adopt an Integrated Waste Management Plan to establish objectives, policies, and programs relative to waste disposal, management, source reduction, and recycling. Reports filed by the San Francisco Department of the Environment show the City generated approximately 476,424 tons of waste material in 2013.¹⁵⁷ Waste diverted from landfills is defined as recycled or composted. San Francisco has a goal of 100 percent of waste diverted from landfills by 2020. As of 2011, 80 percent of San Francisco's solid waste was being diverted from landfills, having met the 2010 diversion target of 75 percent and a zero waste by 2020 target was established.

San Francisco Ordinance No. 27-06 requires a minimum of 65 percent of all construction and demolition debris to be recycled and diverted from landfills. The *San Francisco Green Building Code* also requires certain projects to submit a recovery plan to the Department of the Environment demonstrating recovery or diversion of at least 75 percent of all demolition debris. Furthermore, the proposed project would be required to comply with City Ordinance 100-09, the Mandatory Recycling and Composting Ordinance, which requires everyone in San Francisco to separate their refuse into recyclables, compostables, and trash. The Recology Hay Road landfill is required to meet federal, State, and local solid waste regulations. The proposed project would comply with the solid waste disposal policies and regulations identified above and the proposed project would have a *less-than-significant* impact with respect to solid waste statutes and regulations. No mitigation measures are necessary.

Impact C-UT-1: The proposed project in combination with past, present, and reasonably foreseeable projects would not result in cumulative significant effects related to utilities or service systems. (Less than Significant)

The cumulative development projects in the county-wide service area would incrementally increase demand on citywide utilities, such as water supply, water and wastewater conveyance and treatment facilities, and solid waste services. As noted above, the SFPUC has accounted for such growth in its water demand and wastewater service projections, and the City has implemented various programs with a goal to achieve 100 percent landfill diversion by 2020. Cumulative development projects would be subject to water conservation, wastewater discharge, recycling and composting, and construction demolition and debris ordinances. Compliance with these City ordinances would reduce the effects of cumulative development projects within the city. Moreover, as discussed in section E.2, Population and Housing, cumulative development projects would not result in a growth in population or employment that is in excess of planned growth for the project vicinity, the city, or the region. Therefore the proposed project, in combination with cumulative development projects, would not result in a cumulative impact on utilities and service systems, and cumulative impacts would be *less than significant*. No mitigation measures are necessary.

¹⁵⁷ San Francisco Indicator Project, <http://www.sfindicatorproject.org/indicators/view/4>, accessed on February 10, 2017.

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E.11 PUBLIC SERVICES

<i>Topics:</i>	<i>Potentially Significant Impact</i>	<i>Less Than Significant with Mitigation Incorporated</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>	<i>Not Applicable</i>
PUBLIC SERVICES—					
Would the project:					
a) Result in substantial adverse physical impacts associated with the provision of, or the need for, new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times, or other performance objectives for any public services such as fire protection, police protection, schools, parks, or other services?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The proposed project's impacts to parks and open spaces are discussed under section E.9, Recreation. Impacts on other public services are discussed below.

Impact PS-1: The proposed project would not result in an increase in demand for police protection, fire protection, schools, or other services to an extent that would result in substantial adverse physical impacts associated with the construction or alteration of governmental facilities. (Less than Significant)

Police Protection

The proposed project would result in more intensive use of the project site than currently exists, and thus would likely incrementally increase police service calls in the project area. The proposed project is located within the Central police district, which is bounded by Fisherman's Wharf to the north, the Embarcadero to the east, Market Street to the south, and the Marina and Polk Gulch along Larkin Street to the west.¹⁵⁸ Police protection is provided by the Central Police Station located at 766 Vallejo Street (between Stockton Street and Powell Street), approximately 0.57 miles west of the project site.¹⁵⁹ Although the proposed project could increase the number of calls received from the area, the increase in responsibilities would not be substantial in light of the existing demand for police protection services. The Central Station would be able to provide the necessary police services and crime prevention in the area.¹⁶⁰ Meeting the project's additional service demand would not require the construction of new police facilities that could cause

¹⁵⁸ San Francisco Police Department, City and County of San Francisco Streets and Police Districts, 2015. Available at: http://sanfranciscopolice.org/sites/default/files/Citywide_District_Map.pdf, accessed on January 18, 2017.

¹⁵⁹ San Francisco Police Department, Central Station. Available at: <http://sanfranciscopolice.org/central-station>, accessed on January 18, 2017.

¹⁶⁰ San Francisco Police Department, 2014 Annual Report, p. 112. Available at: <http://sanfranciscopolice.org/annual-reports>, accessed on January 18, 2017, page 112.

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significant environmental impacts. Hence, the proposed project would have a *less-than-significant* impact related to the provision of police services.

Fire Protection

The proposed project would result in more intensive use of the project site than currently exists, and thus, as with police service calls, would likely incrementally increase fire service calls in the project area. The project site receives fire protection services from the San Francisco Fire Department (SFFD). Fire stations located nearby include Station 13, at 530 Sansome Street (at Washington Street, approximately 0.27 miles southwest of the project site), and Station 2, at 1340 Powell Street (at Broadway, approximately 0.59 miles southwest of the project site).¹⁶¹ Although the proposed project would likely increase the number of calls received from the area, the increase in responsibilities would not be substantial in light of existing demand for fire protection services. Furthermore, the proposed project would be required to comply with all applicable building and fire code requirements, which identify specific fire protection systems, including, but not limited to, the provision of State-mandated smoke alarms, fire alarm and sprinkler systems, fire extinguishers, required number and location of egress with appropriate distance separation, and emergency response notification systems. Compliance with all applicable building and fire codes, would further reduce the demand for Fire Department service and oversight. Given that the proposed project would not result in a fire service demand beyond the projected growth for the area or the city, the proposed project would not result in the need for new fire protection facilities, and would have a *less-than-significant* impact on the provision of fire protection facilities.

Schools

A decade-long decline in San Francisco Unified School District (SFUSD) enrollment ended in the 2008-2009 school year, and total enrollment in the SFUSD has increased from 55,183 students in 2008-2009 to 60,133 in the 2016-2017 school year.¹⁶² According to a 2015 SFUSD enrollment study, new affordable housing units in San Francisco generate approximately 0.31 public school students per unit.¹⁶³ Applying that rate to the proposed project's 125 dwelling units that are designated as family units would result in an enrollment increase in the SFUSD of about 39 students.¹⁶⁴

¹⁶¹ San Francisco Fire Department, Fire Station Location Map. Available at: <http://sf-fire.org/sites/default/files/FileCenter/Documents/1975-Station%20Location%20Map%20-%20w%20FS51.pdf>, accessed on January 18, 2017.

¹⁶² California Department of Education, Educational Demographics Unit, Enrollment by Grade for 2015-16, San Francisco Unified School District, K-12 Public School Enrollment, <http://www.ed-data.org/district/San-Francisco/San-Francisco-Unified>, accessed on January 18, 2017; California Department of Education, DataQuest searches for San Francisco County in 2008-2009 and 2016-2017. Available at: <http://dq.cde.ca.gov/dataquest/content.asp>, accessed September 14, 2017.

¹⁶³ Lapkoff & Gobalet Demographic Research, Incorporated, *Demographic Analyses and Enrollment Forecasts for the San Francisco Unified School District*, November 23, 2015. Available at: <http://www.sfusd.edu/en/assets/sfusd-staff/about-SFUSD/files/demographic-analyses-enrollment-forecast.pdf>, accessed on January 18, 2017, page 76.

¹⁶⁴ Number of public school students generated is calculated as follows: (0.31 public school students per unit x 125 dwelling units) = 38.8 public school students.

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The proposed project is located within the Chin Elementary attendance area.¹⁶⁵ The John Yehall Chin Elementary School, at 350 Broadway (temporary address for 2016-17 school year is 940 Filbert Street, about 0.20 miles west of the project site), Chinese Education Center Elementary School, at 657 Merchant Street (about 0.40 miles southwest of the project site), and Gordon J. Lau Elementary School, at 950 Clay Street (about 0.65 miles southwest of the project site) are the nearest public elementary schools to the project site. The closest middle schools are Francisco Middle School, at 2190 Powell Street (about 0.75 miles northwest of the project site), and Marina Middle School at 3500 Fillmore Street (about 2 miles northwest of the project site). Galileo High School, at 1150 Francisco Street (about 1.37 miles northwest of the project site) is the nearest public high school to the project site. The Civic Center Continuation School, at 727 Golden Gate Avenue (about 1.85 miles southwest of the project site) is the nearest public secondary school to the project site.¹⁶⁶ The proposed project, a mix of commercial and residential uses, would incrementally increase the number of school-aged children that would attend public schools in the city, by a total of about 39 students, as noted above. However, this increase would not exceed the projected student capacities that are expected and provided for by the SFUSD and private schools in the project area. Therefore, implementation of the proposed project would not necessitate the need for new or physically altered schools.

Since the proposed project would not result in a substantially increased demand for school facilities and would not require new or expanded school facilities, the proposed project would have a *less-than-significant* impact related to the construction of new or physically altered school facilities.

Other Government Services

The proposed project would incrementally increase demand for governmental services and facilities such as public libraries; however, the proposed project would not be of such a magnitude that the demand could not be accommodated by existing facilities. Therefore, the proposed project would have a less-than-significant impact related to the construction or physical alteration of governmental service facilities.

In summary, the proposed project would have a *less-than-significant* impact on all public services; therefore, no mitigation measures are necessary.

¹⁶⁵ San Francisco Unified School District, Elementary Attendance Areas Map, 2010. Available at: <http://www.sfusd.edu/en/assets/sfusd-staff/enroll/files/final-elementary-attendance-areas-map.pdf>, accessed on January 18, 2017.

¹⁶⁶ San Francisco Unified School District, Schools Map 2016-17, 2016. Available at: http://www.sfusd.edu/en/assets/sfusd-staff/enroll/files/2016-17/2016-17_schools_map.pdf, accessed on January 18, 2017.

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Impact C-PS-1: The proposed project, combined with past, present, and reasonably foreseeable future projects in the vicinity, would not result in significant physical impacts on the environment associated with the construction or alteration of public service facilities. (Less than Significant)

Development of the proposed project in conjunction with the cumulative projects identified within a 0.25-mile radius of the project site in Table 2 and projected population growth in the project area and within the city would increase overall demand for police protection, fire protection, schools, and other government services, such as public libraries. However, this increase would not be considerable since this growth would not exceed growth projections for the area or the region, as discussed under section E.2, Population and Housing, and the San Francisco Police Department, SFFD, the SFUSD, and other agencies have accounted and planned for such growth to continue to provide public services to San Francisco residents. Further, the proposed project and cumulative projects in the vicinity would contribute to an increased demand for police services provided by the Central Station and fire services provided by Fire Stations 2 and 13, but the increased demand would not require the construction of new facilities or the expansion of existing facilities. Similarly, the proposed and cumulative projects in the vicinity would increase demand for schools and other government services, such as libraries, but again, this increase would not require the construction of new facilities or the expansion of existing facilities, as cumulative development projects would result in an additional 20 residents (in addition to the proposed project's 422 new residents) in the project vicinity. For these reasons, the proposed project would not combine with cumulative development projects to create or contribute to a cumulative impact on public services such that new or expanded facilities would be required, and this impact would be *less than significant*. No mitigation measures are necessary.

E.12 BIOLOGICAL RESOURCES

Topics:	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact	Not Applicable
BIOLOGICAL RESOURCES—					
Would the project:					
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

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Topics:	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact	Not Applicable
c) Have a substantial adverse effect on federally protected wetlands as defined by section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

The project site is fully covered with impervious surfaces and is located within a built urban environment. As such, the project site does not provide habitat for any rare or endangered plant or animal species, including on-site or street trees that could provide habitat for birds protected under the Migratory Bird Treaty Act, nor does the project site include riparian habitat or other sensitive natural communities as defined by the California Department of Fish and Wildlife and the United States Fish and Wildlife Service; therefore, Questions 12a and 12b are not applicable to the proposed project. In addition, the project area does not contain any wetlands as defined by section 404 of the Clean Water Act; therefore Question 12c is not applicable to the proposed project. Moreover, the proposed project does not fall within any local, regional or State habitat conservation plans; therefore, Question 12f is also not applicable to the proposed project.

Impact BI-1: The proposed project would not interfere substantially with any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites. (Less than Significant)

Migrating birds do pass through San Francisco. Nesting birds, their nests, and eggs are fully protected by California Fish and Game Code (sections 3503, 3503.5) and the federal Migratory Bird Treaty Act. Although the proposed project would be subject to the Migratory Bird Treaty Act, the site does not contain habitat supporting migratory birds (*i.e.*, no on-site or street trees). However, the location, height, and material of buildings, particularly transparent or reflective glass, may present risks for birds as they travel along their migratory paths. The City has adopted guidelines to address this issue and provided regulations for bird-safe design within San Francisco. Planning Code, section 139, Standards for Bird-Safe Buildings, establishes building design standards to reduce avian mortality rates associated with bird

E. EVALUATION OF ENVIRONMENTAL IMPACTS

strikes.¹⁶⁷ The project site is not located in an Urban Bird Refuge, so the standards concerning location-related hazards are not applicable to the proposed project.¹⁶⁸ The proposed project would be required to comply with the building feature-related hazards standards of section 139 by using bird-safe glazing treatment on 100 percent of any building feature-related hazards such as free-standing glass walls, wind barriers, and balconies.

Overall, the proposed project would be subject to and would comply with City-adopted regulations for bird-safe buildings and federal and State migratory bird regulations. Therefore, the proposed project would not interfere with the movement of native resident or wildlife species or with established native resident or migratory wildlife corridors and the impact would be *less than significant*. No mitigation measures are required.

Impact BI-2: The proposed project would not conflict with the City's local tree ordinance. (Less than Significant)

The City's Urban Forestry Ordinance, Public Works Code sections 801 et. Seq., requires a permit from Public Works to remove any protected trees. Protected trees include landmark trees, significant trees, or street trees located on private or public property anywhere within the territorial limits of the City and County of San Francisco. The project site does not include any on-site or streets trees under existing conditions. Therefore, no impact to protected trees would occur and no mitigation measures are required. Public Works Code section 806(d)(2) requires that for every 20 feet of property frontage along each street, one 24-inch box tree be planted, with any remaining fraction of 10 feet or more of frontage requiring an additional tree. A minimum of 18 additional new street trees would be planted along the sidewalks of the proposed project on all four frontages; however, a total of 27 new street trees would be required, in accordance with Public Works Code section 806(d). The proposed project would request a waiver for providing nine fewer trees than required under Public Works Code section 806. To fulfill the requirement, an in-lieu fee shall be paid or alternative landscaping is required in amount comparable to or greater than the number of street trees waived. With the approval of this waiver the proposed project would be in compliance with the City's street tree requirements and impacts would be *less than significant* and no mitigation measures are required.

Impact C-BI-1: The proposed project in combination with other past, present or reasonably foreseeable projects would not result in significant impacts to biological resources. (Less than Significant)

The cumulative development projects shown on Table 2 and mapped on Figure 17 in section B.2, Cumulative Projects, would result in an overall intensification of land uses typical of infill development

¹⁶⁷ San Francisco Planning Department, Standards for Bird-Safe Buildings, July 14, 2011. Available at: <http://planning.sanfranciscocode.org/1.2/139>, accessed on January 18, 2017.

¹⁶⁸ San Francisco Planning Department, Urban Bird Refuge Map. Available at: http://www.sf-planning.org/ftp/files/publications_reports/library_of_cartography/Urban_Bird_Refuge_Poster.pdf, accessed on January 18, 2017.

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within the project vicinity. The project site and the surrounding area do not currently support any candidate, sensitive, or special status species, any riparian habitat, or any other sensitive natural community identified in local or regional plans, policies, or regulations or by the California Department of Fish and Wildlife or the U.S. Fish and Wildlife Service. The cumulative project sites do not contain habitat that supports any candidate, sensitive, or special-status species, does not include riparian habitat or other sensitive natural communities as defined by the California Department of Fish and Wildlife and the United States Fish and Wildlife Service, including on-site or street trees that could provide habitat for birds protected under the Migratory Bird Treaty Act, does not contain any wetlands as defined by section 404 of the Clean Water Act, and does not fall within any local, regional or State habitat conservation plans, the development of these projects would not have the potential to result in a cumulative impact to these resources.

The cumulative development projects could add a number of tall buildings that could, in the event of a bird-strike collision(s), potentially injure or kill birds. However, as with the proposed project, nearby cumulative development projects would also be subject to the City's bird-safe building regulations. Compliance with these regulations would reduce the effects of cumulative development projects to less-than-significant levels. Similarly, cumulative development projects would be required to comply with the Urban Forestry Ordinance. For these reasons, there would be no cumulative impact on biological resources. Therefore, the proposed project would not combine with cumulative development projects to create or contribute to a cumulative impact on biological resources, and cumulative impacts would be *less than significant*. No mitigation measures are necessary.

E.13 GEOLOGY AND SOILS

Topics:	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact	Not Applicable
GEOLOGY AND SOILS—					
Would the project:					
a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:					
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? (Refer to Division of Mines and Geology Special Publication 42.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
ii) Strong seismic ground shaking?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
iii) Seismic-related ground failure, including liquefaction?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
iv) Landslides?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Result in substantial soil erosion or the loss of topsoil?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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<i>Topics:</i>	<i>Potentially Significant Impact</i>	<i>Less Than Significant with Mitigation Incorporated</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>	<i>Not Applicable</i>
c) Be located on geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction, or collapse?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code, creating substantial risks to life or property?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of wastewater?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Change substantially the topography or any unique geologic or physical features of the site?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
g) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The proposed project would connect to the combined municipal sewer system, which is the conveyance system for San Francisco, and would not use septic tanks or alternative wastewater disposal systems. Therefore, Question 13e is not applicable to the proposed project.

As discussed in section E.5, Noise and Vibration, CEQA does not require lead agencies to consider how existing hazards or conditions might impact a project's users or residents, except for specified projects or where the project would significantly exacerbate an existing environmental hazard. Accordingly, hazards resulting from a project that places development in an existing or future seismic hazard area or an area with unstable soils are not considered impacts under CEQA unless the project would significantly exacerbate the seismic hazard or unstable soil conditions. Thus, the analysis below evaluates whether the proposed project would exacerbate future seismic hazards or unstable soils at the project site and result in a substantial risk of loss, injury, or death. The impact is considered significant if the proposed project would exacerbate existing or future seismic hazards or unstable soils by increasing the severity of these hazards that would occur or be present without the project.

This section describes the geology, soils, and seismicity characteristics of the project area as they relate to the proposed project. Responses in this section rely on the information and findings provided in the Geotechnical Explorations for the 88 Broadway¹⁶⁹ parcel and the 735 Davis Street parcel¹⁷⁰ prepared by ENGEO Incorporated for the project site, unless otherwise noted. The preliminary geotechnical reports

¹⁶⁹ ENGEO Incorporated, 2017. *88 Broadway Family Housing San Francisco, California Geotechnical Exploration*, June 22.

¹⁷⁰ ENGEO Incorporated, 2017. *735 Davis Street Senior Housing San Francisco, California Geotechnical Exploration*, June 22.

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relied on available literature, geologic maps, and geotechnical reports pertinent to the site to develop conclusions and recommendations, including performing field exploration consisting of one boring and two cone penetration tests within each of the parcel boundaries.

Based on the collected data, the project site is underlain by 20 to 40 feet of artificial fill (Qaf), consisting of gravel, sand, silt, clay, rock fragments, organic matter, and man-made debris in various combinations. The fill underlying the project is highly variable containing a mix of dredged material excavated from the Bay and rocky material from on land sources. The upper 10 feet of fill predominately consists of sandy soil laden with construction debris. Based site-specific explorations and a review of the previous subsurface information provided, the coarse-grained material varies in density from loose to medium dense, and fine-grained materials are typically stiff to very stiff. The artificial fill material below the groundwater table is potentially liquefiable and the project site is mapped in a California Department of Conservation, California Geological Survey (CGS) seismic hazard zone map for the area titled State of California Seismic Hazard Zones, City and County of San Francisco, Official Map, dated November 17, 2000.¹⁷¹

Beneath the fill and encountered in all of borings within the project site is a layer of soft to medium stiff, highly plastic clay, locally known as Young Bay Mud. In some of the exploration locations, the Young Bay Mud contains interbedded layers of fine-grained sand and silt. The Young Bay Mud generally increases in thickness from west to east across the site. Based on the explorations, the thickness of Young Bay Mud ranges from approximately 5 feet to approximately 35 feet across the 88 Broadway parcel and from approximately 25 feet to approximately 50 feet across the 735 Davis Street parcel. Young Bay Mud is highly sensitive to long-term settlement when subjected to new loading from future development. In certain areas of the site, the Young Bay Mud is underlain by alluvial soil consisting of interbedded stiff clay, medium dense to dense sand, silty sand, and gravel layers. Where encountered, the alluvial soil in explorations was no greater than 5 feet in thickness at the project site. The site-specific explorations terminated in Cretaceous-age Franciscan bedrock that included greywacke sandstone, shale and metashale, which has the potential to include fossils. The bedrock encountered was typically moderately to highly weathered with a Rock Quality Index ranging from 0 to 70. The bedrock dips steeply towards the east. The bedrock elevation at the site ranges from approximately 50 to 80 feet below ground surface (bgs). Groundwater was encountered at the project site at depths ranging from approximately 6 to 12 feet bgs. However, because of tidal fluctuations at the project site due to the proximity to the San Francisco Bay, a design water level of elevation 5 feet bgs is recommended.

The proposed project is anticipated to be constructed applying a deep foundation system with pile and grade beams. The proposed project would include excavation of approximately 4,000 cubic yards of material to a maximum depth of approximately 4 feet bgs to accommodate building foundations and between 70 to 100 feet below grade to accommodate the required piles.¹⁷²

¹⁷¹ California Geological Survey, 2000. Seismic Hazard Zones, City and County of San Francisco, map scale 1:24,000, released November 17.

¹⁷² Bedrock depth varies across the project site and ranges from 50 to 70 feet below the surface at the 88 Broadway location (page 5, *88 Broadway Geotechnical Exploration* dated June 22, 2017) and 70 to 80 feet below the surface at the 735 Davis Street location (page 5, *735 Davis Street Geotechnical Exploration* dated June 22, 2017). As

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Impact GE-1: The proposed project would not expose people or structures to potential substantial adverse effects, including i) the rupture of a known earthquake fault, ii) strong seismic ground shaking, iii) seismic-related ground failure, including liquefaction, and iv) landslides. (Less than Significant)

Fault Rupture

With respect to potential rupture of a known earthquake fault, there are no known active faults crossing the project site and the site is not within an Earthquake Fault Special Zone. Therefore, the potential of surface rupture occurring at the site is very low.

The proposed project would not exacerbate the potential for surface rupture. Therefore, the proposed project would have *no impact* on fault ruptures.

Strong Seismic Ground Shaking

In terms of the potential for strong seismic ground shaking, the project site is located 9 miles to the west San Andreas fault. According to the U.S. Geological Survey, the overall probability of a magnitude 6.7 or greater earthquake to occur in the San Francisco Bay Region during the next thirty years is 63 percent. Therefore, it is possible that a strong to very strong earthquake would affect the proposed project during its lifetime. The severity of the event would depend on a number of conditions including distance to the epicenter, depth of movement, length of shaking, and the properties of underlying materials.

The proposed project would be designed in accordance with the 2016 California Building Code (CBC) and therefore would not have the potential to exacerbate seismic related ground shaking. Therefore, the proposed project would have *no impact* on strong seismic ground shaking.

Liquefaction and Lateral Spreading

Liquefaction and lateral spreading of soils can occur when ground shaking causes saturated soils to lose strength due to an increase in pore pressure. In terms of seismic-related ground failure, including liquefaction, the site is within a designated liquefaction hazard zone as shown on the CGS seismic hazard zone map for the San Francisco.¹⁷³ CGS provided recommendations for the content of site investigation reports within seismic hazard zones in Special Publication 117A, *Guidelines for Evaluating and Mitigating Seismic Hazards in California*, which recommends that at least one exploration point extend to a depth of at least 50 feet to evaluate liquefaction potential. The site-specific explorations encountered fill that is potentially liquefiable based on the cone penetration test results and standard penetration test blow counts. The estimated liquefaction induced settlement ranges between 3.6 and 10.5 inches due to thick layers of artificial fill extending up to 40 feet bgs that may liquefy during strong ground shaking due to a

shown in Table 4.1.1-1 (Estimate of Vertical Capacities) of both geotechnical reports, the embedment into the bedrock ranges from 10 to 20 feet.

¹⁷³ California Geological Survey, 2000. Seismic Hazard Zones, City and County of San Francisco, map scale 1:24,000, released November 17.

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seismic event on a nearby fault. The preliminary geotechnical reports also determined the lateral displacement would not impact to the foundation of the proposed buildings. As previously discussed, the preliminary geotechnical reports recommended that the proposed project seismic design be in accordance with the provisions of the 2016 CBC and Special Publication 117A. Implementation of these recommendations, as incorporated into and required by the San Francisco Building Code, would ensure that the proposed project would not exacerbate the potential for seismic-related ground failure, including liquefaction and lateral spreading. Therefore, this impact is *less than significant*.

Landslides

With respect to landslides, based on the General Plan, the project site is relatively level and is not located within a mapped landslide zone.¹⁷⁴ The site is not within a designated earthquake-induced landslide zone as shown on the CGS seismic hazard zone map for the area.

As discussed above, the proposed project would be required to comply with the 2016 CBC, which would ensure that the proposed project would not exacerbate the potential for landslide hazards. This impact is therefore *less than significant*. Also see impact GE-3 below.

Impact GE-2: The proposed project would not result in substantial erosion or loss of topsoil, nor would the project change substantially the topography of any unique geologic or physical features of the site. (Less than Significant)

The project site is generally flat and entirely covered with impervious surfaces. The proposed project would not substantially change the general topography of the site or any unique geologic or physical features of the project. Therefore, the project would result in *no impact* with respect to this criterion.

As previously described, the proposed project would include excavation of approximately 4,000 cubic yards of material to a maximum depth of approximately 4 feet bgs to accommodate building foundations and between 70 to 100 feet below grade to accommodate the required piles. Local regulatory requirements seek to prevent significant erosion during construction. For example, the City requires that a Construction Site Runoff Control Permit be obtained from the SFPUC before land-disturbing activities begin.¹⁷⁵ One of the permit requirements is the development and implementation of an Erosion and Sediment Control Plan (ESCP). The ESCP is a site-specific plan that details the use, location and emplacement of sediment and erosion control devices. Among other things, it must include: the location and perimeter of the project site; the location of nearby storm drains and/or catch basins; existing and proposed roadways and drainage patterns within the project site; and a drawing or diagram of the sediment and erosion control devices to be used onsite. In light of these regulatory safeguards, the impacts of project implementation as they relate to substantial soil erosion and the loss of topsoil would

¹⁷⁴ *San Francisco General Plan*, Community Safety Element, Map 4. Available at http://www.sf-planning.org/ftp/General_Plan/Community_Safety_Element_2012.pdf, accessed June 22, 2017.

¹⁷⁵ San Francisco Public Utilities Commission, 2017, Construction Site Runoff Control Program, <http://sfwater.org/index.aspx?page=235>, accessed on February 7, 2017.

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be *less than significant*. Also see section E.14, Hydrology and Water Quality, for additional discussion on erosion impacts as they relate to water quality.

Impact GE-3: The proposed project site would not be located on a geologic unit or soil that is unstable, or that could become unstable as a result of the proposed project. (Less than Significant)

The area around the project site does not include hills or cut slopes likely to be subject to landslide; however, as discussed under Impact GE-1, the project site is within a state designated seismic hazard zone for liquefaction. The geotechnical reports conducted at the site includes recommendations for protecting steel piles in corrosive soils, deep foundation systems, driven pile installation, including impacts of pile installation on offsite facilities. Recommendations for floor slab, underslab utilities, exterior flatwork and retaining walls, as well as earthwork recommendations for demolition and site preparation, and excavation shoring and underpinning, use of appropriate fill, surface drainage, and stormwater infiltration and bioretention areas, are also included in the reports.

The proposed project would be constructed applying a deep foundation system with pile and grade beams between 70 to 100 feet below grade to accommodate the required piles.¹⁷⁶ The final design of the foundation system would be included in a design-level geotechnical investigation that is based on the site-specific data in accordance with San Francisco Building Code requirements. According to the collected data in the geotechnical reports, the bedrock on the project site is capable of supporting a deep foundation that could accommodate loading demand from the proposed buildings in accordance with industry and building code requirements. The geotechnical reports identify that 16-inch-diameter and 18-inch-diameter driven steel pipe piles or displacement auger-cast piles can be considered to support the proposed buildings. However, the ability to achieve embedment into bedrock is dependent on the contractor's equipment and technique.

The California Seismic Hazards Mapping Act of 1990 (SHMA), Public Resources Code sections 2690 to 2699.6, was enacted to identify and map seismic hazard zones for cities and counties to encourage land use management policies and regulations to reduce and address seismic hazards to protect public safety. Public Resources Code section 2697 requires that prior to approval of a project within a seismic hazard zone, cities and counties shall require a geotechnical report defining and delineating the seismic hazard on the site (*i.e.*, a design-level geotechnical investigation). In conjunction with these provisions in the Public Resources Code, California Code of Regulations Title 14, section 3724, specifies that a project located in a State seismic hazard zone shall be approved only when the nature and severity of the seismic hazards at the site have been evaluated in a geotechnical report and appropriate measures have been proposed. The CGS Special Publication 117A provides considerations to address earthquake hazards.

¹⁷⁶ Bedrock depth varies across the project site and ranges from 50 to 70 feet below the surface at the 88 Broadway location (page 5, 88 Broadway Geotechnical Exploration dated June 22, 2017) and 70 to 80 feet below the surface at the 735 Davis Street location (page 5, 735 Davis Street Geotechnical Exploration dated June 22, 2017). As shown in Table 4.1.1-1 (Estimate of Vertical Capacities) of both geotechnical reports, the embedment into the bedrock ranges from 10 to 20 feet.

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Pursuant to the SHMA, San Francisco DBI, the local permitting authority, must regulate certain development projects within the mapped hazard zones. For projects in a hazard zone such as the proposed project, the DBI requires that appropriate measures, if any, are incorporated into the development plans and made conditions of the building permit. The DBI would review the design-level geotechnical report to ensure that the potential settlement and subsidence impacts of excavation and dewatering are appropriately addressed in accordance with section 1704.15 of the San Francisco Building Code. DBI would also require that the report include a determination as to whether a lateral movement and settlement survey should be done to monitor any movement or settlement of surrounding buildings and adjacent streets during construction. If a monitoring survey were recommended, DBI would require that a Special Inspector be retained by the project sponsor to perform this monitoring.

Adherence to *San Francisco Building Code* requirements would ensure that the project sponsor adequately address the potential impacts related to unstable soils as part of the design-level geotechnical investigation prepared for the proposed project. Therefore, any potential impacts related to unstable soils would be *less than significant*. No mitigation measures are required.

Impact GE-4: The proposed project would not create substantial risks to life or property as a result of being located on expansive soil. (Less than Significant)

Expansive soils expand and contract in response to changes in soil moisture, most notably when nearby surface soils change from saturated to a low-moisture content condition, and back again. The site-specific geotechnical reports for the project site and the soil testing of the fill material indicated a plasticity index of 8, indicative of a low expansion potential. Nonetheless, due to the San Francisco Building Code requirement for analysis and measures to address the potential for soil expansion impacts as part of the design-level geotechnical investigation prepared for the proposed project, potential impacts related to expansive soils would be *less than significant*. No mitigation measures are necessary.

Impact GE-5: The proposed project would not result in damage to, or destruction of, an as-yet unknown unique paleontological resource or site. (Less than Significant)

Paleontological resources include fossilized remains or traces of mammals, plants, and invertebrates, as well as their imprints. Such fossil remains as well as the geological formations that contain them are also considered a paleontological resource. Together, they represent a limited, non-renewable scientific and educational resource. Project construction would involve excavation to depths of approximately 4 feet bgs to accommodate building foundations and between 70 to 100 feet bgs to accommodate the required piles.¹⁷⁷

¹⁷⁷ Bedrock depth varies across the project site and ranges from 50 to 70 feet below the surface at the 88 Broadway location (page 5, *88 Broadway Geotechnical Exploration* dated June 22, 2017) and 70 to 80 feet below the surface at the 735 Davis Street location (page 5, *735 Davis Street Geotechnical Exploration* dated June 22, 2017). As shown in Table 4.1.1-1 (Estimate of Vertical Capacities) of both geotechnical reports, the embedment into the bedrock ranges from 10 to 20 feet.

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Paleontological resources are lithologically dependent; that is, deposition and preservation of paleontological resources are related to the lithologic unit in which they occur. If the rock types representing a deposition environment conducive to deposition and preservation of fossils are not favorable, fossils will not be present. Lithological units that may be fossiliferous include sedimentary formations. Artificial fills do not contain paleontological resources.

As previously described, the project site is underlain by 20 to 40 feet of artificial fill (Qaf), consisting of gravel, sand, silt, clay, rock fragments, organic matter, and man-made debris in various combinations. Beneath the fill and encountered in all of the borings within the project site is a layer of soft to medium stiff, highly plastic clay, locally known as Young Bay Mud. The Young Bay Mud ranges from approximately 5 feet to approximately 50 feet bgs across the project site. The site-specific explorations terminated in Cretaceous-age Franciscan bedrock that ranges from approximately 50 to 80 feet bgs.

The potential to affect fossils varies with the depth of disturbance, construction activities and previous disturbance. The logistics of excavation also affect the possibility of recovering scientifically significant fossils because information regarding location, vertical elevation, geologic unit of origin, and other aspects of context is critical to the significance of any paleontological discovery.

The Franciscan sediments that underlies the project site may be fossiliferous. However, the proposed project does not include substantial grading or ground disturbance at these levels. Accordingly impacts to paleontological resources during ground-disturbing activities would be *less than significant*.

Impact C-GE-1: The proposed project, in combination with other past, present or reasonably foreseeable projects, would not result in cumulative impacts related to geology, seismicity, or soils. (Less than Significant)

Geology and soils impacts are generally site-specific and localized. Past, present, and foreseeable cumulative projects could require various levels of excavation or cut-and-fill, which could affect local geologic conditions. The San Francisco Building Code regulates construction in the City and County of San Francisco, and all development projects would be required to comply with its requirements to ensure maximum feasible seismic safety and minimize geologic impacts. Site-specific mitigation measures would also be implemented as site conditions warrant to reduce any potential impacts from unstable soils, ground shaking, liquefaction, or lateral spreading. The cumulative development projects located within an approximate 0.25-mile radius of the project site identified in Table 2 and mapped on Figure 17 in section B.2, Cumulative Projects, would be subject to the same seismic safety standards and design review procedures applicable to the proposed project. Compliance with the seismic safety standards and the design review procedures would ensure that the effects from nearby cumulative projects would not be significant. Therefore, the proposed project would not combine with cumulative development projects to create or contribute to a cumulative impact related to geology and soils and cumulative impacts would be *less than significant*, and no mitigation measures are necessary.

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E.14 HYDROLOGY AND WATER QUALITY

Topics:	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact	Not Applicable
HYDROLOGY AND WATER QUALITY –					
Would the project:					
a) Violate any water quality standards or waste discharge requirements?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner that would result in substantial erosion or siltation on- or off-site?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner that would result in flooding on- or off-site?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f) Otherwise substantially degrade water quality?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other authoritative flood hazard delineation map?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
h) Place within a 100-year flood hazard area structures that would impede or redirect flood flows?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
j) Expose people or structures to a significant risk of loss, injury or death involving inundation by seiche, tsunami, or mudflow?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

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The project site is not located within a 100-year flood hazard area designated on the City's interim floodplain map, and would not place housing or structures within a 100-year flood hazard area that would impede or redirect flood flows.¹⁷⁸ Therefore, Questions 14g and 14h are not applicable. The proposed project is located approximately 400 feet from the San Francisco Bay, and is not within a tsunami inundation zone.¹⁷⁹ A seiche is an oscillation wave generated in an enclosed or partially enclosed body of water, such as San Francisco Bay. Because the project site is outside of the tsunami inundation zone, the site would also not be subject to seiches. The site is not within a dam inundation zone or subject to flooding from levee failure.¹⁸⁰ In addition, the project site would not be subject to mudflows because the proposed project is not located near any landslide-prone areas.¹⁸¹ Thus, Questions 14i and 14j are not applicable.

Impact HY-1: The proposed project would not violate any water quality standards or waste discharge requirements or otherwise substantially degrade water quality. (Less than Significant)

The project site is located within the area of the city served by a combined stormwater and sewer system. With the proposed development, stormwater and wastewater from the site would continue to be discharged to an underground piping network, which conveys the waters to the Southeast Water Pollution Control Plant (SEWPCP) for treatment. The City currently holds a National Pollutant Discharge Elimination System (NPDES) Permit (regional board Order No. R2-2013-0029) that covers the SEWPCP, the North Point Wet Weather Facility, and all of the Bayside wet-weather facilities, including combined sewer discharge (CSD) structures located along the bayside waterfront from Marina Green to Candlestick Park.¹⁸² Captured wastewater and stormwater flows in the combined sewer system are directed first to the SEWPCP and North Point Wet Weather Facility for primary or secondary treatment and disinfection. Flows in excess of the capacity of these facilities are diverted to CSDs constructed throughout the city and receive the equivalent of primary treatment prior to discharge into San Francisco Bay.

New development projects must also comply with Article 4.2 of the San Francisco Public Works Code, section 147, which was last updated on April 2, 2016. The intent of this San Francisco Stormwater Management Ordinance (No. 64-16) is to reduce the volume of stormwater entering the City's combined

¹⁷⁸ Federal Emergency Management Agency (FEMA), 2015. Preliminary Flood Insurance Rate Map 06029801117A, November 12. Available at: <https://hazards.fema.gov/femaportal/prelimdownload/>, accessed on January 31, 2017.

¹⁷⁹ California Emergency Management Agency (CalEMA), 2009. Tsunami Inundation Map for Emergency Planning, State of California – City and County of San Francisco, San Francisco North Quadrangle, San Francisco South Quadrangle (San Francisco Bay), June 15.

¹⁸⁰ San Francisco Planning Department, 2012. Map 06 – Potential Inundation Areas Due to Reservoir Failure, Community Safety Element of the General Plan of the City and County of San Francisco, October.

¹⁸¹ San Francisco Planning Department, 2012. Map 04 – Seismic Hazard Zones (Landslide Zones), Community Safety Element of the General Plan of the City and County of San Francisco, October.

¹⁸² San Francisco Bay Regional Water Quality Control Board, 2013. NPDES Permit No. CA0037664, Order No. R2-2013-0029 for City and County of San Francisco Southeast Water Pollution Control Plant, North Point Wet Weather Facility, Bayside Wet Weather Facilities and Wastewater Collection System.

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and separate sewer systems and to protect and enhance the water quality of the receiving water. The SFPUC has developed the 2016 Stormwater Management Requirements and Design Guidelines in accordance with the requirements of this ordinance.

Construction Impacts

Construction activities have the potential to result in runoff of surface water containing sediments and other pollutants from the site, which could drain into the combined sewer and stormwater system. Stormwater runoff from temporary on-site use and storage of vehicles, fuels, wastes, and building materials could also carry pollutants into the SEWPCP or receiving water if improperly handled. Construction-related stormwater discharges to the combined sewer system would be in accordance with the Bayside NPDES Permit and site runoff would be subject to the Construction Site Runoff requirements of Article 4.2 of the Public Works Code, 146. This requires any construction activity that disturbs 5,000 square feet or more of ground surface to obtain a Construction Site Runoff Control Permit and implement and maintain best management practices to minimize surface runoff, erosion, and sedimentation. The application for the permit must also include an Erosion and Sediment Control Plan, which contains a vicinity map, site survey, existing and proposed topography, area drainage, proposed construction sequencing, proposed drainage channels, erosion and sediment controls, dewatering controls, if applicable, sampling, monitoring, and reporting schedules; and any other information deemed necessary by the SFPUC. Improvements to any existing grading, ground surface or site drainage must also meet the requirements of Article 4.2 for new grading, drainage, and erosion control. A building permit would not be issued until a Construction Site Runoff Control Permit has been submitted and approved. In addition, the proposed project would be required to comply with the Maher Ordinance (Article 22A of the San Francisco Health Code), which requires further site management and reporting requirements for potential hazardous soils (see impact HY-2 for discussion of the Maher Ordinance).

The provisions of the Construction Site Runoff Control Permit would require the project sponsor to conduct daily inspections and maintenance of all erosion and sediment controls and to provide inspection and maintenance information to the SFPUC. The SFPUC may also conduct periodic inspections of the site to ensure compliance with the Erosion and Sediment Control Plan. The project sponsor must notify the SFPUC at least two days prior to the start of construction, when the erosion and sediment control measures have been installed, and upon completion of final grading. The SFPUC has the discretion to require sampling, metering, and monitoring, if necessary. Compliance with these regulatory requirements, implementation of the Erosion and Sediment Control Plan and best management practices during construction activities and the fact that site runoff would be treated pursuant to the City's NPDES permit prior to discharge to receiving waters would render construction impacts to water quality less than significant.

Operational Impacts

Runoff from mixed-use properties and parking lots can contain oil and grease; dissolved metals such as lead, zinc, cadmium, copper, chromium and nickel; nutrients from fertilizers; sediments and trash; and organic compounds. Pollutants at the beginning of the rainy season may result in an initial stormwater runoff (first flush) with high pollutant concentrations.

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Water quality in stormwater runoff is regulated locally by the San Francisco Stormwater Management Ordinance, which provides implementation guidance with the San Francisco Stormwater Management Requirements and Design Guidelines. In accordance with these guidelines, project developers that create and/or replace 5,000 square feet of impervious surface and discharge to the combined sewer system must implement low impact design and best management practices to manage the flow rate and volume of stormwater that enters the combined sewer system. Since more than 50 percent of the project site is covered with existing impervious surfaces, the stormwater management approach must reduce the existing runoff flow rate and volume by 25 percent for a 2-year, 24-hour design storm, using a hierarchy of best management practices set forth in the Stormwater Management Requirements. Examples of best management practices that may be implemented for mixed use projects include rainwater harvesting, vegetated roofs, permeable paving, and bio-retention planters. Alternatively, if site conditions limit the potential for stormwater infiltration, the project sponsor may apply for modified compliance in accordance with the Stormwater Management Ordinance and Stormwater Management Requirements and Design Guidelines to adjust the amount by which the proposed project must reduce stormwater runoff volume and flow rates as compared to existing conditions.

To minimize water quality impacts, the proposed project would also be required to prepare a Stormwater Control Plan (SCP) for review and approval by the SFPUC. The SCP would contain detailed descriptions of site design, source control, and stormwater treatment best management practices as well as a post-construction operations and maintenance (O&M) plan. A maintenance agreement is also required to be signed by the project sponsor to ensure that the stormwater controls are maintained in perpetuity. With implementation of the low impact design and best management practice features, preparation of the SCP, and compliance with San Francisco and State regulatory requirements for water quality standards, the operational phase of the proposed project would not result in significant water quality impacts.

In summary, the proposed project would be required to comply with State and City regulations requiring the preparation of an Erosion and Sediment Control Plan for construction activities, a SCP for post-construction activities, and the implementation of low impact design and best management practice features. Additionally, through the development review process, the City would ensure that the proposed project complies with various statutory requirements necessary to minimize stormwater pollutants. Site runoff would also be treated pursuant to the City's NPDES permit prior to discharge to receiving waters. Therefore, impacts related to water quality from development of the proposed project would be *less than significant*. No mitigation measures are required.

Impact HY-2: The proposed project would not substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or lowering of the local groundwater table. (Less than Significant)

The project site is currently entirely covered with impervious surfaces greatly limiting the amount of surface that water could infiltrate to the groundwater. The proposed project would not result in an increase in impervious surface. Therefore, the proposed project would not cause a deficit in aquifer volume or lowering of the groundwater table.

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Groundwater could potentially be encountered during project construction (pile drilling) as groundwater was previously observed at a depth of 10 to 12 feet below ground surface (bgs) in 2003.¹⁸³ If construction dewatering is required, the proposed project would need to obtain a Batch Wastewater Discharge Permit (BWDP) from the SFPUC prior to any dewatering activities.

Groundwater encountered during pile drilling activities would be subject to the requirements of Article 4.1 of the Public Works Code, Industrial Waste, requiring that groundwater meet specified water quality standards before it may be discharged into the sewer system. The BWDP would contain appropriate discharge standards and may also require the installation of meters to measure the volume of discharge. These measures would ensure protection of water quality during construction of the proposed project. Also, the proposed project would be subject to the Maher Ordinance to address the potential for soil and/or groundwater contamination. Based on the results of a Phase I Environmental Site Assessment (ESA), groundwater sampling and analysis and potential site remediation may be required to ensure that extracted water during construction dewatering meets the water quality standards for discharge to the combined sewer system. Although construction dewatering could result in a temporary impact on the shallow groundwater aquifer, this aquifer is not used for potable water supply.

In addition, the proposed project does not propose to extract any underlying groundwater supplies. The SFPUC does not currently extract groundwater for potable water use and San Francisco water customers are supplied with surface water from the regional water system (RWS). The SFRPD does operate and maintain groundwater wells for irrigation and other non-potable uses but this is a very small percentage of the water demand within the City. In addition, the 2015 UWMP indicates that there is sufficient water to meet the demand for existing and future customers during normal, single-dry, and multiple-dry years through the year 2040.¹⁸⁴ Therefore, groundwater resources would not be substantially depleted, and the proposed project would not otherwise substantially interfere with groundwater recharge. Thus, the impacts to groundwater from development of the proposed project would be *less than significant*. No mitigation measures are required.

Impact HY-3: The proposed project would not substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner that would result in substantial erosion, siltation, or flooding on- or off-site. (Less than Significant)

The project site is currently covered with impervious surfaces (*i.e.*, surface parking lots) and does not contain any streams or water courses. Therefore, the proposed project would not alter the course of a stream or river or substantially alter the existing drainage pattern of the project site or area. Construction activities have the potential to result in erosion and transportation of soil particles off site through excavation and grading activities. However, as discussed previously in Impact HY-1, the project sponsor would be required to develop and implement an Erosion and Sediment Control Plan to minimize the

¹⁸³ Treadwell and Rollo, 2003. *Geotechnical Investigation Embarcadero Hotel, San Francisco*, May 6.

¹⁸⁴ San Francisco Public Utilities Commission, 2016. *2015 Urban Water Management Plan for the City and County of San Francisco*, June.

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potential for on- or off- site erosion or siltation, thus reducing impacts from construction related-activities to a less-than-significant level. Under the proposed project, stormwater would be routed to the City's combined sewer system in accordance with the Stormwater Management Requirements and Design Guidelines. This would require stormwater flows to be reduced by up to 25 percent as compared to existing conditions. In addition, the proposed project would implement site design, source control, and stormwater treatment measures as specified in the SCP. Therefore, there would not be an increase in the rate or amount of surface runoff in a manner that would result in on- or off-site flooding. In summary, flooding impacts related to erosion, siltation, and surface runoff would be *less than significant* through compliance with the City's regulatory requirements. No mitigation measures are required.

Impact HY-4: The proposed project would not create or contribute runoff water that would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff. (Less than Significant)

The proposed project involves the construction of mixed-use housing on an existing developed parking lot that is currently connected to the City's combined sewer system. The proposed project would not result in an increase of impervious surfaces that would increase the amount of stormwater runoff from the property. In addition during construction and operation, the proposed project would be required to comply with all local wastewater discharge, stormwater runoff, and water quality requirements, including the 2016 San Francisco Stormwater Management Requirements and Design Guidelines, and the Stormwater Management Ordinance (No. 64-16). Compliance with these guidelines requires a specified quantity of stormwater generated by the proposed project to be managed on-site, resulting in a reduction in the existing runoff flow rate and volume by 25 percent for a 2-year, 24-hour design storm. Therefore, the proposed project would not result in an exceedance of the existing storm drainage system capacity and impacts would be less than significant.

The project site is located in an area previously part of San Francisco Bay and filled with material of unknown origin in the 1860s.¹⁸⁵ Areas located on fill or bay mud can subside to a point at which the combined sewers do not drain freely during a storm event, and there can be backups or flooding near these streets and sewers.¹⁸⁶ Additionally, the proposed project is located in an area identified as being prone to flooding hazards as a result of the underlying fill.¹⁸⁷ The proposed project would be referred to SFPUC at the beginning of the building permit process to determine whether the proposed project would result in ground-level flooding during storms. If SFPUC determines the proposed project would result in ground-level flooding, the side sewer connection permits would be required to be reviewed and approved by SFPUC at the beginning of the review process for all permit applications submitted to the Planning Department or the Department of Building Inspection. The project sponsor must then comply

¹⁸⁵ Treadwell and Rollo, 2003. *Geotechnical Investigation Embarcadero Hotel*, San Francisco, May 6, 2003.

¹⁸⁶ San Francisco Planning Department, 2007. *Planning Director Bulletin No. 4: Review of Projects in Areas Prone to Flooding*, April 2007. Available at: http://www.sf-planning.org/ftp/files/publications_reports/DB_04_Flood_Zones.pdf, accessed on February 1, 2017.

¹⁸⁷ San Francisco Planning Department, 2007. *Planning Director Bulletin No. 4: Review of Projects in Areas Prone to Flooding*, April 2007. Available at: http://www.sf-planning.org/ftp/files/publications_reports/DB_04_Flood_Zones.pdf, accessed on February 1, 2017.

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with SFPUC requirements for projects in flood-prone areas. Such requirements may include provision of a pump station for sewage flow, raised elevation of entryways, special sidewalk construction, and deep gutters.¹⁸⁸

With the implementation of site design, source control, treatment control low impact design and best management practice features, and compliance with SFPUC requirements for projects in flood-prone areas, the proposed project would not contribute additional volumes of polluted runoff to the City's combined sewer system. In addition, the proposed project would be required to comply with all local wastewater discharge, stormwater runoff, and water quality requirements, pursuant to the effluent discharge standards of the City's NPDES permit for the SEWPCP. Therefore, the proposed project would not create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff, and impacts would be *less than significant*. No mitigation measures are required.

Impact C-HY-1: The proposed project, in combination with other past, present, or reasonably foreseeable projects, would result in less-than-significant cumulative impacts to hydrology and water quality. (Less than Significant)

The proposed project would result in no impact with respect to 100-year flood zones, failure of dams or levees, and/or seiche, tsunami, and/or mudflow hazards. Therefore, the project would not have the potential to contribute to cumulative impacts related to these topics. As stated above, the proposed project would result in less-than-significant impacts related to water quality, groundwater levels, alteration of drainage patterns, and the capacity of the drainage infrastructure. The proposed project and all future projects within San Francisco would be required to comply with the water quality and drainage control requirements that apply to all land use development projects within the city, including the development of an Erosion and Sediment Control Plan for construction activities and a SCP for post-construction operation. Since all development projects would be required to follow the same regulations as the proposed project, peak stormwater drainage rates and volumes resulting from design storms would gradually decrease over time with the implementation of new, conforming development projects. As a result, no substantial adverse cumulative effects with respect to drainage patterns, water quality, stormwater runoff, or stormwater capacity of the combined sewer system would occur.

In addition, San Francisco's very limited current use of groundwater would preclude any significant adverse cumulative effects to groundwater levels, and the latest UWMP states that there are sufficient water supplies to meet demand for existing and future projects through the year 2040. Cumulative impacts are not anticipated since all development projects would be required to comply with the same drainage, dewatering and water quality regulations as the proposed project. Thus, the proposed project would not combine with cumulative development projects to create or contribute to a cumulative impact related to hydrology and water quality, and cumulative impacts would be *less than significant*.

¹⁸⁸ San Francisco Planning Department, 2007. *Planning Director Bulletin No. 4: Review of Projects in Areas Prone to Flooding*, April 2007. Available at: http://www.sf-planning.org/ftp/files/publications_reports/DB_04_Flood_Zones.pdf, accessed on February 1, 2017.

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E.15 HAZARDS AND HAZARDOUS MATERIALS

<i>Topics:</i>	<i>Potentially Significant Impact</i>	<i>Less Than Significant with Mitigation Incorporated</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>	<i>Not Applicable</i>
HAZARDS AND HAZARDOUS MATERIALS—					
Would the project:					
a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within 0.25-mile of an existing or proposed school?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within 2 miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h) Expose people or structures to a significant risk of loss, injury or death involving fires?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The project site is not located within an airport land use plan area or in the vicinity of a private airstrip. Therefore, Questions 15e and 15f are not applicable.

Baseline Environmental Consulting and ENGEO Incorporated prepared Phase I ESAs that assessed the potential for adverse environmental impacts from the proposed project related to the contemporary and historical practices on the project site and the surrounding area.¹⁸⁹

¹⁸⁹ ENGEO Incorporated, 2017. *Phase I Environmental Site Assessment 88 Broadway, San Francisco, California APN 0140-007*. February 13; and ENGEO Incorporated, 2017. *Phase I Environmental Site Assessment, 735 Davis Street, San Francisco, California APN 0140-008*. February 13; Baseline Environmental Consulting, 1998. *Phase I Environmental Site*

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Impact HZ-1: The proposed project would not create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials. (Less than Significant)

The proposed project requires demolition of the parking lots and excavation of soil down to 4 feet below grade for building foundations (and between 70 to 100 feet below grade to accommodate the required piles) and could result in generation of hazardous soil and asphalt materials for transport off site. The City would require the project sponsor and its contractor to comply with the Maher Ordinance, as discussed under Impact HZ-2 below, which would require material sampling and analysis prior to demolition and excavation to ensure proper handling of any hazardous materials in accordance with State and federal laws. Construction activities associated with the proposed new buildings would require the use of limited quantities of hazardous materials such as fuels, oils, solvents, paints, and other common construction materials that would not result in a significant impact on the environment. The City requirements, such as Article 22 section 1203 of the San Francisco Health Code, would require the project sponsor to comply with the minimum standards of management of hazardous waste as specified in Title 22 of the California Code of Regulations, Chapter 30, Division 4 and grants the City the right to conduct inspections of "any factory, plant, construction site, waste disposal site, transfer station, establishment or any other place or environment where hazardous wastes are stored, handled, processed, disposed of, or being treated to recover resources."¹⁹⁰ As a result of existing regulations requiring the proper disposal of hazardous materials construction-related transport and disposal of hazardous materials would not result in a significant impact on the environment.

Once constructed, the proposed project would likely result in the use of common types of hazardous materials typically associated with retail and residential uses, such as cleaning products, disinfectants, and solvents. These products are typically labeled to inform users of their potential risks and to instruct them in appropriate handling and disposal procedures. However, most of these materials are consumed through use, resulting in relatively little waste. Businesses are required by law to ensure employee safety by identifying hazardous materials in the workplace, providing safety information to workers who handle hazardous materials, and adequately training workers. For these reasons, hazardous materials used during project operation would not pose any substantial public health or safety hazards resulting from hazardous materials. In addition, transportation of hazardous materials would be regulated by the California Highway Patrol and the California Department of Transportation (Caltrans). These hazardous materials are not expected to cause any substantial health or safety hazards. Therefore, potential impacts related to the routine use, transport, and disposal of hazardous materials would be *less than significant*.

Assessment, Sea Wall Lots, 322-1, 323, 324, and City-Owned Parcel Broadway Site Development Project, San Francisco, California, October.

¹⁹⁰ City of San Francisco, *San Francisco Health Code*, Article 22: Hazardous Waste Management, Sec. 1203. Implementation and Enforcement of Hazardous Waste Control Act. Available at: [http://library.amlegal.com/nxt/gateway.dll/California/health/article22hazardouswastemanagement?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanfrancisco_ca\\$anc=JD_Article22](http://library.amlegal.com/nxt/gateway.dll/California/health/article22hazardouswastemanagement?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca$anc=JD_Article22), accessed September 14, 2017.

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Impact HZ-2: The proposed project is not included on a list of hazardous materials sites compiled pursuant to Government Code section 65962.5 and would not create a significant hazard to the public or the environment through reasonably foreseeable conditions involving the release of hazardous materials into the environment. (Less than Significant)

The proposed project site is not on a list of identified hazardous material sites pursuant to Government Code 65962.5, as determined by the database searches compiled for the Phase I ESA reports, which includes databases maintained by the USEPA, Department of Toxic Substance Control (DTSC), and the State Water Resources Control Board (SWRCB). According to the SWRCB's GeoTracker online database, no sites that give any indication of significant environmental impacts are present within the proposed project boundaries. Sites previously identified as Leaking Underground Storage Tank (LUST) cleanup sites are present in surrounding areas; however, those sites have since been designated as completed-case closed, and have been remediated to the satisfaction of the applicable regulatory authority (regional board or DTSC or San Francisco Department of Public Health [SFDPH]).

Phase I Environmental Site Assessments

The proposed project site is located in an area of San Francisco governed by Article 22A of the San Francisco Health Code, also known as the Maher Ordinance, which is administered and overseen by the SFDPH.¹⁹¹ The project would disturb more than 50 cubic yards of soil through the proposed grading and pile drilling and as a result is subject to the Maher Ordinance. The Maher Ordinance requires the preparation of a Phase I ESA by a qualified professional in accordance with the requirements of Health Code section 22A.6 (Site History). The purpose of the Phase I ESA is to determine the potential for site contamination and level of exposure risk associated with the project. Based on that information, the project sponsor may be required to conduct soil and/or groundwater sampling and analysis. Where such analysis reveals the presence of hazardous substances in excess of state or federal standards, the project sponsor is required to submit a site mitigation plan (SMP) to the SFDPH or other appropriate state or federal agency (or agencies), and to remediate any site contamination in accordance with an approved SMP prior to the issuance of any building permit.

In compliance with the Maher Ordinance, the project sponsor has submitted a Maher Application to SFDPH¹⁹² and an updated Phase I ESA¹⁹³ has been prepared to assess the potential for site contamination. No observed evidence of any significant staining, spillage, and/or ponded liquids or unconfined solids was discovered on the project site during site reconnaissance. No recognized environmental conditions

¹⁹¹ San Francisco Planning Department, "Expanded Maher Area" Map, March 2015. Available at: http://www.sf-planning.org/ftp/files/publications_reports/library_of_cartography/Maher%20Map.pdf, accessed on September 29, 2016.

¹⁹² The project applicant submitted the Maher Application to the San Francisco Department of Public Health of in accordance with *San Francisco Health Code* Article 22A on May 17, 2017 and received the letter of compliance on July 27, 2017.

¹⁹³ ENGEO Incorporated, 2017. *Phase I Environmental Site Assessment 88 Broadway, San Francisco, California APN 0140-007*. February 13; and ENGEO Incorporated, 2017. *Phase I Environmental Site Assessment, 735 Davis Street, San Francisco, California APN 0140-008*. February 13.

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associated with the storage of hazardous materials at the project site were observed during a site reconnaissance for the Phase I ESAs. A summary of the findings from the Phase I ESAs that have been prepared for the project site is as follows:

1998 Phase I ESA

On October 21, 1998, Baseline Environmental Consulting published a Phase I ESA (1998 ESA).¹⁹⁴ The 1998 ESA assessed four parcels, two of which comprise the project site – Block 140, Lot 007 (88 Broadway) and 008 (735 Davis Street). The 1998 ESA noted that laboratory testing by others of a sample of fill, collected on an adjacent parcel, found total lead that exceeded the California and federal hazardous waste standards. Given that the project is used for vehicle parking, it was noted that releases of automotive fluids from parked vehicles have the potential to affect subsurface conditions at the site. The potential contaminants of concern within these fluids were total petroleum hydrocarbons and heavy metals. Additionally, the 1998 ESA referenced previous studies that included soil and groundwater sampling. Laboratory testing of soil samples collected near the seawall in 1990, as part of the Embarcadero Roadway Project, indicated hazardous lead concentrations that exceeded the Total Threshold Limit Concentration (TTLC) of 1,000 mg/kg. Additional testing of soil samples in 1993 also found elevated concentrations of lead. The 1998 ESA investigation concluded:

- The project site was part of San Francisco Bay until at least 1853. Between 1853 and 1884, the site was filled with material of unknown origin. One sample of fill, collected adjacent to the site for the Embarcadero Roadway Project, contained total lead at a concentration exceeding California and federal hazardous waste standards.
- The project site is currently used for vehicle parking. Releases of automotive fluids from parked vehicles have the potential to have affected subsurface conditions at the project site. Potential contaminants of concern in automotive fluids include petroleum hydrocarbons and heavy metals.
- Historical land uses with the potential to affect subsurface conditions at the project site include a wood and coal yard, a blacksmith shop, railyards, carriage painting shop, a gasoline service station, and automobile parking. Potential contaminants of concern associated with these land uses include metals, poly-nuclear aromatic hydrocarbons, petroleum hydrocarbons, VOCs, and unknown hazardous materials that could potentially have been released during loading/unloading operations at the former railyards.
- Twenty-five sites within 0.25-mile of the project site are listed on regulatory agency databases associated with the use, storage, disposal, or release of hazardous materials. One site, within 0.25-mile of and hydraulically up gradient of the project site, has reported a release of gasoline that may have the potential to affect subsurface conditions at the project site.

Based on a review of the 1998 ESA, all of the conclusions then applicable to the four parcels subject to the evaluation, are also applicable to the two parcels that comprise the project site.

¹⁹⁴ Baseline Environmental Consulting, 1998. *Phase I Environmental Site Assessment, Sea Wall Lots, 322-1, 323, 324, and City-Owned Parcel Broadway Site Development Project, San Francisco, California*, October.

E. EVALUATION OF ENVIRONMENTAL IMPACTS

2017 Phase 1 ESA

ENGEO Incorporated conducted a Phase I ESA on February 13, 2017 for the 88 Broadway parcel, which is the location of the proposed family housing building.¹⁹⁵ As described below, the records review identified documentation of soil and possible groundwater impairments associated with the use of the project site. A review of regulatory databases maintained by county, State, and federal agencies found no documentation of hazardous materials violations or discharge on the project site. A review of regulatory agency records and available databases did not identify contaminated facilities within the appropriate American Society for Testing and Materials (ASTM) search distances that would be expected to impact the project site. Based on the findings of the ENGEO Incorporated Phase I ESA for the 88 Broadway parcel, the following recognized environmental conditions were identified for the project site.

- The project site was utilized for industrial processes beginning in the late 1880s that include a railyard, copper shop, and tank factory. It is possible that poly-nuclear aromatic hydrocarbons, petroleum hydrocarbons and metals may remain in the soil and groundwater from this past use.
- The project site was part of the San Francisco Bay prior to 1853 before being filled with material of unknown origin to achieve the current site grade. The project site, underlain by artificial fill is mapped within the limits of the Maher Ordinance program, and thus requires oversight by the SFDPH.
- Between approximately 1956 and 1999, a gasoline service station operated on the southeastern portion of the project site. It is possible that the soil and groundwater were impacted by petroleum hydrocarbons, solvents and metals from the former service station use.
- The project site has been used for railcar and/or vehicle parking since at least 1913. Releases of automotive fluids containing petroleum hydrocarbons and metals from parked vehicles may have affected the near-surface soil.

Based on the findings of this assessment, ENGEO Incorporated recommends an environmental site characterization to investigate, in conformance with the Maher Ordinance program, the potential soil and groundwater impacts that have resulted from earlier industrial and commercial uses associated with the railyard, gasoline service station, and surface parking.

ENGEO Incorporated conducted a Phase I ESA on February 13, 2017 for the 735 Davis Street parcel, which is the location of the proposed senior housing building.¹⁹⁶ As described below, the records review identified documentation of soil and possible groundwater impairments associated with the use of the property. A review of regulatory databases maintained by county, State, and federal agencies found no documentation of hazardous materials violations or discharge on the project site. A review of regulatory agency records and available databases did not identify contaminated facilities within the appropriate ASTM search distances that would be expected to impact the project site. The project site, underlain by artificial fill with an unknown origin, is mapped within the limits of the City's Maher Ordinance program, and thus requires oversight by the SFDPH. Previous reports indicated soil in the vicinity of the

¹⁹⁵ ENGEO Incorporated, 2017. *Phase I Environmental Site Assessment 88 Broadway, San Francisco, California* APN 0140-007. February 13.

¹⁹⁶ ENGEO Incorporated, 2017. *Phase I Environmental Site Assessment, 735 Davis Street, San Francisco, California* APN 0140-008. February 13.

E. EVALUATION OF ENVIRONMENTAL IMPACTS

site contained elevated concentrations of lead that exceed California and federal hazardous waste standards. Past use of the project site includes railyards, a carriage painting shop, a gasoline service station and additional industrial/commercial uses. Based on the findings of the ENGEO Incorporated Phase I ESA for 735 Davis Street parcel, the following recognized environmental conditions were identified for the Property.

- The western portion of the site was used for industrial processes in the late 1800s that include a rail yard, carriage painting and copper shops. It is possible that poly-nuclear aromatic hydrocarbons, petroleum hydrocarbons and metals may remain in the soil and groundwater from this past use.
- Between about 1956 and 1999, a gasoline service station operated in the southeast portion of the project site. It is possible that the soil and groundwater were impacted by petroleum hydrocarbons and metals from the former service station use.
- The project site has been used for vehicle parking since at least 1956. Releases of automotive fluids containing petroleum hydrocarbons and metals from parked vehicles may have affected the near-surface soil.

Based on the findings of this assessment, ENGEO Incorporated recommends an environmental site characterization to investigate, in conformance with the Maher Ordinance program, the potential soil and groundwater impacts that have resulted from earlier industrial and commercial uses associated with the rail yard, gasoline service station, and surface parking.

Lead Exposure

The proposed project would result in demolition of the parking lots, excavation for building foundations (approximately 4 feet below grade and between 70 to 100 feet below grade to accommodate the required piles),¹⁹⁷ and subsequent construction of the proposed project buildings. Demolition, excavation and construction activities would follow all appropriate standards and regulations for hazardous materials, including the California Health and Safety Code. Demolition of the parking lots and excavation of underlying soil, also would be subject to the Division of Occupational Safety and Health (CalOSHA) Lead in Construction Standard (8 California Code of Regulations 1532.1). This standard requires development and implementation of a lead compliance plan when materials containing lead would be disturbed during construction. The plan must describe activities that could emit lead, methods that would be used to comply with the standard, safe work practices, and a plan to protect workers from exposure to lead during construction activities. CalOSHA would require 24-hour notification if more than 100 square feet of materials containing lead would be disturbed. Implementation of procedures required by 3426 of the San Francisco Building Code and the Lead in Construction Standard would ensure that potential impacts of demolition or excavation with lead-contaminated asphalt or soil would not be significant.

¹⁹⁷ Bedrock depth varies across the project site and ranges from 50 to 70 feet below the surface at the 88 Broadway location (page 5, *88 Broadway Geotechnical Exploration* dated June 22, 2017) and 70 to 80 feet below the surface at the 735 Davis Street location (page 5, *735 Davis Street Geotechnical Exploration* dated June 22, 2017). As shown in Table 4.1.1-1 (Estimate of Vertical Capacities) of both geotechnical reports, the embedment into the bedrock ranges from 10 to 20 feet.

E. EVALUATION OF ENVIRONMENTAL IMPACTS

In summary, the removal of potentially contaminated asphalt from the parking lots and the potential contaminants in soil from historical uses could pose health concerns for construction workers and future residents if not properly assessed, handled and/or disposed. As discussed above, the project sponsor would be required to remediate any groundwater or soil contamination in accordance with an approved SMP prior to issuance of any building permit pursuant to the Maher Ordinance.

Based on mandatory compliance with existing regulatory requirements, the information and conclusions from the Phase I ESAs, and adherence to the Maher Ordinance, the proposed project would result in a *less than significant* impact to the public or environment from releasing contaminated soil, groundwater, or construction debris.

Impact HZ-3: The proposed project would not emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within 0.25-mile of an existing or proposed school. (Less than Significant)

One school is located within 0.25-mile of the project site: John Yehall Chin Elementary School, a SFUSD school at 350 Broadway Avenue, about 0.20 miles west of the project site. The temporary address for the 2016-17 school year for this school is 940 Filbert Street.

As noted above, the proposed project would not result in the storage, handling, or disposal of significant quantities of hazardous materials and would not otherwise include any uses that would result in the emission of hazardous substances. Any hazardous materials currently on the site, such as contaminated soil or asphalt would be sampled, analyzed and removed during, or prior to, demolition of the parking lots and excavation for building foundations and prior to project construction, and would be handled in compliance with applicable laws and regulations as described above. With adherence to these regulations, there would be no potential for such materials to affect the nearest school. Thus, the proposed project would have a *less-than-significant* impact related to hazardous emissions or the handling of hazardous materials within 0.25-mile of a school.

Impact HZ-4: The proposed project would not expose people or structures to a significant risk of loss, injury or death involving fires, nor interfere with the implementation of an emergency response plan. (Less than Significant)

San Francisco ensures fire safety primarily through provisions of the Building and Fire Codes. Final building plans are reviewed by the SFFD (as well as the DBI), to ensure conformance with these provisions. In this way, potential fire hazards, including those associated with hydrant water pressures and emergency access would be addressed during the permit review process. Compliance with fire safety regulations would ensure that the proposed project would not impair implementation of, or physically interfere with an adopted emergency response or emergency evacuation plan or expose people or structures to a significant risk of loss, injury or death involving fires. This impact would be *less than significant*, and no mitigation measures are necessary.

E. EVALUATION OF ENVIRONMENTAL IMPACTS

Impact C-HZ-1: The proposed project would not result in significant cumulative effects related to hazardous materials. (Less than Significant)

Impacts from hazardous materials are generally site-specific and typically do not result in cumulative impacts. Any potential hazards occurring at nearby sites would be subject to the same safety, investigation and/or remediation requirements discussed for the proposed project, which would reduce any cumulative hazardous effects to less-than-significant levels. As such, the proposed project would not combine with cumulative development projects to create or contribute to a cumulative impact related to hazards and hazardous materials, and cumulative impacts would be *less than significant*.

E.16 MINERAL AND ENERGY RESOURCES

Topics:	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact	Not Applicable
MINERAL AND ENERGY RESOURCES—					
Would the project:					
a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Encourage activities which result in the use of large amounts of fuel, water, or energy, or use these in a wasteful manner?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The project site is designated by the California Division of Mines and Geology as Mineral Resource Zone Four (MRZ-4) under the Surface Mining and Reclamation Act of 1975.¹⁹⁸ The MRZ-4 designation indicates that the site does not belong to any other MRZ and does not have any significant mineral deposits. Because of this, the proposed project's development and operation would not have an impact on operational mineral resource recovery sites. Therefore, Questions 16a and 16b are not applicable to the proposed project.

Impact ME-1: The proposed project would not encourage activities that result in the use of large amounts of fuel, water, or energy, or use these resources in a wasteful manner. (Less than Significant)

The proposed project would add residential, retail, and commercial uses to the project site, but the proposed project would be in an established part of San Francisco where existing infrastructure would

¹⁹⁸ California Division of Mines and Geology. Open File Report 96-03 and Special Report 146 Parts I and II.

E. EVALUATION OF ENVIRONMENTAL IMPACTS

supply the proposed project's utility and transit services. As a new development, the proposed project is subject to building standards such as the Title 24 of the California Code of Regulations and the *San Francisco Green Building Code*. Title 24 regulates the energy consumption of residential and nonresidential buildings and their fuel use of ventilation, heating, cooling, and lighting. The *San Francisco Green Building Code* requires new buildings to meet conservation standards, including water efficiency, energy efficiency, and features that promote alternative modes of transportation. Documentation for compliance to these regulations would be submitted with the building permit application and would be enforced by the DBI. Additionally, the proposed project is in a low VMT area (see section E.4, Transportation and Circulation) and thus would not generate substantial VMT that would result in the use of large amounts of fuel. The proposed project's compliance with Title 24 and the San Francisco Green Building Code regulations would ensure that fuel, water, or energy would not be used in a wasteful manner and therefore result in a *less-than-significant* impact. No mitigation measures are necessary.

Impact C-ME-1: The proposed project, in combination with other past, present or reasonably foreseeable projects, would not result in a cumulative impact on mineral and energy resources. (Less than Significant)

As described above, all of San Francisco is within MRZ-4 meaning that no known minerals exist in the project site or in the vicinity; therefore, no cumulative impacts would occur with respect to mineral resources. All land use development projects in San Francisco, including the projects listed in Table 2 and mapped on Figure 17 in section B.2, Cumulative Projects, would be required to comply with the DBI's Title 24 and the *San Francisco Green Building Code*, which require developments to minimize the use of fuel, water, or energy. Installing energy efficient appliances and water efficient fixtures would preclude cumulative significant impacts on fuel, water, or energy. Furthermore, the cumulative projects are also infill projects and would contribute to reduced transportation-related fuel demand compared to projects located in a less VMT efficient setting. Additionally, there are statewide efforts to increase power supply such as the California Energy Commission's Renewable Energy Program to help increase total renewable electricity production statewide¹⁹⁹ and to encourage energy conservation through implementation of regulations such as CALGreen. As such, the proposed project would not combine with cumulative development projects to create or contribute to a cumulative impact on fuel, water, and energy resources, and cumulative impacts would be *less than significant*. No mitigation measures are necessary.

¹⁹⁹ California Energy Commission, California Renewable Energy Overview and Programs. Available at: <http://www.energy.ca.gov/renewables/>, accessed April 7, 2017.

E. EVALUATION OF ENVIRONMENTAL IMPACTS

E.17 AGRICULTURAL AND FORESTRY RESOURCES

<i>Topics:</i>	<i>Potentially Significant Impact</i>	<i>Less Than Significant with Mitigation Incorporated</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>	<i>Not Applicable</i>
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AGRICULTURE AND FOREST RESOURCES:

In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. In determining whether impacts to forest resources, including timberland, are significant environmental effects, lead agencies may refer to information compiled by the California Department of Forestry and Fire Protection regarding the state's inventory of forest land, including the Forest and Range Assessment Project and the Forest Legacy Assessment project; and forest carbon measurement methodology provided in Forest Protocols adopted by the California Air Resources Board.

—Would the project:

- | | | | | | |
|---|--------------------------|--------------------------|--------------------------|--------------------------|-------------------------------------|
| a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance, as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| b) Conflict with existing zoning for agricultural use, or a Williamson Act contract? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)) or timberland (as defined by Public Resources Code section 4526)? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| d) Result in the loss of forest land or conversion of forest land to non-forest use? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| e) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland to non-agricultural use or forest land to non-forest use? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

The project site is located within an urbanized area of San Francisco. No land in San Francisco County has been designated by the California Department of Conservation's Farmland Mapping and Monitoring Program as agricultural land. Because the project site does not contain agricultural uses and is not zoned for such uses, the proposed project would not require the conversion of any land designated as prime farmland, unique farmland, or Farmland of Statewide Importance to non-agricultural use. The proposed project would not conflict with any existing agricultural zoning or Williamson Act contracts.²⁰⁰ No land in San Francisco is designated as forest land or timberland by the *California Public Resource Code*. Therefore, the proposed project would not conflict with zoning for forest land, cause a loss of forest land, or convert forest land to a different use. For these reasons, Questions 17a, 17b, 17c, 17d, and 17e are not applicable to the proposed project.

²⁰⁰ San Francisco is identified as "Urban and Built-Up Land" on the California Department of Conservation Important Farmland in California Map, 2012. Available at: www.consrv.ca.gov, accessed on January 12, 2017.

E. EVALUATION OF ENVIRONMENTAL IMPACTS

E.18 MANDATORY FINDINGS OF SIGNIFICANCE

Topics:	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact	Not Applicable
MANDATORY FINDINGS OF SIGNIFICANCE—					
Would the project:					
a) Have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal, or eliminate important examples of the major periods of California history or prehistory?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Have impacts that would be individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Have environmental effects that would cause substantial adverse effects on human beings, either directly or indirectly?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

As discussed in the previous sections (E.1 through E.17), impacts as a result of the proposed project are anticipated to be less than significant or less than significant with mitigation in the areas discussed. The foregoing analysis identifies potentially significant impacts related to cultural resources, and noise, which would be mitigated through implementation of mitigation measures, as described in the following paragraphs. Section F, Mitigation Measures and Improvement Measures identified mitigation and improvement measures applicable to the proposed project. As described in section E.3; Cultural Resources, the proposed project could result in a substantial adverse change on historic and archeological resources, including tribal cultural resources and exceeding the construction vibration standards for architectural damage from the use of large bulldozers resulting in potentially significant impacts to historic buildings. In addition, the proposed project could disturb human remains. Implementation of Mitigation Measures M-CR-2, Vibration Monitoring Program for Adjacent Historical Resources, M-CR-3, Archeological Testing, M-CR-4, Inadvertent Discovery of Human Remains, M-CR-5, Tribal Cultural Resources Interpretive Program, would reduce the impacts to less-than-significant levels. Therefore, the proposed project would not result in a significant impact through the elimination of important examples of major periods of California history or prehistory. Both long-term and short-term environmental effects, including substantial adverse effects on human beings, associated with the proposed project would be *less than significant or less than significant with mitigation*, as discussed under each environmental topic. Each environmental topic area includes an analysis of cumulative impacts. This initial study concludes that cumulative impacts for all environmental topic areas would be less than significant.

F. Mitigation Measures and Improvement Measures

The following mitigation measures have been identified to reduce potentially significant impacts resulting from the proposed project to a less-than-significant level. Improvement measures recommended to reduce or avoid less-than-significant impacts are also identified below. The project sponsor has agreed to implement the mitigation measures and all improvement measures described below.

2. MITIGATION MEASURES

Mitigation Measure M-CR-2: Vibration Monitoring Program for Adjacent Historical Resources

The project sponsor shall retain the services of a qualified structural engineer and preservation architect that meet the Secretary of the Interior's Historic Preservation Professional Qualification Standards to conduct a Pre-Construction Assessment of the adjacent historical resources at 753 Davis Street and 60 Broadway prior to any ground-disturbing activity. The Pre-Construction Assessment shall be prepared to establish a baseline, and shall contain written and/or photographic descriptions of the existing condition of the visible exteriors of the adjacent buildings. The structural engineer and/or preservation architect shall also develop and the project sponsor shall prepare and implement a Vibration Management and Monitoring Plan to protect the adjacent historical resources against damage caused by vibration or differential settlement caused by vibration during project construction activities. In this plan, the maximum vibration level not to be exceeded at each building shall be determined by the structural engineer and/or preservation architect for the project. The Vibration Management and Monitoring Plan shall document the criteria used in establishing the maximum vibration level for the project. The Vibration Management and Monitoring Plan shall include vibration monitoring and regular periodic inspections at the project site by the structural engineer and/or historic preservation consultant throughout the duration of the major structural project activities to ensure that vibration levels do not exceed the established standard. The Pre-Construction Assessment and Vibration Management and Monitoring Plan shall be submitted to the Planning Department Preservation staff prior to issuance of any construction permits. Should damage to 753 Davis Street or 60 Broadway be observed, construction shall be halted and alternative techniques put in practice, to the extent feasible, and/or repairs shall be completed as part of project construction. A final report on the vibration monitoring of 753 Davis Street and 60 Broadway shall be submitted to Planning Department Preservation staff prior to the issuance of a Certificate of Occupancy for the project.

Mitigation Measure M-CR-3: Archeological Testing

The project sponsor shall retain the services of an archeological consultant from the rotational Department Qualified Archeological Consultants List (QACL) maintained by the Planning Department archeologist. The project sponsor shall contact the Department archeologist to obtain the names and contact information for the next three archeological consultants on the QACL. The archeological consultant shall undertake an archeological testing program as specified herein. In addition, the consultant shall be available to conduct an archeological monitoring and/or data recovery program if required pursuant to this measure. The archeological consultant's work shall be

F. MITIGATION MEASURES AND IMPROVEMENT MEASURES

conducted in accordance with this measure at the direction of the Environmental Review Officer (ERO). All plans and reports prepared by the consultant as specified herein shall be submitted first and directly to the ERO for review and comment, and shall be considered draft reports subject to revision until final approval by the ERO. Archeological monitoring and/or data recovery programs required by this measure could suspend construction of the project for up to a maximum of four weeks. At the direction of the ERO, the suspension of construction can be extended beyond four weeks only if such a suspension is the only feasible means to reduce to a less than significant level potential effects on a significant archeological resource as defined in CEQA Guidelines section 15064.5(a) and (c).

Consultation with Descendant Communities. On discovery of an archeological site²⁰¹ associated with descendant Native Americans, the Overseas Chinese, or other potentially interested descendant group, an appropriate representative²⁰² of the descendant group and the ERO shall be contacted. The representative of the descendant group shall be given the opportunity to monitor archeological field investigations of the site and to offer recommendations to the ERO regarding appropriate archeological treatment of the site, of recovered data from the site, and, if applicable, any interpretative treatment of the associated archeological site. A copy of the Final Archeological Resources Report shall be provided to the representative of the descendant group.

Archeological Testing Program. The archeological consultant shall prepare and submit to the ERO for review and approval an archeological testing plan (ATP). The archeological testing program shall be conducted in accordance with the approved ATP. The ATP shall identify the property types of the expected archeological resource(s) that potentially could be adversely affected by the proposed project, the testing method to be used, and the locations recommended for testing. The purpose of the archeological testing program will be to determine to the extent possible the presence or absence of archeological resources and to identify and to evaluate whether any archeological resource encountered on the site constitutes an historical resource under CEQA.

At the completion of the archeological testing program, the archeological consultant shall submit a written report of the findings to the ERO. If based on the archeological testing program the archeological consultant finds that significant archeological resources may be present, the ERO in consultation with the archeological consultant shall determine if additional measures are warranted. Additional measures that may be undertaken include additional archeological testing, archeological monitoring, and/or an archeological data recovery program. No archeological data recovery shall be undertaken without the prior approval of the ERO or the Planning Department archeologist. If the

²⁰¹ The term "archeological site" is intended here to minimally include any archeological deposit, feature, burial, or evidence of burial.

²⁰² An "appropriate representative" of the descendant group is here defined to mean, in the case of Native Americans, any individual listed in the current Native American Contact List for the City and County of San Francisco maintained by the California Native American Heritage Commission and in the case of the Overseas Chinese, the Chinese Historical Society of America. An appropriate representative of other descendant groups should be determined in consultation with the Department archeologist.

F. MITIGATION MEASURES AND IMPROVEMENT MEASURES

ERO determines that a significant archeological resource is present and that the resource could be adversely affected by the proposed project, at the discretion of the project sponsor either:

- A. The proposed project shall be re-designed so as to avoid any adverse effect on the significant archeological resource; or
- B. A data recovery program shall be implemented, unless the ERO determines that the archeological resource is of greater interpretive than research significance and that interpretive use of the resource is feasible.

Archeological Monitoring Program. If the ERO in consultation with the archeological consultant determines that an archeological monitoring program (AMP) shall be implemented the archeological monitoring program shall minimally include the following provisions:

- The archeological consultant, project sponsor, and ERO shall meet and consult on the scope of the AMP reasonably prior to any project-related soils disturbing activities commencing. The ERO in consultation with the archeological consultant shall determine what project activities shall be archeologically monitored. In most cases, any soils- disturbing activities, such as demolition, foundation removal, excavation, grading, utilities installation, foundation work, site remediation, etc., shall require archeological monitoring because of the risk these activities pose to potential archeological resources and to their depositional context;
- The archeological consultant shall advise all project contractors to be on the alert for evidence of the presence of the expected resource(s), of how to identify the evidence of the expected resource(s), and of the appropriate protocol in the event of apparent discovery of an archeological resource;
- The archeological monitor(s) shall be present on the project area according to a schedule agreed upon by the archeological consultant and the ERO until the ERO has, in consultation with project archeological consultant, determined that project construction activities could have no effects on significant archeological deposits;
- The archeological monitor shall record and be authorized to collect soil samples and artefactual/ecofactual material as warranted for analysis;
- If an intact archeological deposit is encountered, all soils-disturbing activities in the vicinity of the deposit shall cease. The archeological monitor shall be empowered to temporarily redirect demolition/excavation/construction activities and equipment until the deposit is evaluated. The archeological consultant shall immediately notify the ERO of the encountered archeological deposit. The archeological consultant shall make a reasonable effort to assess the identity, integrity, and significance of the encountered archeological deposit, and present the findings of this assessment to the ERO.

Whether or not significant archeological resources are encountered, the archeological consultant shall submit a written report of the findings of the monitoring program to the ERO.

Archeological Data Recovery Program. If required based on the results of the ATP, an archeological data recovery program shall be conducted in accord with an archeological data recovery plan (ADRP). The archeological consultant, project sponsor, and ERO shall meet and consult on the scope of the ADRP prior to preparation of a draft ADRP. The archeological consultant shall submit a draft ADRP to the

F. MITIGATION MEASURES AND IMPROVEMENT MEASURES

ERO. The ADRP shall identify how the proposed data recovery program will preserve the significant information the archeological resource is expected to contain. That is, the ADRP will identify what scientific/historical research questions are applicable to the expected resource, what data classes the resource is expected to possess, and how the expected data classes would address the applicable research questions. Data recovery, in general, should be limited to the portions of the historical property that could be adversely affected by the proposed project. Destructive data recovery methods shall not be applied to portions of the archeological resources if nondestructive methods are practical.

If required, the scope of the ADRP shall include the following elements:

- *Field Methods and Procedures*—Descriptions of proposed field strategies, procedures, and operations.
- *Cataloguing and Laboratory Analysis*—Description of selected cataloguing system and artifact analysis procedures.
- *Discard and Deaccession Policy*—Description of and rationale for field and post-field discard and deaccession policies.
- *Interpretive Program*—Consideration of an on-site/off-site public interpretive program during the course of the archeological data recovery program.
- *Security Measures*—Recommended security measures to protect the archeological resource from vandalism, looting, and non-intentionally damaging activities.
- *Final Report*—Description of proposed report format and distribution of results.
- *Curation*—Description of the procedures and recommendations for the curation of any recovered data having potential research value, identification of appropriate curation facilities, and a summary of the accession policies of the curation facilities.

Final Archeological Resources Report. The archeological consultant shall submit a Draft Final Archeological Resources Report (FARR) to the ERO that evaluates the historical significance of any discovered archeological resource and describes the archeological and historical research methods employed in the archeological testing/monitoring/data recovery program(s) undertaken. Information that may put at risk any archeological resource shall be provided in a separate removable insert within the final report.

Once approved by the ERO, copies of the FARR shall be distributed as follows: California Archeological Site Survey Northwest Information Center (NWIC) shall receive one (1) copy and the ERO shall receive a copy of the transmittal of the FARR to the NWIC. The Environmental Planning division of the Planning Department shall receive one bound, one unbound and one unlocked, searchable PDF copy on CD of the FARR along with copies of any formal site recordation forms (CA DPR 523 series) and/or documentation for nomination to the National Register of Historic Places/California Register of Historical Resources. In instances of high public interest in or the high interpretive value of the resource, the ERO may require a different final report content, format, and distribution than that presented above.

F. MITIGATION MEASURES AND IMPROVEMENT MEASURES

Mitigation Measure M-CR-4: Inadvertent Discovery of Human Remains

The treatment of human remains and of associated or unassociated funerary objects discovered during any soils disturbing activity shall comply with applicable State and federal laws. This shall include immediate notification of the Coroner of the City and County of San Francisco and the Environmental Review Officer (ERO), and in the event of the Coroner's determination that the human remains are Native American remains, notification of the California State Native American Heritage Commission (NAHC) who shall appoint a Most Likely Descendant (MLD) (Public Resources Code section 5097.98). The archeological consultant, project sponsor, ERO, and MLD shall have up to but not beyond six days of discovery to make all reasonable efforts to develop an agreement for treating or disposing of, with appropriate dignity, the human remains and any associated items (CEQA Guidelines section 15064.5(d)). The agreement should take into consideration the appropriate excavation, removal, recordation, analysis, custodianship, curation, and final disposition of the human remains and associated or unassociated funerary objects. Nothing in existing State regulations or in this mitigation measure compels the project sponsor and the ERO to accept recommendations of an MLD. The archeological consultant shall retain possession of any Native American human remains and associated or unassociated burial objects until completion of any scientific analyses of the human remains or objects as specified in the treatment agreement if such as agreement has been made or, otherwise, as determined by the archeological consultant and the ERO.

Mitigation Measure M-CR-5: Tribal Cultural Resources Interpretive Program

If the Environmental Review Officer (ERO) determines that a significant archeological resource is present, and if in consultation with the affiliated Native American tribal representatives, the ERO determines that the resource constitutes a tribal cultural resource (TCR) and that the resource could be adversely affected by the proposed project, the proposed project shall be redesigned so as to avoid any adverse effect on the significant tribal cultural resource, if feasible.

If the ERO, in consultation with the affiliated Native American tribal representatives and the project sponsor, determines that preservation-in-place of the tribal cultural resources is not a sufficient or feasible option, the project sponsor shall implement an interpretive program of the TCR in consultation with affiliated tribal representatives. An interpretive plan produced in consultation with the ERO and affiliated tribal representatives, at a minimum, and approved by the ERO would be required to guide the interpretive program. The plan shall identify, as appropriate, proposed locations for installations or displays, the proposed content and materials of those displays or installation, the producers or artists of the displays or installation, and a long-term maintenance program. The interpretive program may include artist installations, preferably by local Native American artists, oral histories with local Native Americans, artifacts displays and interpretation, and educational panels or other informational displays.

3. IMPROVEMENT MEASURES

Improvement Measure I-TR-2a: Passenger Loading Zone Management

The project sponsor should ensure that project-generated passenger loading activities along Vallejo Street and Davis Street are accommodated within the confines of the loading zones. Specifically, the project sponsor should monitor passenger loading activities at the proposed zones to ensure that such activities are in compliance with the following requirements:

- That double parking, queuing, or other project-generated activities do not result in intrusions into the adjacent travel lane or obstruction of the adjacent sidewalk. Any project-generated vehicle conducting, or attempting to conduct, passenger pick-up or drop-off activities should not occupy the adjacent travel lane such that free-flow traffic circulation is inhibited, and associated passengers and pedestrian activity should not occupy the adjacent sidewalk such that free-flow pedestrian circulation is inhibited.
- That vehicles conducting passenger loading activities are not stopped in the passenger loading zone for an extended period of time. In this context, an "extended period of time" shall be defined as more than 5 consecutive minutes at any time during other time periods. Passenger loading would occur on Vallejo Street and Davis Street adjacent to the proposed daycare and proposed mid-block passageway respectively.

Should passenger loading activities at the proposed on-street passenger loading zones not be in compliance with the above requirements, the Project Sponsor should employ abatement methods as needed to ensure compliance. Suggested abatement methods may include, but are not limited to, employment or deployment of staff to direct passenger loading activities; use of off-site parking facilities or shared parking with nearby uses; travel demand management strategies such as additional bicycle parking; and / or limiting hours of access to the passenger loading zones. Any new abatement measures should be reviewed and approved by the Planning Department.

If the Planning Director, or his or her designee, suspects that Project-generated passenger loading activities in the proposed passenger loading zones are not in compliance with the above requirements, the Planning Department should notify the property owner in writing. The property owner, or his or her designated agent (such as building management), should hire a qualified transportation consultant to evaluate conditions at the site for no less than seven total days. The consultant should submit a report to the Planning Department documenting conditions. Upon review of the report, the Planning Department should determine whether or not Project-generated passenger loading activities are in compliance with the above requirements, and should notify the property owner of the determination in writing.

If the Planning Department determines that passenger loading activities are not in compliance with the above requirements, upon notification, the property owner or his or her designated agent should have 90 days from the date of the written determination to carry out abatement measures. If after 90 days the Planning Department determines that the property owner or his or designated agent has been unsuccessful at ensuring compliance with the above requirements, use of the on-street passenger loading zone should be restricted during certain time periods or events to ensure

F. MITIGATION MEASURES AND IMPROVEMENT MEASURES

compliance. These restrictions should be determined by the Planning Department in coordination with SFMTA, as deemed appropriate based on the consultant's evaluation of site conditions, and communicated to the property owner in writing. The property owner or his or her designated agent should be responsible for relaying these restrictions to building tenants to ensure compliance.

Improvement Measure I-TR-2b: Construction Traffic Management

The project sponsor should implement measures to minimize the effects of project-related construction activities on traffic, transit, bicycle, and pedestrian circulation. Potential measures could include (but are not limited to) the following:

- Limit hours of construction-related traffic, including, but not limited to, truck movements, to avoid the weekday AM and PM peak hours (7:00 to 9:00 a.m. and 4:00 to 6:00 p.m.) (or other times, if approved by San Francisco Municipal Transportation Agency).
- Construction contractor(s) for the project should coordinate construction activities with other construction activities that may take place concurrently in the vicinity of the Project site. Potential measures could include establishing regular coordination protocols (e.g., a weekly liaison meeting between general contractors to discuss upcoming activities and resolve conflicts); offsetting schedules (e.g., scheduling materials deliveries, concrete pours, crane assembly/disassembly, and other major activities at different hours or on different days to avoid direct overlap); shared travel and/or parking solutions for construction workers (e.g., helping establish an informal vanpool/carpool program); and other measures.

The project sponsor should require that the construction contractor(s) for the project encourage workers to take transit, rideshare, bicycle, or walk when traveling to and from the construction site.

Improvement Measure I-NO-2: Construction Noise Reduction

The project sponsor will incorporate the following practices into the construction contract agreement documents to be implemented by the construction contractor during the entire construction phase of the proposed project:

- Conduct noise monitoring at the beginning of major construction phases (e.g., demolition, excavation) to determine the need and the effectiveness of noise-attenuation measures. The project sponsor and contractor will apply as many mitigating features as needed to reduce noise from the simultaneous operation of multiple pieces of construction equipment to meet the noise criteria of 90 dBA during the day at sensitive (residential) receptors and 100 dBA at any time for non-sensitive (commercial) receptors, and should not exceed 10 dBA above the ambient noise conditions at either sensitive or non-sensitive receptors at any time. Mitigating features could include, but are not limited to plywood barriers, suspended construction blankets, or other screening devices to break line of sight to noise-sensitive receivers.
- At least 90 days prior to the start of construction activities, all offsite businesses and residents within 300 feet of the project site will be notified of the planned construction activities. The notification will include a brief description of the project, the activities that would occur, the hours when construction would occur, and the construction period's overall duration. The

F. MITIGATION MEASURES AND IMPROVEMENT MEASURES

notification should include the telephone numbers of the City's and contractor's authorized representatives that are assigned to respond in the event of a noise or vibration complaint.

- The project sponsor and contractors will prepare a Construction Noise and Vibration Control Plan. The details of the Construction Noise and Vibration Control Plan, including those details listed herein, will be included as part of the permit application drawing set and as part of the construction drawing set.
- At least 10 days prior to the start of construction activities, a sign will be posted at the entrance(s) to the job site, clearly visible to the public, which includes permitted construction days and hours, as well as the telephone numbers of the City's and contractor's authorized representatives that are assigned to respond in the event of a noise or vibration complaint. If the authorized contractor's representative receives a complaint, he/she will investigate, take appropriate corrective action, and report the action to the City.
- During the entire active construction period, equipment and trucks used for project construction will utilize the best available noise control techniques (e.g., improved mufflers, equipment re-design, use of intake silencers, ducts, engine enclosures, and acoustically attenuating shields or shrouds), wherever feasible.
- During the entire active construction period, stationary noise sources will be located as far from sensitive receptors as possible, and they will be muffled and enclosed within temporary sheds, or insulation barriers or other measures will be incorporated to the extent feasible.
- During the entire active construction period, "quiet" air compressors and other stationary noise sources will be used where such technology exists.
- During the entire active construction period, noisy operations will be combined so that they occur in the same time period as the total noise level produced would not be significantly greater than the level produced if the operations were performed separately (and the noise would be of shorter duration).
- Signs will be posted at the job site entrance(s), within the on-site construction zones, and along queueing lanes (if any) to reinforce the prohibition of unnecessary engine idling. All other equipment will be turned off if not in use for more than 5 minutes.
- During the entire active construction period and to the extent feasible, the use of noise producing signals, including horns, whistles, alarms, and bells will be for safety warning purposes only. The construction manager will use smart back-up alarms, which automatically adjust the alarm level based on the background noise level, or switch off back-up alarms and replace with human spotters.

G. Public Notice and Comment

G.1 NEIGHBORHOOD NOTICE COMMENTS

On February 8, 2017, the Planning Department mailed a Notice of Project Receiving Environmental Review to property owners within 300 feet of the project site, adjacent tenants, and other potentially interested parties. Comments received addressed the following:

- Compatibility with the scale, texture and materials of the Northeast Waterfront Landmark District in which it is located, the Waterfront Special Use District No. 3, Article 10 of the Planning Code and consistency with preservation policies in the General Plan.
- Conformity to adjacent urban design, “fitting in” with existing buildings.
- Activation of the street level with ground-floor retail uses and by maintaining wide sidewalks.
- Increased demand on transit service in the Northeast Waterfront.
- The air quality effect from vehicles in the
- Concern about the air quality effects from vehicles parked in an on-site parking garage on the project site, should the project proposed on-site vehicle parking.
- Concerns about the cumulative effects of the proposed project with other proposed projects in the project site vicinity.

The comments that directly relate to a physical impact on the environment were directly addressed in section E.3, Cultural Resources, (historic resources) and, section E.4, Transportation and Circulation, (transit demand). Note, the proposed project no longer includes a parking garage.

G.2 PMND PUBLIC REVIEW COMMENTS AND APPEAL

On October 25, 2017, the Planning Department mailed a Notice of Availability of and Intent to Adopt a Mitigated Negative Declaration to owners of properties within 300 feet of the project site, adjacent occupants, and neighborhood groups. During the 33-day PMND comment period from October 25, 2017 to November 27, 2017, the Planning Department received one comment letter regarding the PMND from Telegraph Hill Dwellers dated November 27, 2017. The comments received related to physical environmental effects addressed the following:

- The proposed project’s compatibility with the General Plan objective of the stepping down of buildings toward the waterfront, with regards to the proposed building’s height, mass and scale. (see LU-2, page 56, for this impact analysis)
- The proposed project’s compatibility with the Northeast Waterfront Historic District, with regards to the proposed building’s height, mass and scale. (see CR-1, page 63, for this impact analysis)
- Concerns about the cumulative effects of the proposed project when combined with the proposed Seawall Lots 323/324 (proposed theater and hotel development) ²⁰³ with respect to the

²⁰³ Seawall Lots 323/324, Case No. 2015-016326ENV, is undergoing separate environmental review.

G. PUBLIC NOTICE AND COMMENT

compatibility of the combined projects with the Northeast Waterfront Landmark District. (see C-LU-1, page 57, and C-CR-1, page 73, for an analysis of these impacts.)

Other comments that directly relate to a physical impact on the environment were directly addressed in section C, Compatibility with Existing Zoning and Plans; section E.1, Land Use and Land Use Planning; and section E.3, Cultural Resources, (historic resources). Policies addressed in the comment letter that were not explicitly discussed in the PMND were added to section C, Compatibility with Existing Zoning and Plans, of this FMND. However, the addition of these policies does not change the less-than-significant determination discussed in LU-2, CR-1 and C-CR-1.

Additionally, in response to the to the Notice of Availability, Marc Bruno, with the St. Vincent de Paul Conference at Saints Peter and Paul Church, filed an appeal of the PMND on November 27, 2017. The appellant raised concerns regarding the following:

- Cumulative transportation impacts due to the loss of the existing 180 parking spaces on the project site and development of the proposed project at 88 Broadway and 735 Davis Street and other cumulative projects at Seawall Lot 323 and 324²⁰⁴ and 940 Battery Street.²⁰⁵
- A significant impact related to an increase in vehicle miles traveled due to the loss of the existing 180 parking spaces on the project site.
- Cumulative transportation impacts due to taxi and transportation network company trips that would be generated by the proposed project and the cumulative projects in the vicinity of the projects site.
- Cumulative impacts due to the development of five projects within a 0.25-mile radius of the project site, and the Central Subway, Better Market Street, and Geary Bus Rapid Transit transportation network changes.

These concerns were evaluated and responded to in an appeal response. The Planning Department's responses to the appellant's concerns do not change the less-than-significant impact findings of the PMND concerning the topic of transportation and circulation, noise, and air quality or the determination in the PMND that impacts on cultural resources would be less than significant with mitigation.

²⁰⁴ Planning Department Case No. 2015-016326ENV

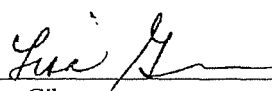
²⁰⁵ Planning Department Case No. 2015-001033ENV

H. Determination

On the basis of this initial study:

- ☐ I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.
- ☒ I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.
- ☐ I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.
- ☐ I find that the proposed project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.
- ☐ I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, no further environmental documentation is required.

3/9/18
Date


Lisa Gibson

Environmental Review Officer
for
John Rahaim
Director of Planning

H. DETERMINATION

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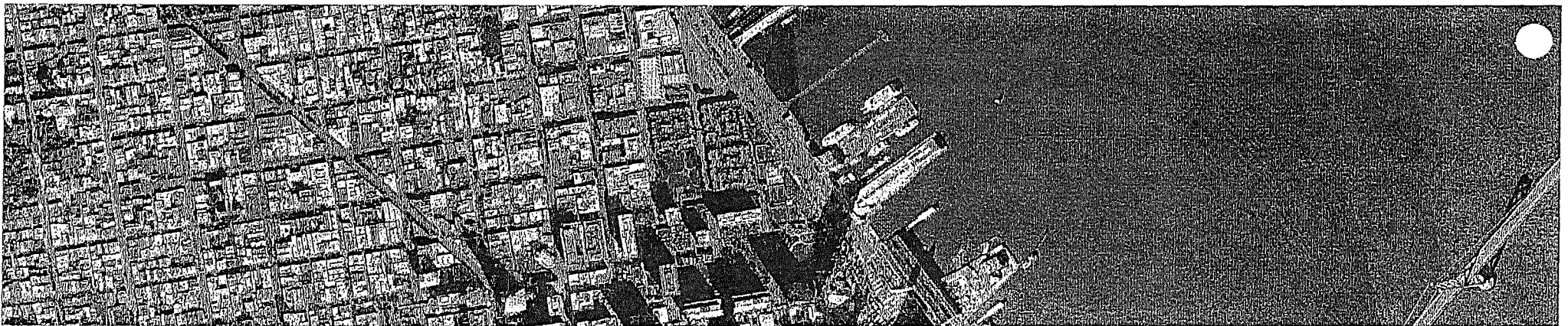
88 BROADWAY FAMILY + 735 DAVIS SENIOR AFFORDABLE HOUSING

CERTIFICATE OF APPROPRIATENESS - REVISION 5 / SECTION 315

4728



03/09/18



10. PROJECT DATA

- 10.1 Project Name: [REDACTED]
- 10.2 Project Number: [REDACTED]
- 10.3 Project Location: [REDACTED]
- 10.4 Project Manager: [REDACTED]
- 10.5 Project Sponsor: [REDACTED]

11. SITE CONTEXT

- 11.1 Site Location: [REDACTED]
- 11.2 Site History: [REDACTED]
- 11.3 Site Zoning: [REDACTED]
- 11.4 Site Access: [REDACTED]
- 11.5 Site Surroundings: [REDACTED]

12. ARCHITECTURAL DRAWINGS

- 12.1 Site Plan: [REDACTED]
- 12.2 Floor Plan: [REDACTED]
- 12.3 Section: [REDACTED]
- 12.4 Elevation: [REDACTED]
- 12.5 Detail: [REDACTED]

13. HISTORIC COMPATIBILITY

- 13.1 Historic Context: [REDACTED]
- 13.2 Compatibility Analysis: [REDACTED]
- 13.3 Recommendations: [REDACTED]

14. MASSING AND BUILDING HEIGHT

- 14.1 Massing Diagram: [REDACTED]
- 14.2 Building Height: [REDACTED]
- 14.3 Massing Analysis: [REDACTED]

15. MATERIALS

- 15.1 Material Selection: [REDACTED]
- 15.2 Material Analysis: [REDACTED]
- 15.3 Material Recommendations: [REDACTED]

16. PENETRATION

- 16.1 Penetration Analysis: [REDACTED]
- 16.2 Penetration Recommendations: [REDACTED]

17. CORNER TREATMENT

- 17.1 Corner Treatment Analysis: [REDACTED]
- 17.2 Corner Treatment Recommendations: [REDACTED]

18. GROUND FLOOR UNITS

- 18.1 Ground Floor Units Analysis: [REDACTED]
- 18.2 Ground Floor Units Recommendations: [REDACTED]

19. MID-BLOCK PASSAGES

- 19.1 Mid-Block Passages Analysis: [REDACTED]
- 19.2 Mid-Block Passages Recommendations: [REDACTED]

20. PLANNING ANALYSIS

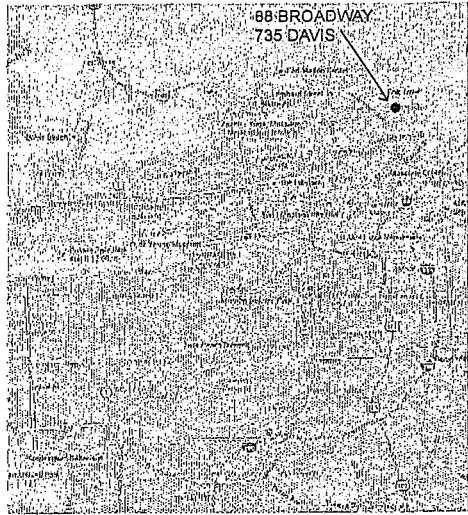
- 20.1 Planning Analysis: [REDACTED]
- 20.2 Planning Recommendations: [REDACTED]

21. APPENDIX

- 21.1 Appendix A: [REDACTED]
- 21.2 Appendix B: [REDACTED]

PROJECT DATA

VICINITY MAP

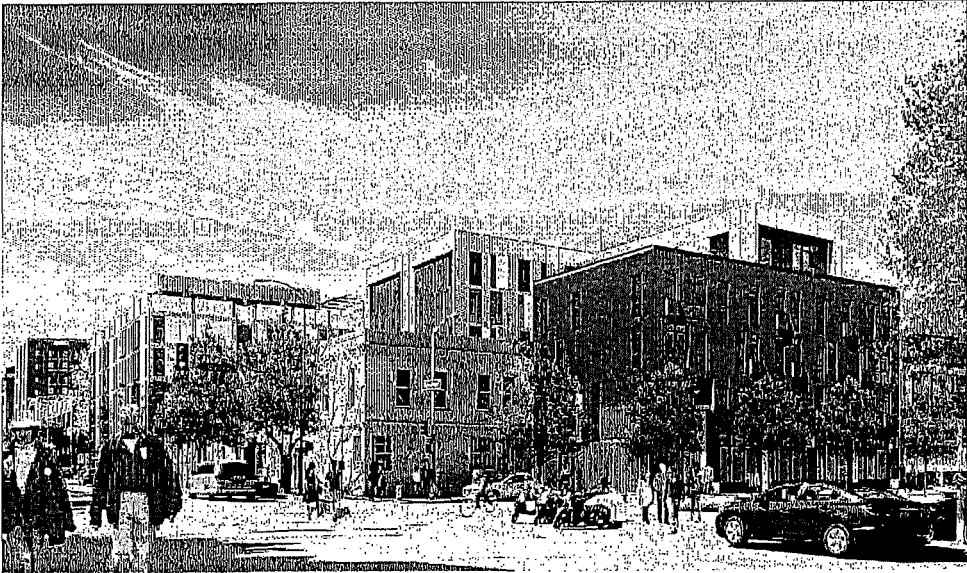
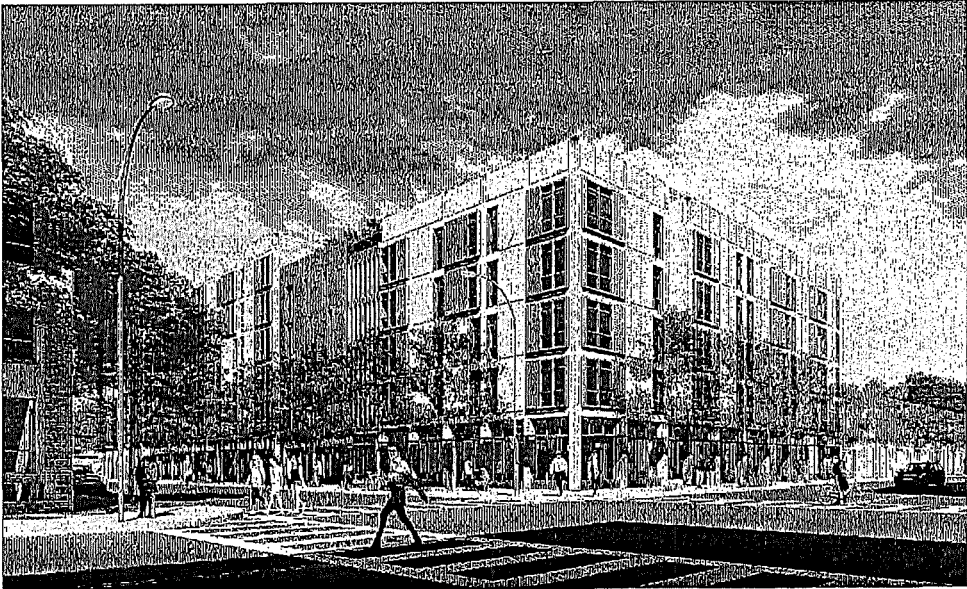


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4731
PROJECT DESCRIPTION

ADDRESS
88 Broadway Family & 735 Davis Senior
Affordable Housing
88 Broadway/735 Davis street
San Francisco, CA 94111

ASSESSOR'S PARCEL
88 BROADWAY
FAMILY BUILDING
Block: 140
Lot: 007
735 DAVIS
SENIOR BUILDING
Block: 140
Lot: 008

LOT AREA
88 BROADWAY
FAMILY BUILDING
Site Area: 37,812.50 SQ. FT. (0.86 acres)
Lot Dimensions: 275' X 137.5'
Total Lot Area: 37,812 SF

735 DAVIS
SENIOR BUILDING
Site Area: 10,805 SQ.FT. (.24 acres)
Lot Dimensions: 137.5' X 78.58'
Total Lot Area: 10,805 SF

ZONING

C-2: Community Business
Special Use District: Waterfront 3
Height and Bulk District: 65-X
Planning Area: North East Waterfront/ Northeast
Embarcadero Study

UNIT COUNT
88 BROADWAY:

	Studio	1BR	2BR	3BR	TOTAL	GSF
LVL 6	2	10	5	3	20	14,713
LVL 5	4	7	11	4	26	20,299
LVL 4	3	7	10	5	25	20,312
LVL 3	3	7	10	5	25	20,312
LVL 2	3	6	10	5	24	19,713
LVL 1	0	1	2	2	5	5,361
TOTAL	15	38	48	24	125	100,710
%	12%	31%	38%	19%	100%	

735 DAVIS:

	Studio	1BR	2BR	TOTAL	GSF
LVL 6	4	4	0	8	4,011
LVL 5	4	4	0	8	4,011
LVL 4	5	7	0	12	6,364
LVL 3	5	7	0	12	6,367
LVL 2	5	5	1	11	5,974
LVL 1	1	1	0	2	1,023
TOTAL	24	28	1	53	27,750
%	45%	53%	2%	100%	



AREA MAP - FAMILY HOUSING
APN: BLOCK 140 LOT 007

GENERAL NOTES

Unit Gross Square Footage (GSF): The sum of all areas on all floors of unit included within the outside faces of its exterior walls.

Building Gross Square Footage (GSF): The sum of all areas on all floors of building included within the outside faces of its exterior walls.

TRASH COLLECTION & LOADING

See A2.1 for location of Trash Room. Residential trash collection will be on Front Street. Commercial trash collection will be on Broadway Street.

REQUESTED PUD MODIFICATIONS

- 134 Rear yard configuration
- 151 Off street loading
- 151 Off street parking at childcare

BIRD SAFE STANDARDS

88 Broadway is 450' from the Bay, outside of the 300' zone. Location hazards do not apply. Building will comply with feature related hazards where they apply.

UNIT MIX

	STUDIO	1 BR	2 BR	3 BR	TOTAL	GSF
LEVEL 6	2	10	5	4	21	14,713
LEVEL 5	4	7	10	4	25	20,299
LEVEL 4	3	7	10	5	25	20,312
LEVEL 3	3	7	10	5	25	20,312
LEVEL 2	3	6	10	5	24	19,713
LEVEL 1	0	1	2	2	5	5,361
TOTAL:	15	38	47	25	125	100,710
PERCENTAGE	12%	30%	38%	20%	100%	
TCAC REQ:				30% min*		

* at least 30% required to be 3-bd or larger units; waiver may be granted under At-Risk set-aside application

UNIT TYPES

UNIT TYPE	FORMAT	ACCESSIBILITY	SIZE (GSF)	SIZE (NSF)	TCAC REQ (NSF)	COUNT
STUDIO	FLAT	ADAPTABLE	430	368	N/A	11
ADPT-0BR-A	FLAT	ADAPTABLE	430	368	N/A	1
ADPT-0BR-A-R	FLAT	ADAPTABLE REPOSITIONABLE	430	368	N/A	2
ADPT-0BR-B	FLAT	ADAPTABLE	430	368	N/A	1
MOBL-0BR-A	FLAT	MOBILITY	430	370	N/A	1
1-BR	FLAT	ADAPTABLE	585	502	450	20
ADPT-1BR-A	FLAT	ADAPTABLE	585	502	450	2
ADPT-1BR-A-C	FLAT	ADAPTABLE COMMUNICATION	585	502	450	2
ADPT-1BR-A-R	FLAT	ADAPTABLE REPOSITIONABLE	585	502	450	2
ADPT-1BR-B	FLAT	ADAPTABLE	558	507	450	8
ADPT-1BR-C	FLAT	ADAPTABLE	489	507	450	1
ADPT-1BR-LW	FLAT/LIVWORK	ADAPTABLE	608	507	450	1
MOBL-1BR-A	FLAT	MOBILITY	591	507	450	4
2-BR	FLAT	ADAPTABLE	893	763	700	33
ADPT-2BR-A	FLAT	ADAPTABLE	893	763	700	2
ADPT-2BR-A-C	FLAT	ADAPTABLE COMMUNICATION	893	763	700	2
ADPT-2BR-A-R	FLAT	ADAPTABLE REPOSITIONABLE	893	763	700	1
ADPT-2BR-B	FLAT	ADAPTABLE	861	783	700	5
ADPT-2BR-C	FLAT	ADAPTABLE	945	783	700	1
ADPT-2BR-LW	FLAT/LIVWORK	ADAPTABLE	914	785	700	1
MOBL-2BR-A	FLAT	MOBILITY	890	763	700	4
MOBL-2BR-LW	FLAT/LIVWORK	MOBILITY	928	763	700	1
3-BR	FLAT	ADAPTABLE	1198	1136	900	15
ADPT-3BR-A	FLAT	ADAPTABLE	1198	1136	900	1
ADPT-3BR-A-C	FLAT	ADAPTABLE COMMUNICATION	1198	1136	900	1
ADPT-3BR-A-R	FLAT	ADAPTABLE REPOSITIONABLE	1198	1136	900	1
ADPT-3BR-B	FLAT	ADAPTABLE	1347	1012	900	3
ADPT-3BR-LW	FLAT/LIVWORK	ADAPTABLE	1393	1012	900	1
MOBL-3BR-A	FLAT	MOBILITY	1185	1012	900	2
MOBL-3BR-LW	FLAT/LIVWORK	MOBILITY	1519	1012	900	1
Total Units:						125

PLANNING DATA

FAMILY HOUSING	PERMITTED	PROVIDED
FAR (1:5)	189,062.5 MAX	146,037
RESIDENTIAL DENSITY (1:200 RC-4)	189 UNITS	125
REAR YARD 25% (275.0'X34.37')	9,453 FT.	11,629 S.F.
RES OPEN SPACE (48 SF *125 du)	6,000 S.F.	7,128 S.F.
PARKING (COMMERCIAL OR PORT)	2 / Childcare	0
LOADING	1 Space	2 Street
HEIGHT	65 FT.	65 FT.

ACCESSIBLE UNIT SUMMARY

UNIT TYPE	MOBILITY UNIT (11B) 10% PER 2015 TCAC, COMPLETES WITH 2016 CBC 11B	ADAPTABLE HEARING + VISUAL IMPAIRED ADAPTABLE UNIT (4% PER 2015 TCAC, COMPLETES WITH 2016 CBC 11A)	ADAPTABLE UNIT 11A(8% PER 2016 CBC 11a)	ADAPTABLE REPOSITIONABLE COUNTERTOPS (IN 5% OF TOTAL 90% ADAPTABLE UNITS, COMPLETES WITH 2016 CBC 11A)
STUDIO	1	0	12	1
1 BD	4	2	33	2
2 BD	5	2	40	1
3 BD	5	1	22	1
SUBTOTAL	13	5	107	5
GRAND TOTAL:			125	

* Note: Accessible mobility TBD

CODES + REGULATIONS

APPLICABLE CODES AND REGULATIONS

Codes:
 2016 California Building Code
 2016 California Electrical Code
 2016 California Mechanical Code
 2016 California Plumbing Code
 2016 Green Building Code
 2016 California Energy Code
 2010 ADA Standards
 Federal Fair Housing Act
 Outdoor Developed Area Guidelines (Access Board)
 San Francisco Health Code, Article 38

Funding Requirements:
 TCAC, Attachment 10

Green Building:
 GreenPoint Rated: Goal 176

BUILDING AREA

PROGRAM	AREA
Level 1	
MULTI-PURPOSE SPACE/KITCHEN/STORAGE/FILE/ PM OFFICE/WC/LOBBY/MAIL/	4,819
COMMERCIAL	5,246
CHILDCARE	4,306
MAINT/PUMP ROOMS/ MPOE/JAN	2,961
BIKE PARKING	1,259
RESIDENTIAL	5,153
CIRCULATION	429
SERVICE (MECH / TRASH)	1,208
	25,381
Level 2	
RESIDENTIAL	19,397
CIRCULATION	4,967
SERVICE(LAUNDRY/TRASH/MECH)	753
	25,117
Level 3	
RESIDENTIAL	19,827
CIRCULATION	4,537
SERVICE(LAUNDRY/TRASH/MECH)	753
	25,117
Level 4	
RESIDENTIAL	19,827
CIRCULATION	4,537
SERVICE(LAUNDRY/TRASH/MECH)	753
	25,117
Level 5	
RESIDENTIAL	18,607
CIRCULATION	4,537
SERVICE(LAUNDRY/TRASH/MECH)	753
	23,897
Level 6	
RESIDENTIAL	16,118
CIRCULATION	4,537
SERVICE(LAUNDRY/TRASH/MECH)	753
	21,408
TOTAL GSF	146,037
TOTAL GFA (PLANNING CODE) 2017.05.04 TIS	122,044

03/09/18

PROJECT DATA - FAMILY HOUSING

JOHN STEWART COMPANY
BRIDGE HOUSING

A0.2 LMSA 88 BROADWAY / +735 DAVIS
 CERTIFICATE OF APPROPRIATENESS
 REV-5 / SECTION 315



AREA MAP - SENIOR HOUSING
APN: BLOCK 140 LOT 008

GENERAL NOTES

Unit Gross Square Footage (GSF): The sum of all areas on all floors of unit included within the outside faces of its exterior walls.

Building Gross Square Footage (GSF): The sum of all areas on all floors of building included within the outside faces of its exterior walls.

TRASH COLLECTION & LOADING
See A2.1 for location. Trash collection will be on Davis Street.

REQUESTED PUD MODIFICATIONS
134 Rear yard configuration and size
140 Exposure for 12 units

BIRD SAFE STANDARDS
735 Davis is 421' from the Bay, outside of the 300' zone. Location hazards do not apply. Building will comply with feature related hazards where they apply.

UNIT MIX

	STUDIO	1 BR	2 BR	TOTAL	GSF
LEVEL 6	4	4	0	8	4,044
LEVEL 5	4	4	0	8	4,044
LEVEL 4	5	7	0	12	6,415
LEVEL 3	5	7	0	12	6,415
LEVEL 2	5	5	1	11	5,896
LEVEL 1	0	2	0	2	1,208
TOTAL:	23	29	1	53	28,022
PERCENTAGE	43%	55%	2%	100%	
TCAC REQ:			20% max*		

* no more than 20% of low income units should be larger than 1 BD

UNIT TYPES

UNIT TYPE:	FORMAT:	ACCESSIBILITY:	SIZE (GSF):	SIZE (NSF):	TCAC REQ (NSF):	COUNT:
STUDIO	FLAT	ADAPTABLE	433	347	N/A	14
ADPT-0BR-A	FLAT	ADAPTABLE	433		N/A	1
ADPT-0BR-A-C	FLAT	COMMUNICATION	433		N/A	1
ADPT-0BR-A-R	FLAT	REPOSITIONABLE	433		N/A	1
ADPT-0BR-B	FLAT	ADAPTABLE	422		N/A	5
ADPT-0BR-C	FLAT	ADAPTABLE	412		N/A	1
MOBL-0BR-A	FLAT	MOBILITY	431		N/A	2
1-BD						24
ADPT-1BR-A	FLAT	ADAPTABLE	573	500	450	17
ADPT-1BR-A-C	FLAT	COMMUNICATION	573		450	1
ADPT-1BR-A-R	FLAT	REPOSITIONABLE	573		450	1
ADPT-1BR-B	FLAT	ADAPTABLE	564	541	450	5
ADPT-1BR-C	FLAT	ADAPTABLE	778	667	450	1
MOBL-1BR-A	FLAT	MOBILITY	581		450	1
MOBL-1BR-B	FLAT	MOBILITY	611		450	1
MOBL-1BR-C	FLAT	MOBILITY	778		450	1
2-BD						28
ADPT-2BR-A	FLAT	ADAPTABLE	958	784	700	1
						1
Total Units:						53

PLANNING DATA

SENIOR HOUSING	PERMITTED	PROVIDED
FAR (1:5)	54,023 MAX	45,319 S.F.
RESIDENTIAL DENSITY (1:200 RC-4)	54 UNITS	53
REAR YARD 25% (137.5'*25)*78.58	2,701 S.F.	1,706 S.F.
RES OPEN SPACE (24 SF *53 du)	1,272 S.F.	3,102 S.F.
PARKING	NONE	NONE
LOADING	NONE	1 Street
HEIGHT	65 FT.	65 FT.
RES BIKE PARKING CLASS I 1:10 du	5 SPACES	10 SPACES
RES BIKE PARKING CLASS II 1:50 du	2	2
COM BIKE PARKING CLASS I 1:7500 sf	0	0
COM BIKE PARKING CLASS II 1:7500 sf	2	2
STREET TREES 1 PER 20'	3	3

ACCESSIBLE UNIT SUMMARY

UNIT TYPE	ACCESSIBLE MOBILITY UNIT (11B) 10% PER 2015 TCAC, COMPLIES WITH 2016 CBC 11B	ADAPTABLE HEARING + VISUAL IMPAIRED ADAPTABLE UNIT (4% PER 2015 TCAC, COMPLIES WITH 2016 CBC 11A)	ADAPTABLE UNIT 11A(86% PER 2016 CB	REPOSITIONABLE COUNTERTOPS (IN 5% OF TOTAL 90% ADAPTABLE UNITS, COMPLIES WITH 2016 CBC 11A)
STUDIO	2	1	20	1
1 BD	3	1	25	1
2 BD	0	0	1	0
SUBTOTAL	5	2	46	2
GRAND TOTAL:			53	

* Note: Accessible mobility TBD

CODES + REGULATIONS

APPLICABLE CODES AND REGULATIONS

Codes:
2016 California Building Code
2016 California Electrical Code
2016 California Mechanical Code
2016 California Plumbing Code
2016 Green Building Code
2016 California Energy Code
2010 ADA Standards
Federal Fair Housing Act
Outdoor Developed Area Guidelines (Access Board)
San Francisco Health Code, Article 38

Funding Requirements:
TCAC, Attachment 10

Green Building:
GreenPoint Rated: Goal 176

BUILDING AREA

SENIOR BUILDING

PROGRAM	AREA
---------	------

LEVEL 1	MULTI-PURPOSE SPACE/KITCHEN/STORAGE/FILE/ PM OFFICE/WC/LOBBY/MAIL/	2,039
COMMERCIAL		1,190
BIKE PARKING		138
RESIDENTIAL		1,208
CIRCULATION		1,209
SERVICE (MECH/ELEC/PUMP/TRASH)		1,677
		7,461

LEVEL 2	RESIDENTIAL	5,986
CIRCULATION		1,798
SERVICE(LAUNDRY/TRASH/MECH)		262
		8,046

LEVEL 3	RESIDENTIAL	6,415
CIRCULATION		1,989
SERVICE(LAUNDRY/TRASH/MECH)		262
		8,666

LEVEL 4	RESIDENTIAL	6,415
CIRCULATION		1,989
SERVICE(LAUNDRY/TRASH/MECH)		262
		8,666

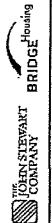
LEVEL 5	RESIDENTIAL	4,044
CIRCULATION		1,934
SERVICE(LAUNDRY/TRASH/MECH)		262
		6,240

LEVEL 6	RESIDENTIAL	4,044
CIRCULATION		1,934
SERVICE(LAUNDRY/TRASH/MECH)		367
		6,345
TOTAL GSF		45,424

TOTAL GFA (PLANNING CODE) 37,960
2017.05.04 TIS

03/09/18

PROJECT DATA - SENIOR HOUSING



A0.3 LMSA 88 BROADWAY/+735 DAVIS CERTIFICATE OF APPROPRIATENESS REV-5 / SECTION 315

PROJECT DESCRIPTION

Design Concept

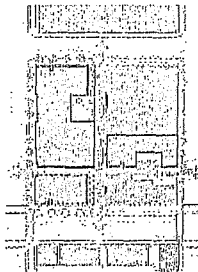
1. The Architectural Design Concept for 88 Broadway / 735 Davis is an integrated design response to the multifaceted requirements of Site, Context and Program. It will welcome and nurture families and seniors, enhance the diverse context of the Northeast Waterfront Historic District, and enrich the urban experience of the broader community. The design addresses five key areas:
2. **Connected Community:** The design provides a variety of generous networked community spaces, indoors and out, that will encourage social engagement at many scales – from small play groups to larger community gatherings; between residents, their neighborhood and the city beyond.
3. **Healthy City Living:** The project will provide 178 healthy, sustainable and affordable homes with bright, inviting living spaces that connect residents to the natural world on a daily basis.
4. **Intergenerational Integration:** A multi-generational community of families, seniors, and a neighborhood-serving child care center, will come together in a supportive enclave of landscaped courtyards, roof terraces and pedestrian passages.
5. **Urban Vitality:** Retail and community spaces, restaurant, café, a child care center and live-work flats will enliven the block's four street frontages, enriching urban life. Two intersecting mid-block passages will invite pedestrians into the landscaped interior of the site for outdoor dining and strolling.

4734

Historic Context: The new construction is designed to fully comply with the Secretary of the Interiors Standards for the Treatment of Historic Properties as well as Section 6, Appendix D, Article 10—Northeast Waterfront Historic District, of the San Francisco Planning Code. The overall design is compatible with the defining elements of the Northeast Waterfront Historic District, while clearly expressing its contemporary condition. Through a variety of integrated design elements, the project avoids a false sense of historical development by drawing upon the essential character of this historically industrial district: authenticity; a forthright use of simple, industrial materials; and a clear expression of structural rhythms and proportions.

Site Plan

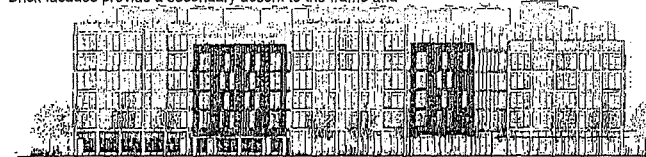
The Site Plan is organized around two landscaped pedestrian passages that take their cue from alleys throughout the district such as Ice House Alley and John Maher Street. They cross the two lots and intersect near the center of the block. A north/south passage on the Port Site extends from Broadway north to Vallejo Street, while an east/west passage on the DPW Site passes under the Senior Apartments on Davis Street, opening into an interior courtyard and extending to the Family Apartment Building Lobby on Front Street. In addition to enriching the urban experience of the neighborhood, the passages also help to articulate the massing of the buildings into smaller elements more compatible with the scale of the surrounding historic context. Active retail and community-serving spaces line the street frontages on all four sides of the block, while the mid-block passages host more private uses, including courtyards, ground floor live-work units and a playground for the neighborhood child care center.



Site Plan

Family Apartment Building (5 stories over Podium)

- Occupying the Port Site (Seawall Lot 322-1) and facing Broadway, Front and Vallejo Streets, this building contains 125 apartments for families, with ground floor retail and community-serving spaces and rooftop common spaces.
- **Massing:** The building mass is articulated into smaller elements compatible with the typical scale and rhythm of adjacent structures in the historic district. The massing steps in and down along Front Street, and at the eastern ends of the Broadway and Vallejo Street facades. Additional step back occur at the corner of Broadway and Front Street.
- **Facades:** The dominant façade treatment at the site perimeter is inspired by the historic frame-and-infill structures surrounding the site, expressing vertical bearing lines and horizontal floor lines. Infill panels echo the texture and color of nearby concrete buildings. Projecting panels strategically arrayed throughout the façade provide detail, accent color, and relief. The facades at the interior of the site are finished in a simpler and lighter cladding to amplify the available daylight. Brick facades provide a secondary accent to the frame and infill elements.

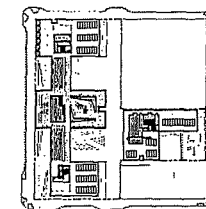


Front St. Elevation

- **Ground Floor Broadway:** Space for retail and restaurant uses is provided at the corner of Broadway and Front Streets, extending east along Broadway to the entry to north/south passage. The restaurant space opens onto an arcade, providing space for outdoor dining that will activate the street and invite people into the mid-block zone.
- **Front Street:** On Front Street, the Lobby entry – providing access to both the apartments and the east/west passage – and social service spaces are recessed behind a small landscaped plaza. Social service spaces include a private office, meeting room and a community space for events and gatherings. Live-work units, entered directly from the street through small garden courts, activate the northern end of the Front Street façade. These flexible spaces could easily be converted to retail spaces as the neighborhood evolves.
- **Vallejo Street:** A child care center is located at the northeast corner, opening onto both Vallejo Street and the east/west passage. An arcade, similar to the one on the south side, provides a secure, covered play space for the children in rainy weather. A large, enclosed courtyard off the passage provides a playground for the children. During off hours, the playground can serve the residents of the Family Building.
- **Roof:** The roof provides a 6th floor terrace for the residents, along with space for vegetable gardens and alternative energy systems. Green roofs and rooftop planters provide a more inviting space, manage stormwater, and enhance the views of neighbors.



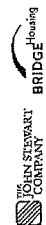
Front St. X Broadway St.



Roof Plan

03/09/18

PROJECT NARRATIVE

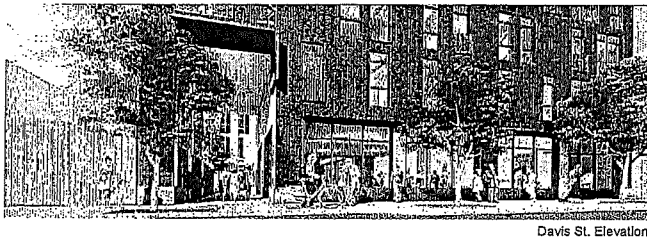
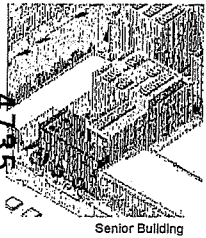


A0.4 LMSA 88 BROADWAY / 735 DAVIS CERTIFICATE OF APPROPRIATENESS REV-5 / SECTION 315

Senior Apartment Building (3 and 5 stories over 1)

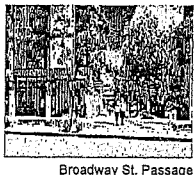
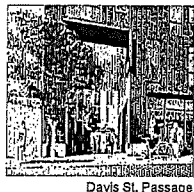
Occupying the "DPW Site" and facing Davis Street, this building provides 53 apartments for seniors with ground floor retail, administration, and common spaces and a roof terrace.

- **Massing:** The U-shaped building steps down two floors at Davis Street to match the scale of the adjacent brick structure to the north.
- **Facade:** Unlike the Family Apartment Building, the Senior Apartment Building is flanked by historic brick buildings on Davis Street. Here, the frame-and-infill cladding is replaced by a planar facade with tall, deep-set openings and brick cladding. "French balconies" set within some of the openings reinforce this compatibility with the historic context. Similar to the Family Apartment Building
- **Building,** the cladding at the interior courtyard would be constructed of simpler and lighter panels to amplify daylight.
- **Ground Floor:** The east facade on Davis Street is occupied by the building Lobby, a café space and a two-story tall portal leading to the east/west passage. The café opens into both the portal and an interior courtyard to allow for outdoor dining. The interior courtyard is shared by the senior's Community Room, fostering greater community connection.
- **Roof:** A 5th Floor roof terrace overlooking Davis Street provides additional common outdoor space and gardening space for the residents, along with stunning views of the waterfront.



Mid-Block Passages

- The two mid-block passages will offer a major new public pedestrian experience to the Northeast Waterfront.
- **North/South Passage:** The broad passage on the Port Site will be anchored at the north by a neighborhood-serving child care center and playground, and at the south by a new restaurant with outdoor seating. At the mid-block, six ground floor apartments enter off the passage through small private entry porches. A landscaped "ribbon" will divide the passage, with lush planting, and seating, creating a variety of community gathering spaces. The passage offers a great opportunity for public art to further enliven the shared public place.
- **East/West Passage:** The passage on the DPW Site is narrower and will provide a more intimate pedestrian experience. At the eastern entry on Davis Street, a two-story portal frames a view west through both sites all the way to Front Street. A café with outdoor seating activates the portal. Further along, one arrives at an inviting interior courtyard with landscaping, more café tables and outdoor seating for senior Common Room. After passing through another, lower portal, one arrives at the intersection with the north/south passage and a celebration of public art. Ahead, the passage is enclosed to create a glassy Lobby for the Family Apartment Building that opens out onto Front Street.



Construction Type and Building Materials

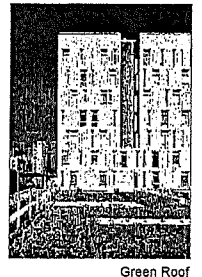
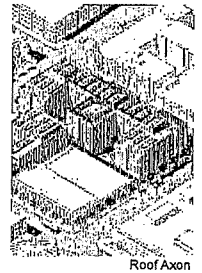
Brick masonry, reinforced concrete, and stucco are the predominant historic materials in the district. These materials, serving as both structure and exterior finish, were typical for their respective historic periods and reflect an industrial simplicity and durability. They provide a record of the evolution of construction technologies within the district over time, particularly after the devastation of the 1906 earthquake and fire.

The new buildings are designed as physical records of their time, place and use, offering compatible yet contemporary interpretations of the defining characteristics of the historic district. In accordance with the Secretary of the Interiors Standards for the Treatment of Historic Properties Standard Nine, the architecture avoids creating a false sense of historical development by using contemporary materials and detailing to create a meaningful dialogue with history. It extends the historic evolution of construction technologies already displayed within the district by respectfully articulating 21st century construction technologies. Consistent with this evolution, the new building will use simple, durable structural systems typical of our own time: up to five stories of wood-framed construction above a one-story concrete podium. At the frame and infill portions of the building, lightweight cement board panels in a rain screen application will retain the simple, durable character of the district while providing a high-performance building envelope appropriate to 21st century requirements.

In order to blend with the character of the surrounding district, a rustic, red, sand finished brick cladding will be used on significant portions of both buildings. Different from bearing walls of the historic district, the thin brick veneer is applied to a wood framed structure. The thin veneer takes cues from the horizontal bond and narrow deep-set openings of the district. As a contemporary interpretation, the brick facade is stacked instead of a running bond; the window frames and brick edges, while deep, are trimmed with metal. Together the cement panels and brick veneer are compatible with the texture and material of the Northeast Waterfront Historic District.

Green Building Strategies

- **General:** Construction materials and systems will be selected for both durability and sustainability with an emphasis on healthy living environments and advanced energy and water conservation.
- **Healthy Homes:** Non-toxic materials, natural ventilation and abundant daylight will be combined to provide the healthiest possible indoor environments for the residents.
- **Stormwater Management:** Green roofs will retard and filter rainwater runoff while providing an appealing view to surrounding neighbors. Filtered rainwater will be directed to an underground cistern to be used as non potable water for flushing toilets and for site landscape irrigation.
- **Organic Gardens:** The roof terraces of both buildings feature garden boxes that allow families and seniors to grow their own vegetables, providing food while fostering healthy social interaction.
- **Alternative Energy:** Rooftop photovoltaic and solar thermal canopies are estimated to provide up to 20% of the electrical demand, and up to 70% of the domestic hot water demand.
- **Water Conservation:** Ultra water-efficient fixtures, combined with draught-tolerant landscaping, will reduce water use by an estimated 45% from baseline.
- We expect to achieve a Green Point Rated Multifamily score of approximately 175 points for the Family Building and 137 points for the Senior Building.



03/09/18

88 BROADWAY #735 DAVIS CENTER OF AEROPHOTOMETRY
FEB 27 1980

1 SITE CONTEXT

03/09/18

CERTIFICATE OF APPROPRIATENESS
REV-5 / SECTION 315

88 BROADWAY/+735 DAVIS

A1.1

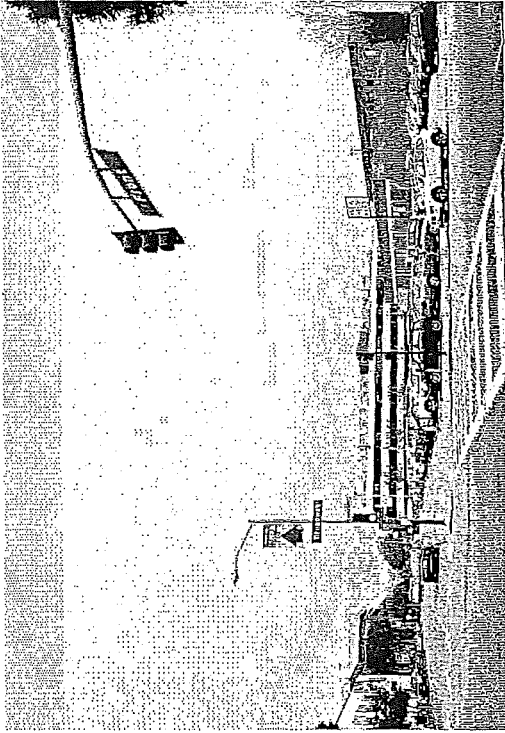
SITE CONTEXT - HISTORIC DISTRICTS

JOHN STEWART
COMPANY
BRIDGE
HOUSING

- NORTHEAST
WATERFRONT
HISTORIC DISTRICT
- TELEGRAPH HILL
HISTORIC DISTRICT



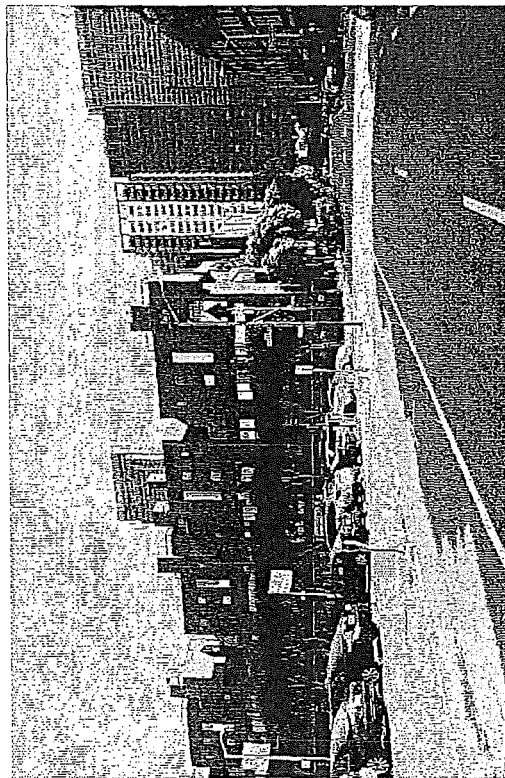
EXISTING SITE PHOTOGRAPHS



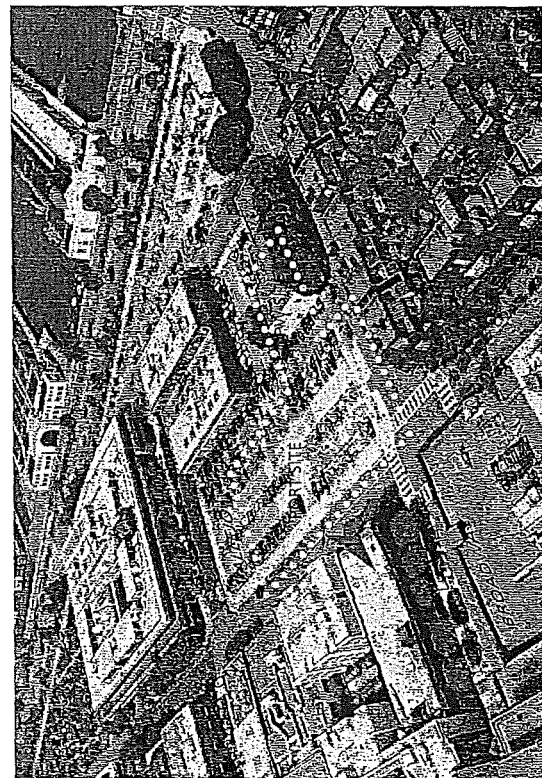
VIEW 2 LOOKING NORTH ON FRONT STREET X BROADWAY



VIEW 3 LOOKING NORTH WEST ON BROADWAY AND DAVIS STREET

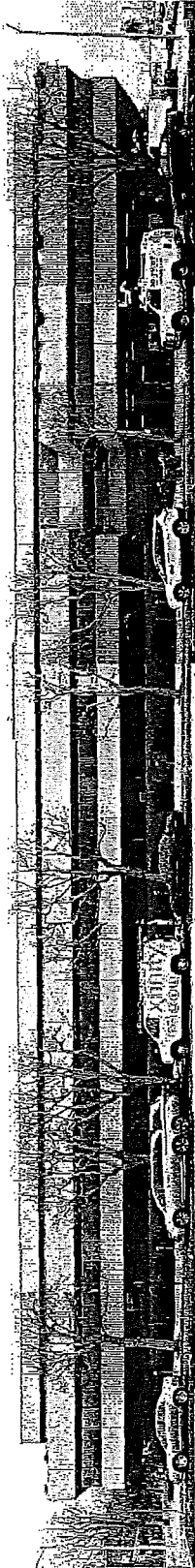


VIEW 1 LOOKING SOUTH ON FRONT STREET

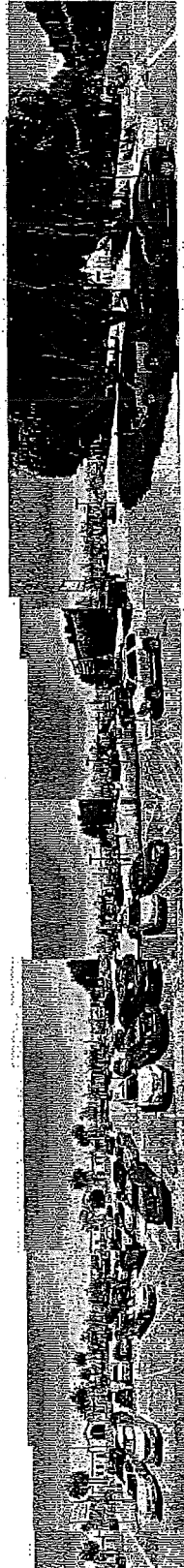


AERIAL VIEW + KEY

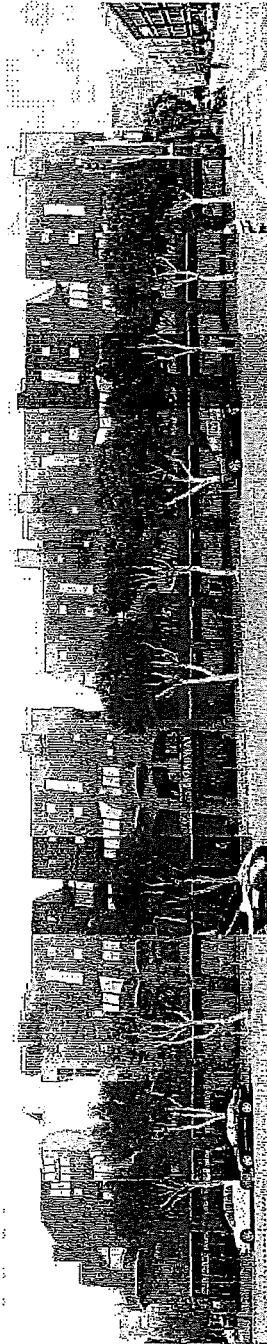
SITE PHOTOS - VIEWS FROM SITE



1 VALLEJO STREET



2 DAVIS STREET



3 BROADWAY STREET



4 FRONT STREET

03/09/18

CERTIFICATE OF APPROPRIATENESS
REV-5 / SECTION 315

88 BROADWAY/+735 DAVIS

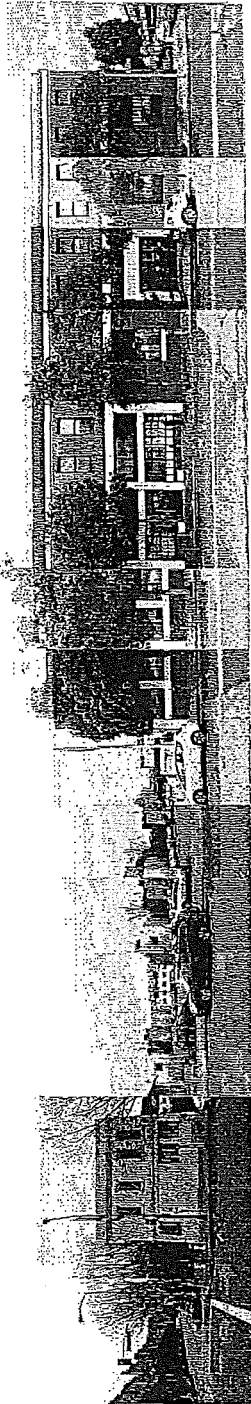
A1.4 LMSA

SITE PHOTOS - VIEWS INTO SITE

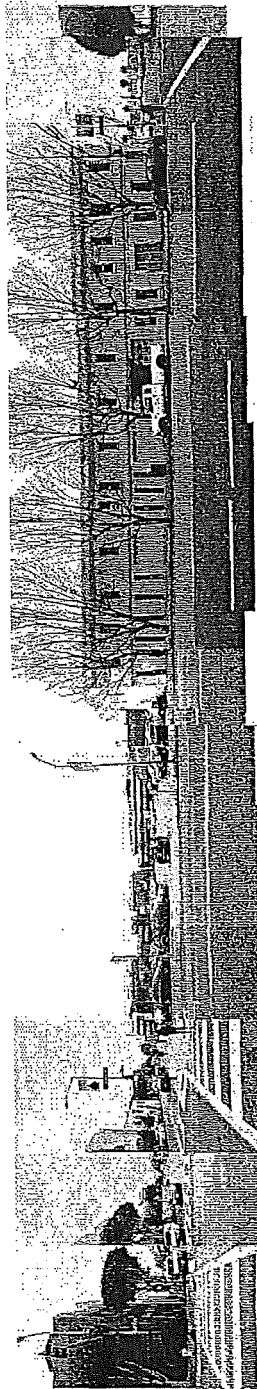
JOHN STEWART
COMPANY
BRIDGE
HOUSING



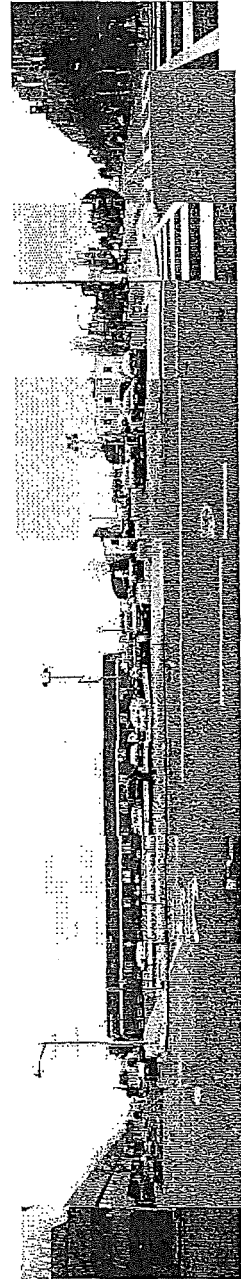
5 VALLEJO STREET



6 DAVIS STREET







7 BROADWAY STREET



8 FRONT STREET



LEGEND

-  HISTORIC BEARING WALL BLDGS.
-  HISTORIC FRAME & INFILL BLDGS.
-  NON-CONTRIBUTING
-  NE WATERFRONT DISTRICT BOUNDARY

BEARING WALL BLDGS.

28%

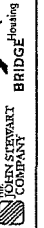
FRAME & INFILL BLDGS.

46%

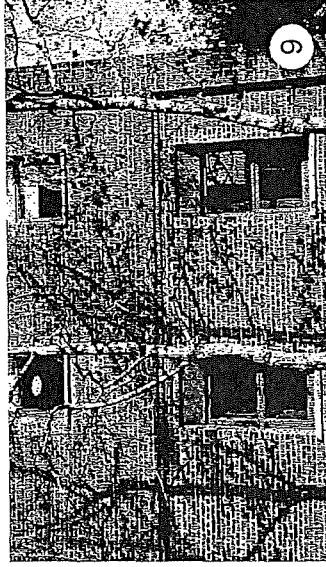
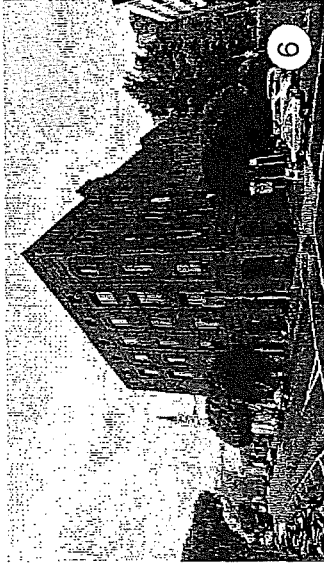
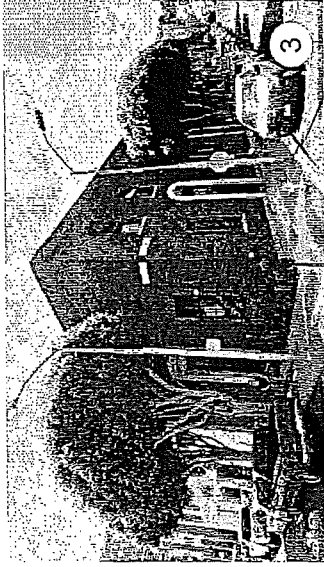
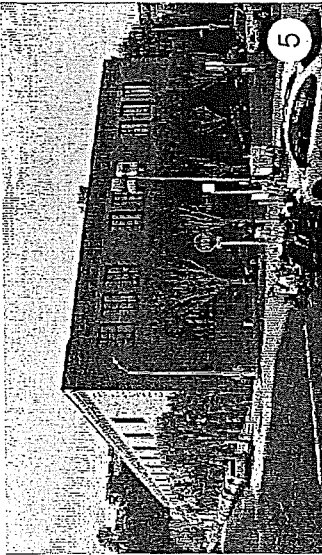
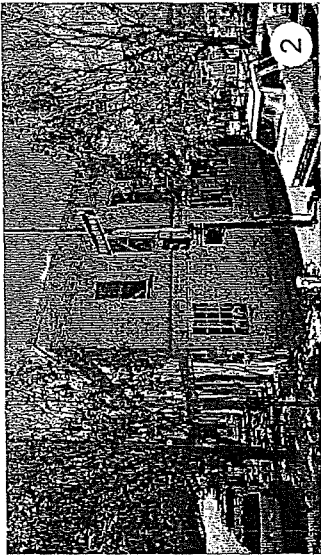
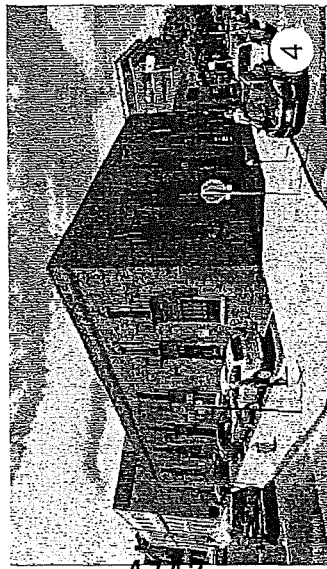
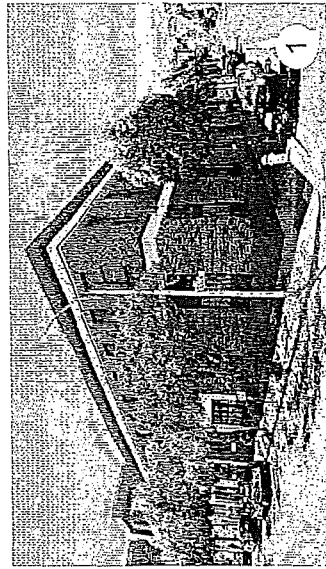
NON-CONTRIBUTING

26%

SITE BUILDING CONTEXT



BEARING WALL BLDGS. 28%



SITE BUILDING CONTEXT

88 BROADWAY/+735 DAVIS
CERTIFICATE OF APPROPRIATENESS
REV-5 / SECTION 315

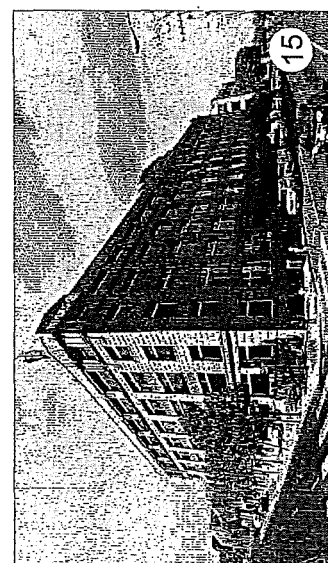
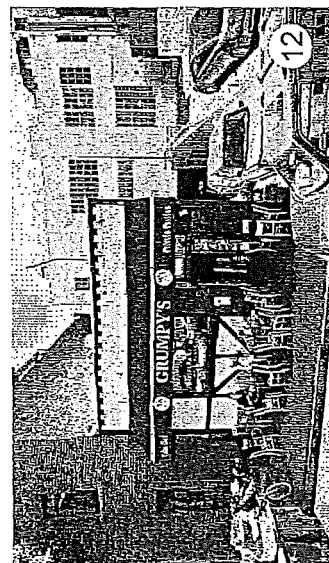
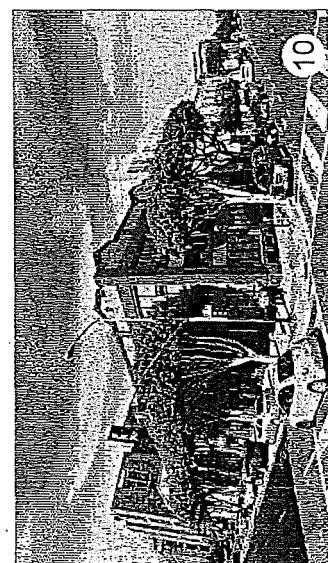
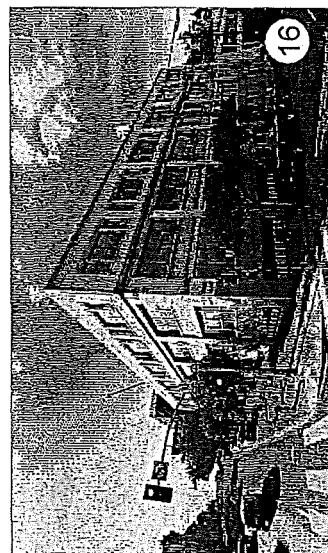
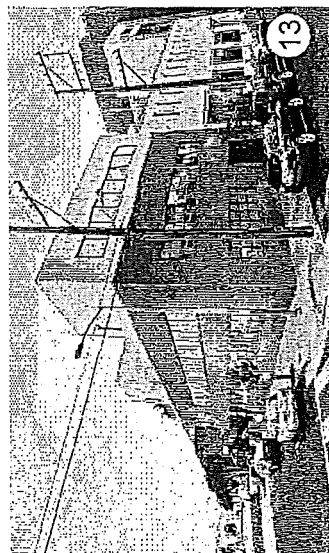
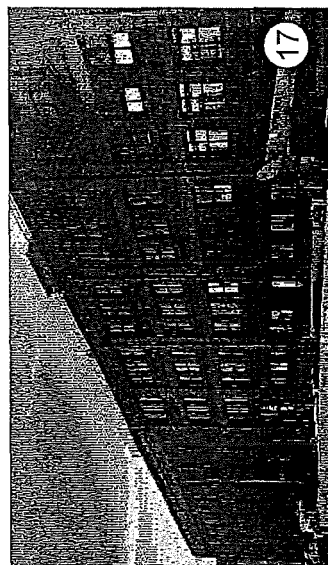
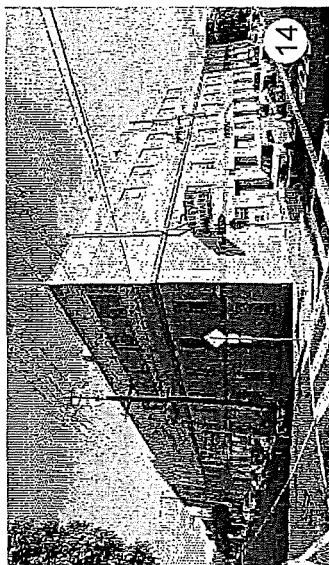
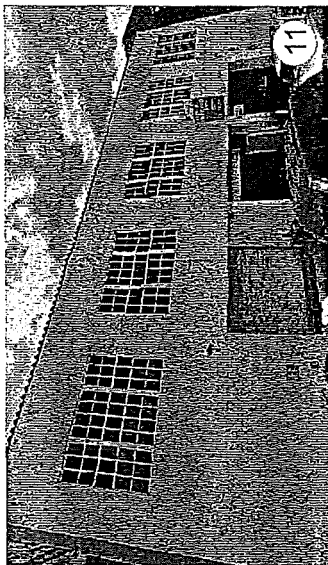
JOHN STEWART
COMPANY
BRIDGE
PLANNING

A1.6

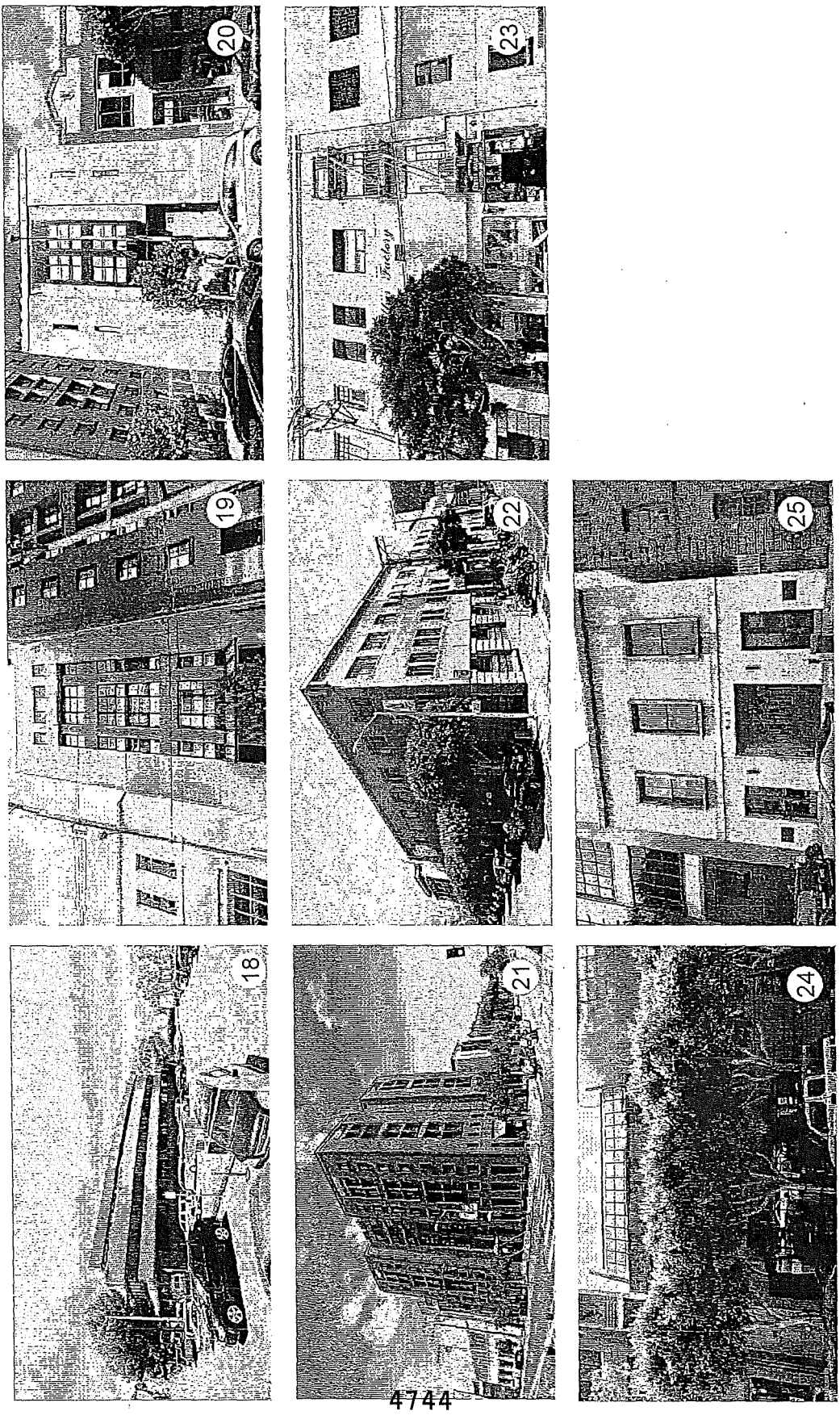
LMSA

03/09/18

FRAME & INFILL BLDGS. 46%



NON-CONTRIBUTING 26%



4744

2 ARCHITECTURAL DRAWINGS

03/09/18

CERTIFICATE OF APPROPRIATENESS
REV-5 / SECTION 315

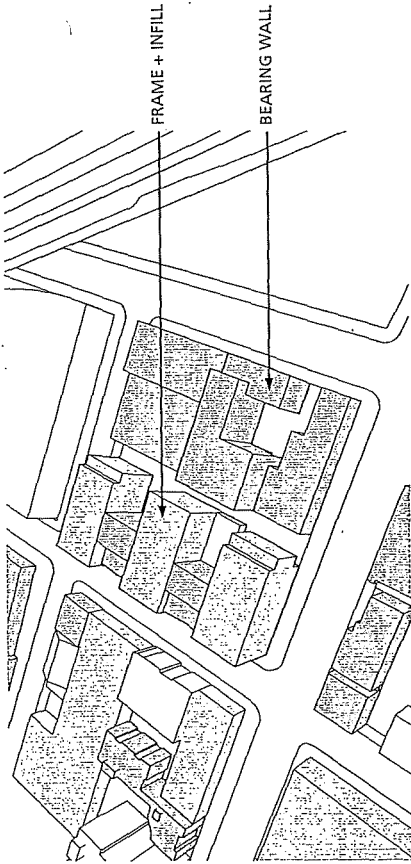
88 BROADWAY / +735 DAVIS

A2.1 LMS

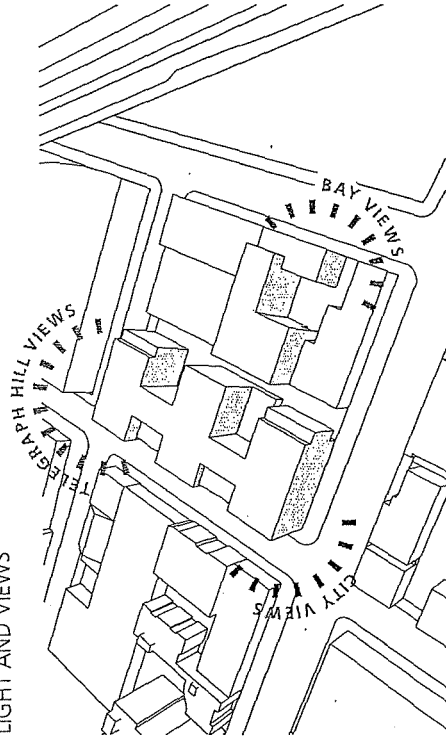
CONCEPT DIAGRAMS

JOHN STEWART
COMPANY
BRIDGE
BUILDING

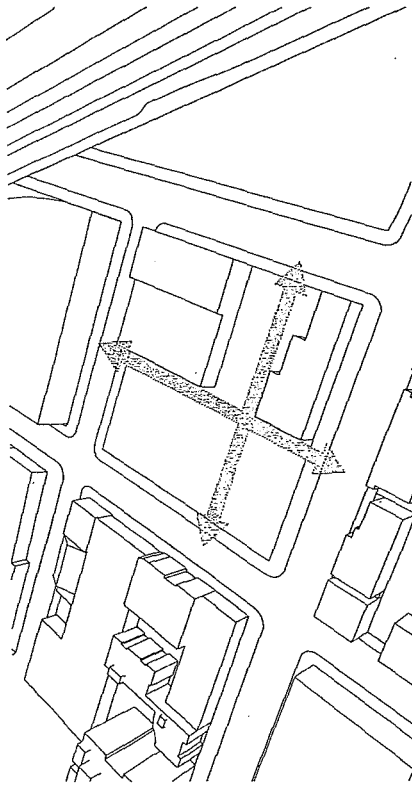
CONTEXTUAL HARMONY



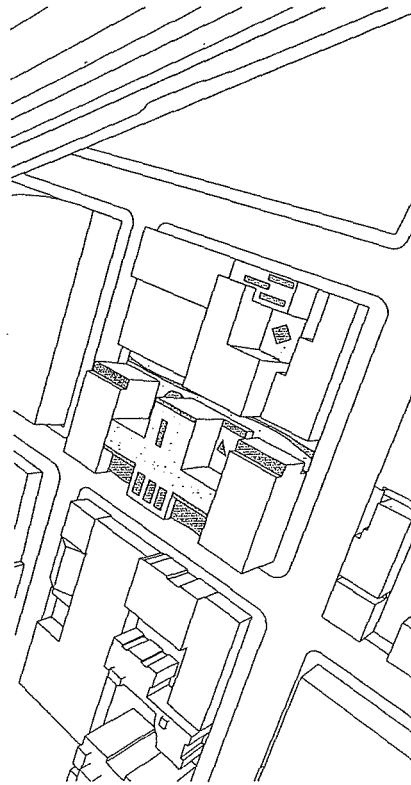
LIGHT AND VIEWS

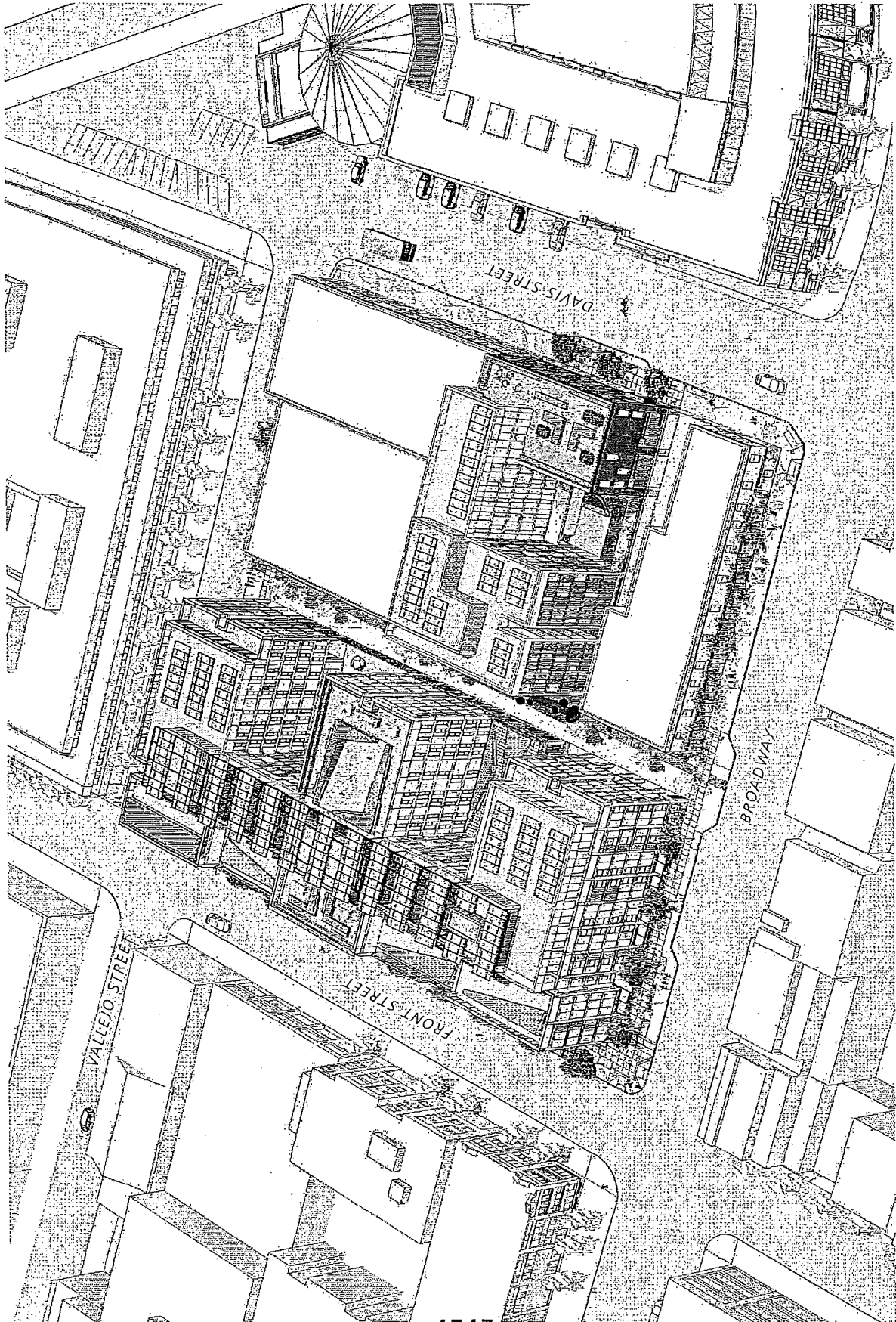


MID BLOCK PASSAGES



NETWORKED GREEN + OPEN SPACE

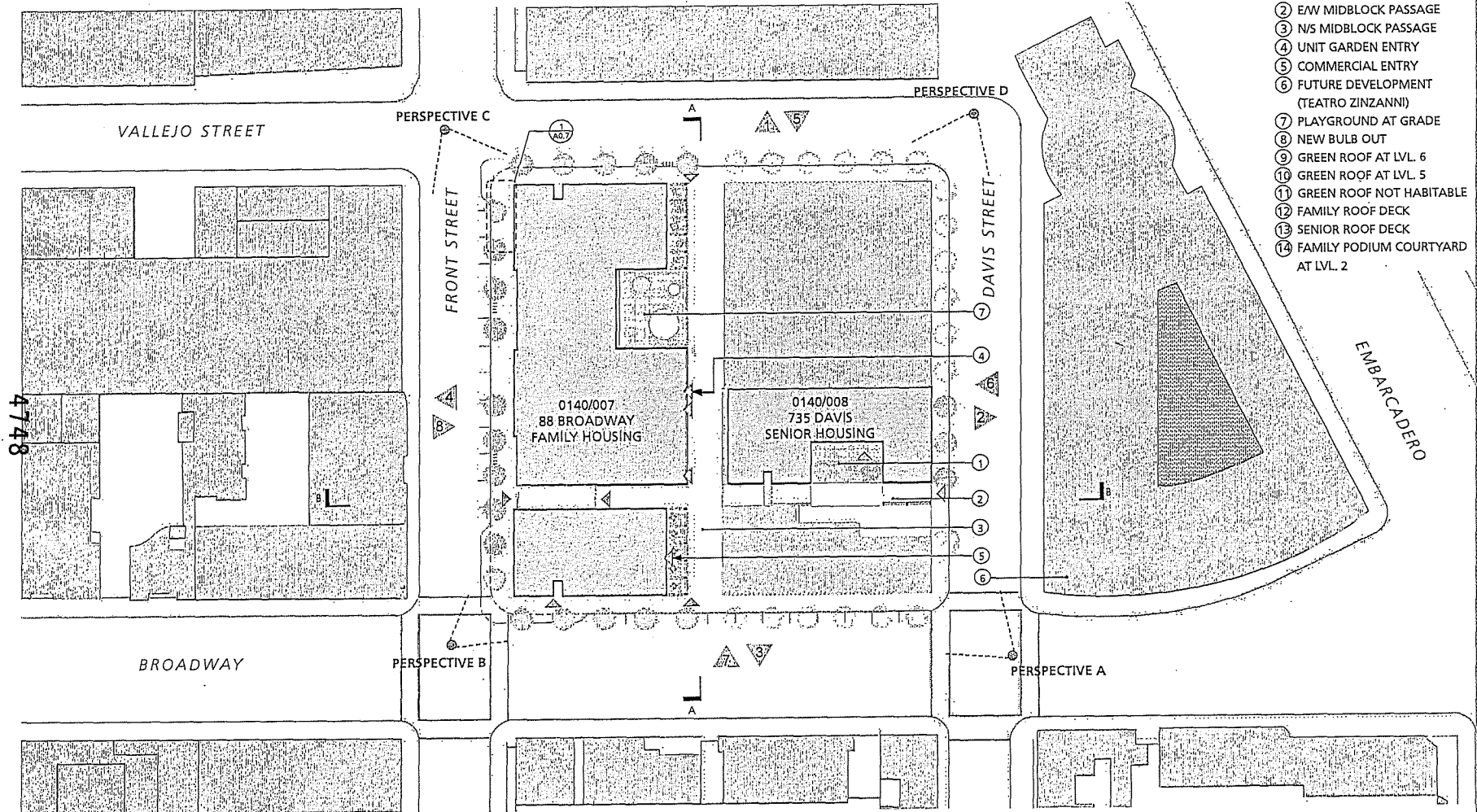




SITE PLAN / KEYPLAN KEYNOTES:

03/09/18

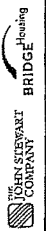
- ① COMMON COURTYARD AT GRADE
- ② E/W MIDBLOCK PASSAGE
- ③ N/S MIDBLOCK PASSAGE
- ④ UNIT GARDEN ENTRY
- ⑤ COMMERCIAL ENTRY
- ⑥ FUTURE DEVELOPMENT (TEATRO ZINZANNI)
- ⑦ PLAYGROUND AT GRADE
- ⑧ NEW BULB OUT
- ⑨ GREEN ROOF AT LVL. 6
- ⑩ GREEN ROOF AT LVL. 5
- ⑪ GREEN ROOF NOT HABITABLE
- ⑫ FAMILY ROOF DECK
- ⑬ SENIOR ROOF DECK
- ⑭ FAMILY PODIUM COURTYARD AT LVL. 2



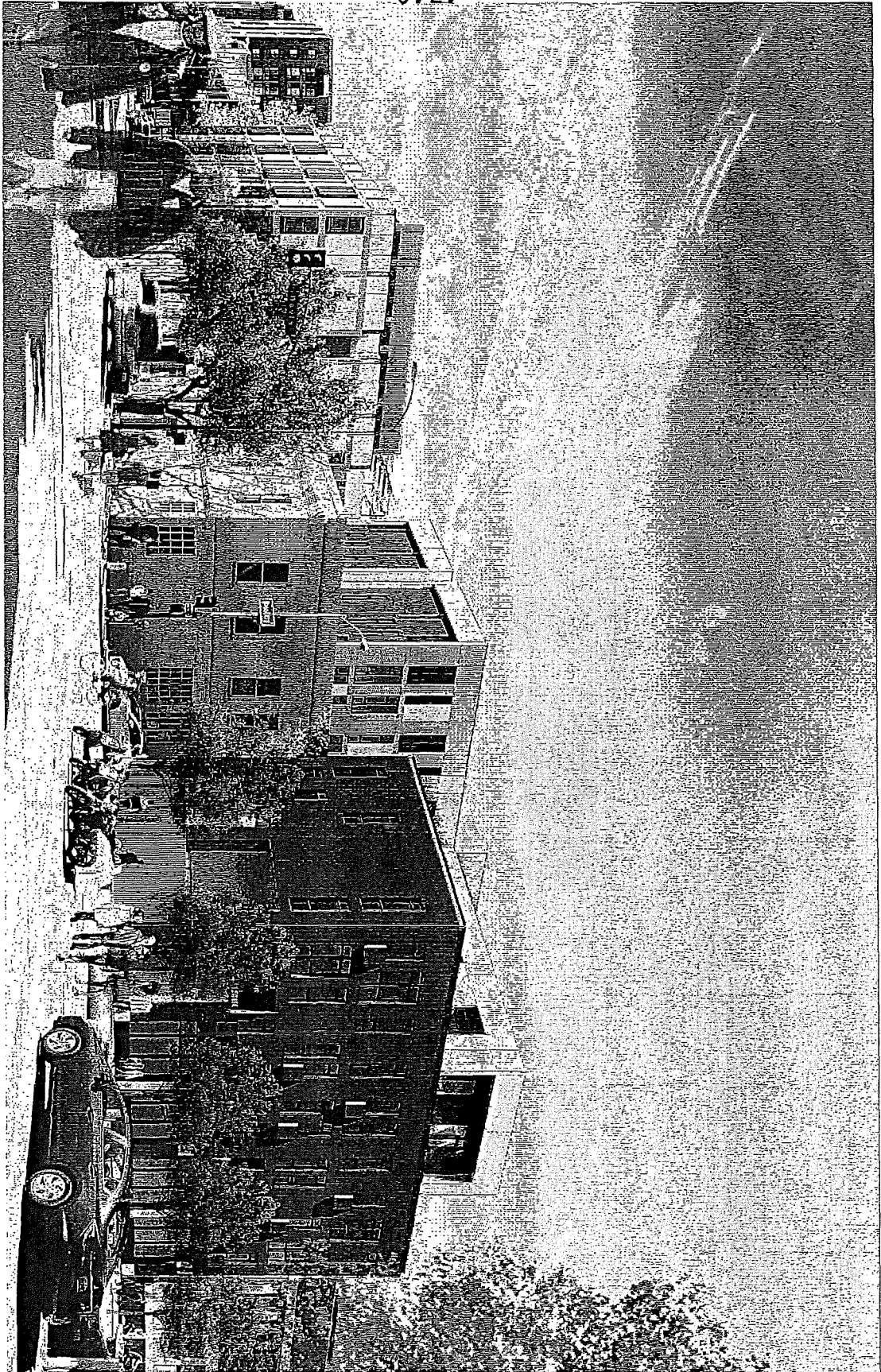
▲ PANORAMIC SEE A0.8-A0.9



KEY PLAN



A2.3 LMSA 88 BROADWAY / 735 DAVIS CERTIFICATE OF APPROPRIATENESS
REV-5 / SECTION 315



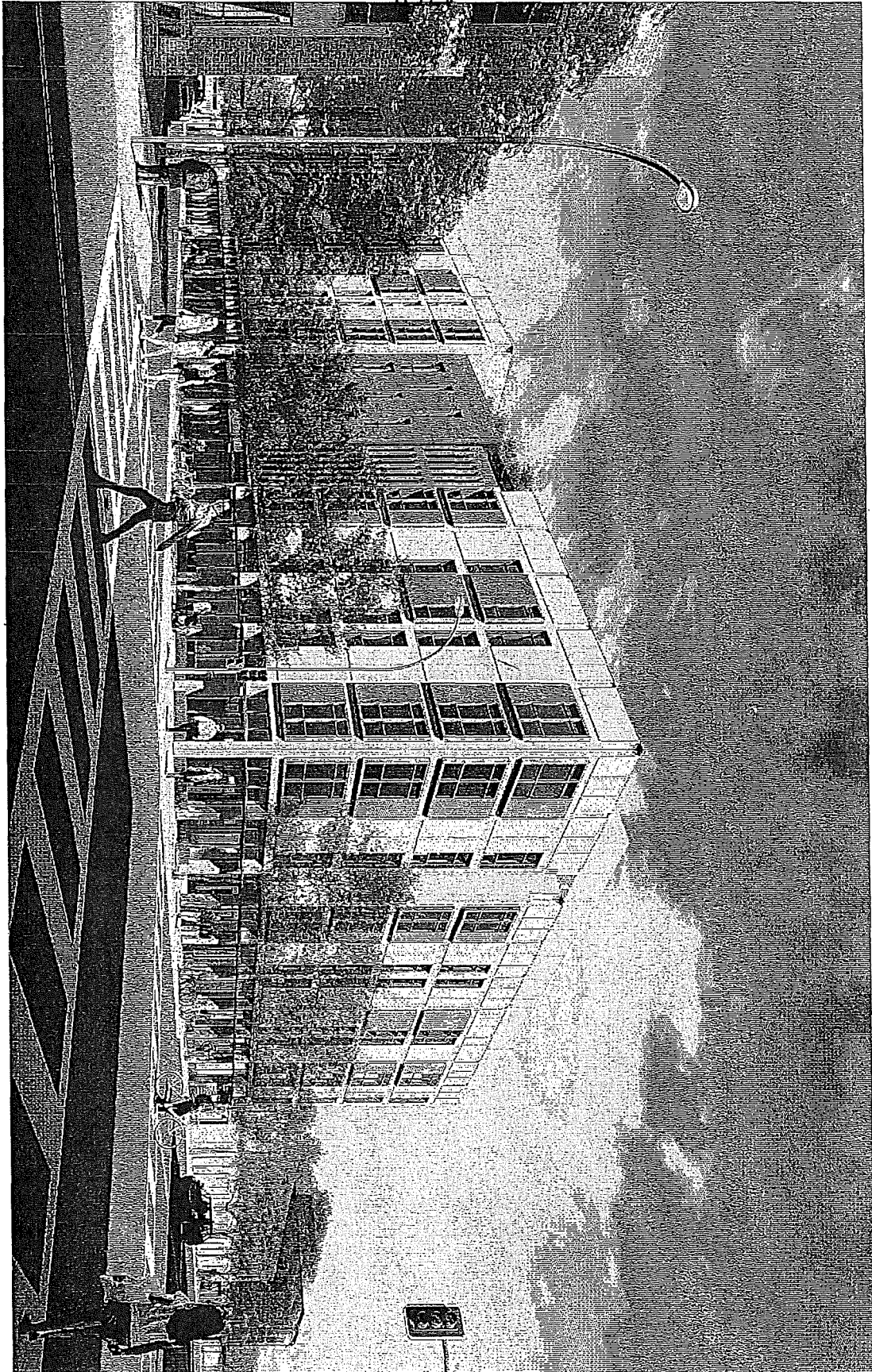
PERSPECTIVE A - BROADWAY X DAVIS STREET

A2.4 LMSA

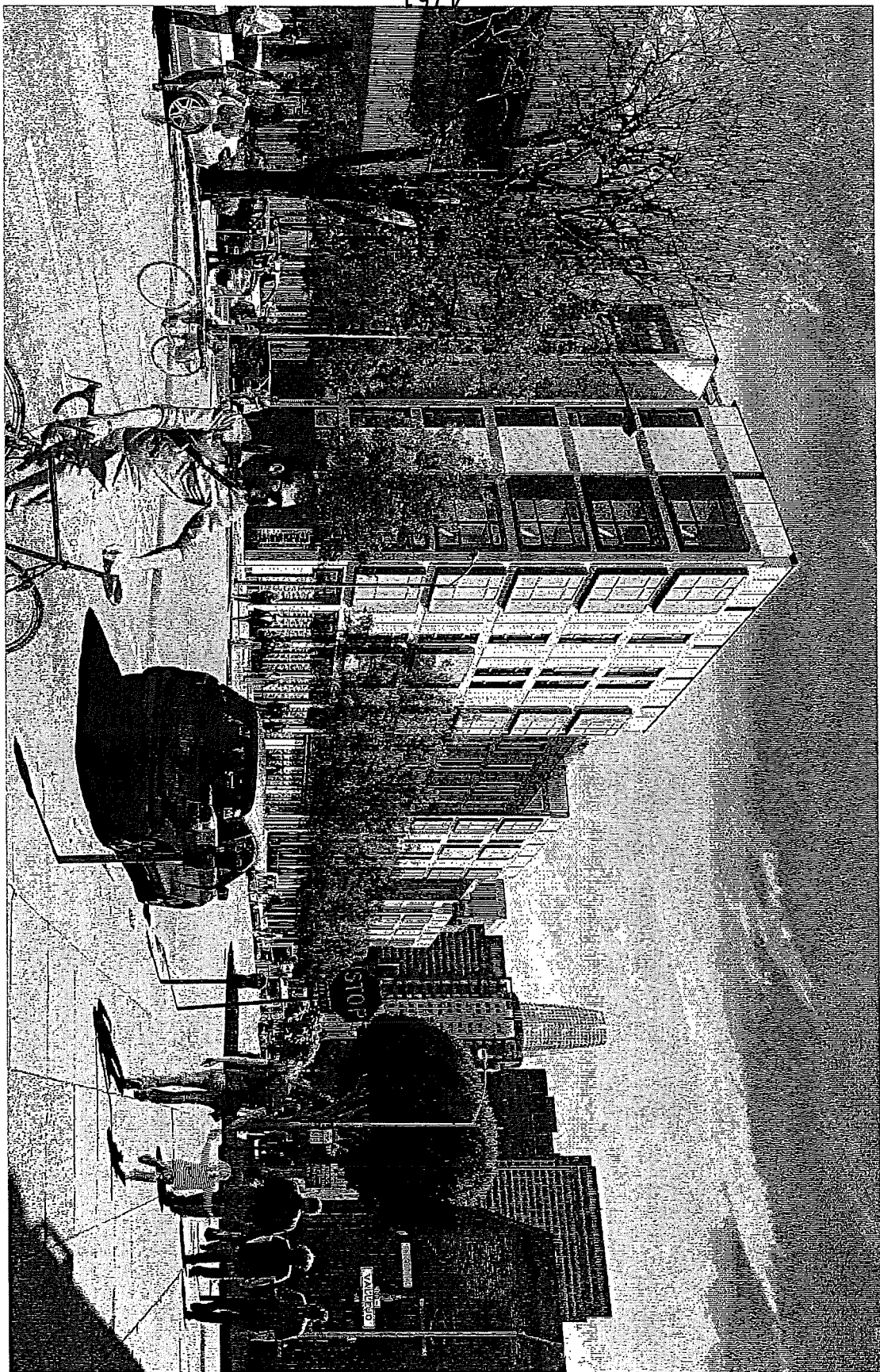
88 BROADWAY/+735 DAVIS

CERTIFICATE OF APPROPRIATENESS
REV-5 / SECTION 315

03/09/18

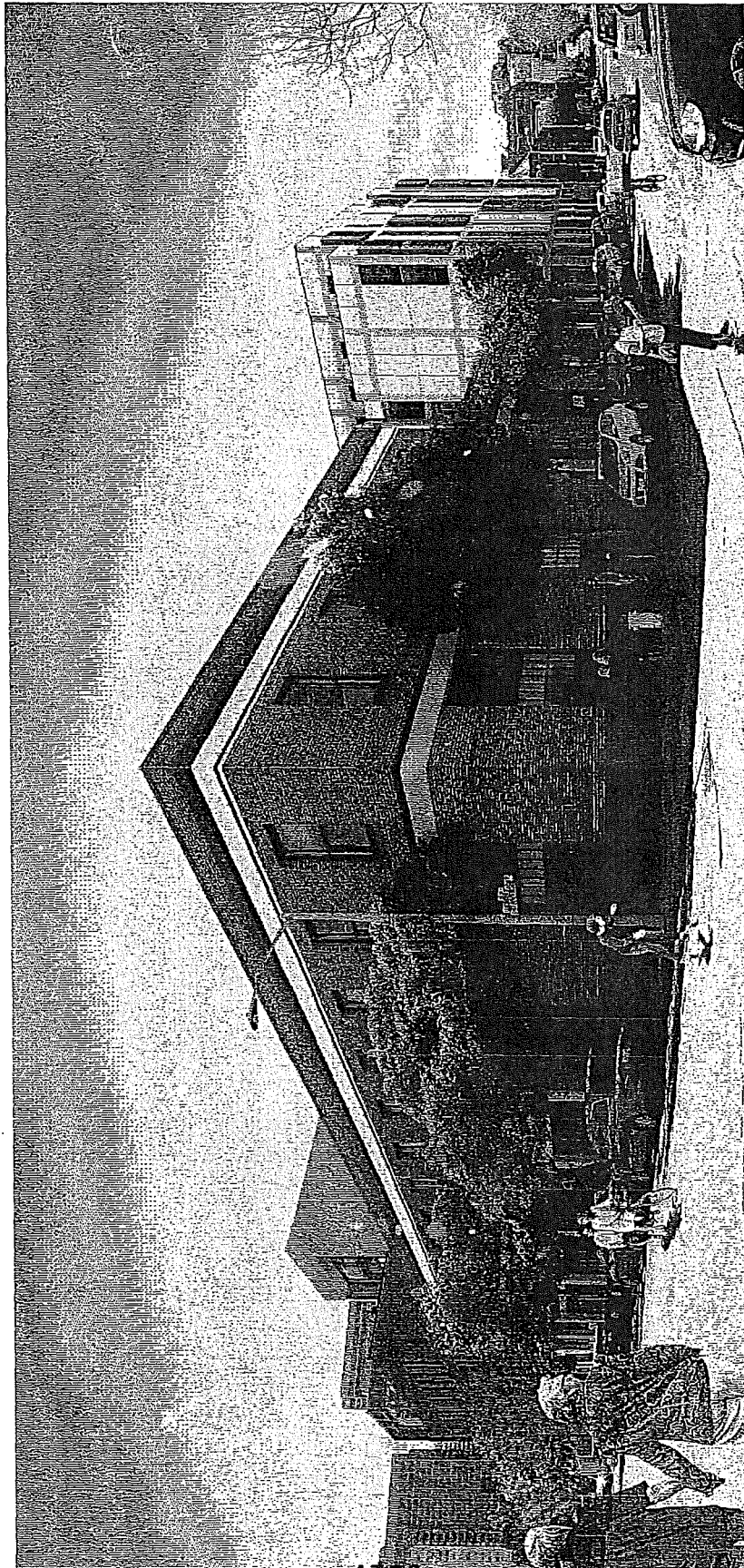


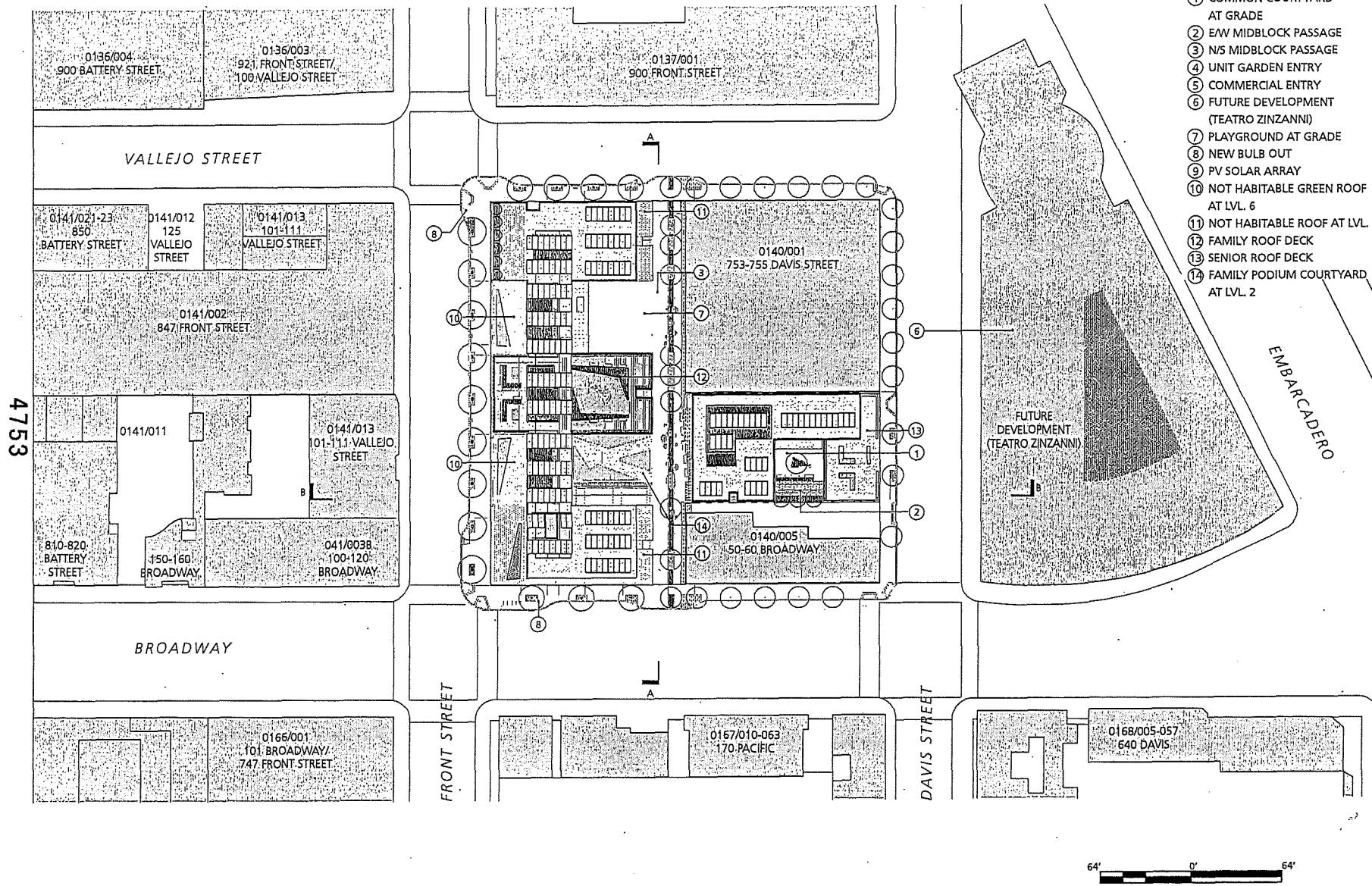
4/50



03/09/18

PERSPECTIVE D - VALLEJO X DAVIS STREETS





SITE PLAN / KEYPLAN KEYNOTES:

- ① COMMON COURTYARD AT GRADE
- ② E/W MIDBLOCK PASSAGE
- ③ N/S MIDBLOCK PASSAGE
- ④ UNIT GARDEN ENTRY
- ⑤ COMMERCIAL ENTRY
- ⑥ FUTURE DEVELOPMENT (TEATRO ZINZANNI)
- ⑦ PLAYGROUND AT GRADE
- ⑧ NEW BULB OUT
- ⑨ PV SOLAR ARRAY
- ⑩ NOT HABITABLE GREEN ROOF AT LVL. 6
- ⑪ NOT HABITABLE ROOF AT LVL. 6
- ⑫ FAMILY ROOF DECK
- ⑬ SENIOR ROOF DECK
- ⑭ FAMILY PODIUM COURTYARD AT LVL. 2

03/09/18

SITE PLAN

SCALE: 1/8" = 1'-0"

CERTIFICATE OF APPROPRIATENESS

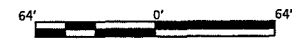
REV-5 / SECTION 315

A2.8

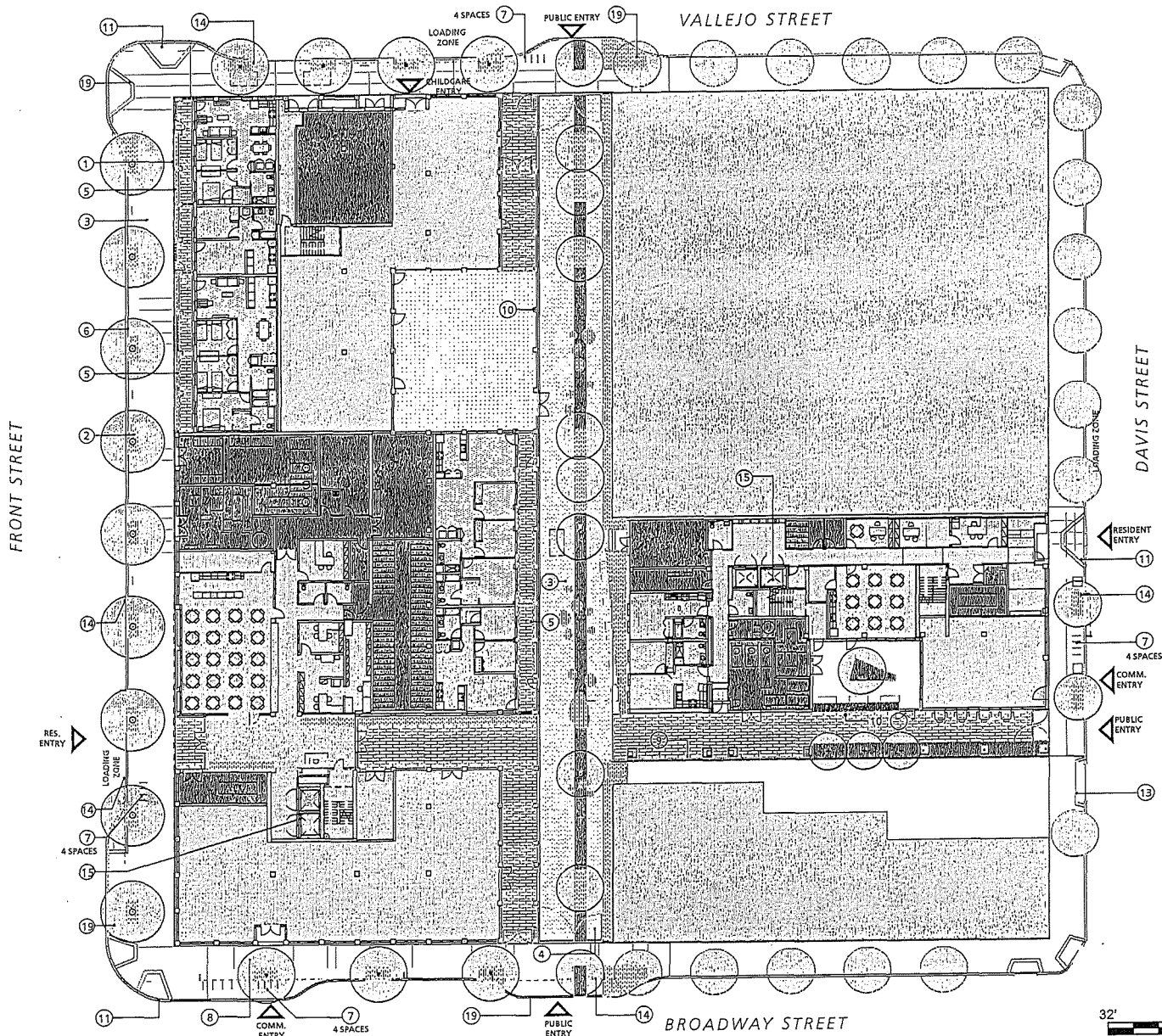
LM SA 88 BROADWAY / 735 DAVIS

JOHN STEWART COMPANY

BRIDGE



4754



FLOOR PLAN KEYNOTES:

- ① UNIT ENTRY GATE / FENCE
- ② TREE WELL COVER; S.L.D.
- ③ TEXTURED PAVEMENT, CONC.
PAVERS; S.L.D.
- ④ MID-BLOCK GATE
- ⑤ GRADE PLANTER
- ⑥ NEW STREET TREE
- ⑦ CLASS II BIKE PARKING
- ⑧ MTL. & GLASS CANOPY
- ⑨ BENCH S.L.D.
- ⑩ COURTYARD FENCE
- ⑪ NEW CURB RAMP
- ⑫ NEW CURB CUT
- ⑬ EXISTING CURB
CUT TO REMAIN
- ⑭ EXISTING CURB
CUT TO BE REMOVED
- ⑮ ELEVATORS
- ⑯ PAVERS
- ⑰ HORIZONTAL EXIT
- ⑱ GREEN ROOF NOT HABITABLE
- ⑲ NEW BULB OUT
- ⑳ PLAY STRUCTURE
- ㉑ FURNITURE BY OTHERS
- ㉒ RAISED PLANTERS
- ㉓ PV SOLAR ARRAY
- ㉔ SENIOR ROOF TERRACE LVL. 5
- ㉕ STL. & CABLE RAILING


LEGEND:

- COMMERCIAL /
CHILDCARE
RESIDENTIAL UNITS
CIRCULATION & SUPPORT
SERVICE

03/09/18

SCALE: 1/32" = 1'-0"

LEVEL 1 PLAN



THE JOHN STEWART
COMPANY

BRIDGE Housing

A2.9	LMS# 88 BROADWAY / +735 DAVIS	CERTIFICATE OF APPROPRIATENESS REV-5 / SECTION 315
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100

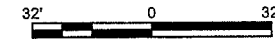
4755

FRONT STREET

VALLEJO STREET

DAVIS STREET

BROADWAY STREET



FLOOR PLAN KEYNOTES:

- ① UNIT ENTRY GATE / FENCE
- ② TREE WELL COVER; S.L.D.
- ③ TEXTURED PAVEMENT, CONC. PAVERS; S.L.D.
- ④ MID-BLOCK GATE
- ⑤ GRADE PLANTER
- ⑥ NEW STREET TREE
- ⑦ CLASS II BIKE PARKING
- ⑧ MTL. & GLASS CANOPY
- ⑨ BENCH S.L.D.
- ⑩ COURTYARD FENCE
- ⑪ NEW CURB RAMP
- ⑫ NEW CURB CUT
- ⑬ EXISTING CURB CUT TO REMAIN
- ⑭ EXISTING CURB CUT TO BE REMOVED
- ⑮ ELEVATORS
- ⑯ PAVERS
- ⑰ HORIZONTAL EXIT
- ⑱ GREEN ROOF NOT HABITABLE
- ⑲ NEW BULB OUT
- ⑳ PLAY STRUCTURE
- ㉑ FURNITURE BY OTHERS
- ㉒ RAISED PLANTERS
- ㉓ PV SOLAR ARRAY
- ㉔ SENIOR ROOF TERRACE LVL. 5
- ㉕ STL. & CABLE RAILING

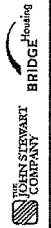
LEGEND:

- COMMERCIAL / CHILDCARE
- RESIDENTIAL UNITS
- CIRCULATION & SUPPORT
- SERVICE

03/09/18

SCALE: 1/32" = 1'-0"

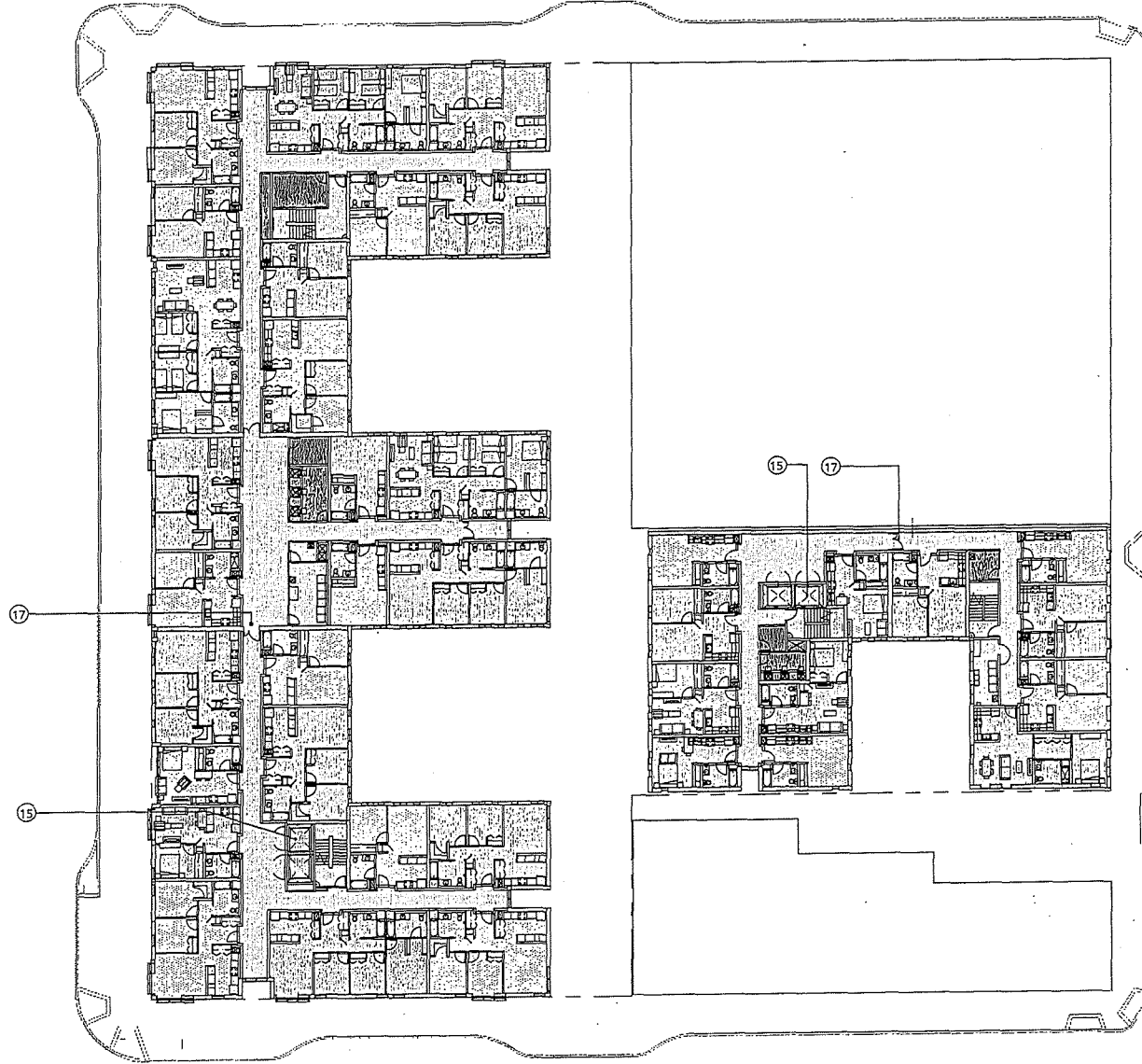
LEVEL 2 PLAN



A2.10 LMSA 88 BROADWAY/+735 DAVIS CERTIFICATE OF APPROPRIATENESS REV-5 / SECTION 315

4756

FRONT STREET



VALLEJO STREET

BROADWAY STREET

DAVIS STREET



FLOOR PLAN KEYNOTES:

- ① UNIT ENTRY GATE / FENCE
- ② TREE WELL COVER; S.L.D.
- ③ TEXTURED PAVEMENT, CONC. PAVERS; S.L.D.
- ④ MID-BLOCK GATE
- ⑤ GRADE PLANTER
- ⑥ NEW STREET TREE
- ⑦ CLASS II BIKE PARKING
- ⑧ MTL & GLASS CANOPY
- ⑨ BENCH S.L.D.
- ⑩ COURTYARD FENCE
- ⑪ NEW CURB RAMP
- ⑫ NEW CURB CUT
- ⑬ EXISTING CURB CUT TO REMAIN
- ⑭ EXISTING CURB CUT TO BE REMOVED
- ⑮ ELEVATORS
- ⑯ PAVERS
- ⑰ HORIZONTAL EXIT
- ⑱ GREEN ROOF NOT HABITABLE
- ⑲ NEW BULB OUT
- ⑳ PLAY STRUCTURE
- ㉑ FURNITURE BY OTHERS
- ㉒ RAISED PLANTERS
- ㉓ PV SOLAR ARRAY
- ㉔ SENIOR ROOF TERRACE LVL. 5
- ㉕ STL. & CABLE RAILING

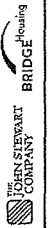
LEGEND:

- COMMERCIAL / CHILDCARE
- RESIDENTIAL UNITS
- CIRCULATION & SUPPORT SERVICE

03/09/18

SCALE: 1/32" = 1'-0"

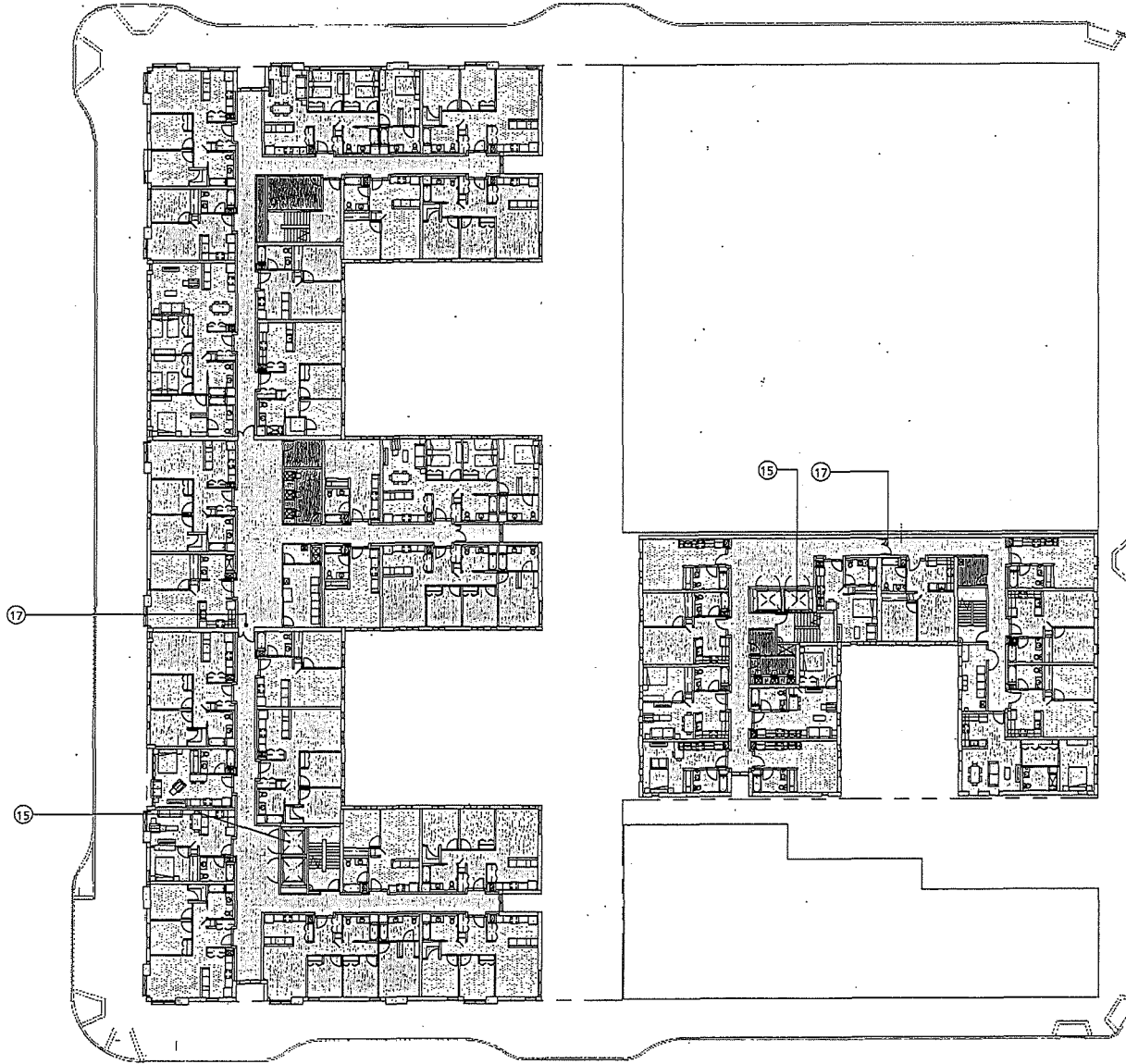
LEVEL 3 PLAN



A2.11 LMSA 88 BROADWAY/+735 DAVIS CERTIFICATE OF APPROPRIATENESS REV.5 / SECTION 315

4757

FRONT STREET



BROADWAY STREET

DAVIS STREET

FLOOR PLAN KEYNOTES:

- ① UNIT ENTRY GATE / FENCE
- ② TREE WELL COVER; S.L.D.
- ③ TEXTURED PAVEMENT, CONC. PAVERS; S.L.D.
- ④ MID-BLOCK GATE
- ⑤ GRADE PLANTER
- ⑥ NEW STREET TREE
- ⑦ CLASS II BIKE PARKING
- ⑧ MTL. & GLASS CANOPY
- ⑨ BENCH S.L.D.
- ⑩ COURTYARD FENCE
- ⑪ NEW CURB RAMP
- ⑫ NEW CURB CUT
- ⑬ EXISTING CURB CUT TO REMAIN
- ⑭ EXISTING CURB CUT TO BE REMOVED
- ⑮ ELEVATORS
- ⑯ PAVERS
- ⑰ HORIZONTAL EXIT
- ⑱ GREEN ROOF NOT HABITABLE
- ⑲ NEW BULB OUT
- ⑳ PLAY STRUCTURE
- ㉑ FURNITURE BY OTHERS
- ㉒ RAISED PLANTERS
- ㉓ PV SOLAR ARRAY
- ㉔ SENIOR ROOF TERRACE LVL. 5
- ㉕ STL. & CABLE RAILING

LEGEND:

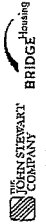
- COMMERCIAL / CHILDCARE
- RESIDENTIAL UNITS
- CIRCULATION & SUPPORT
- SERVICE



03/09/18

SCALE: 1/32" = 1'-0"

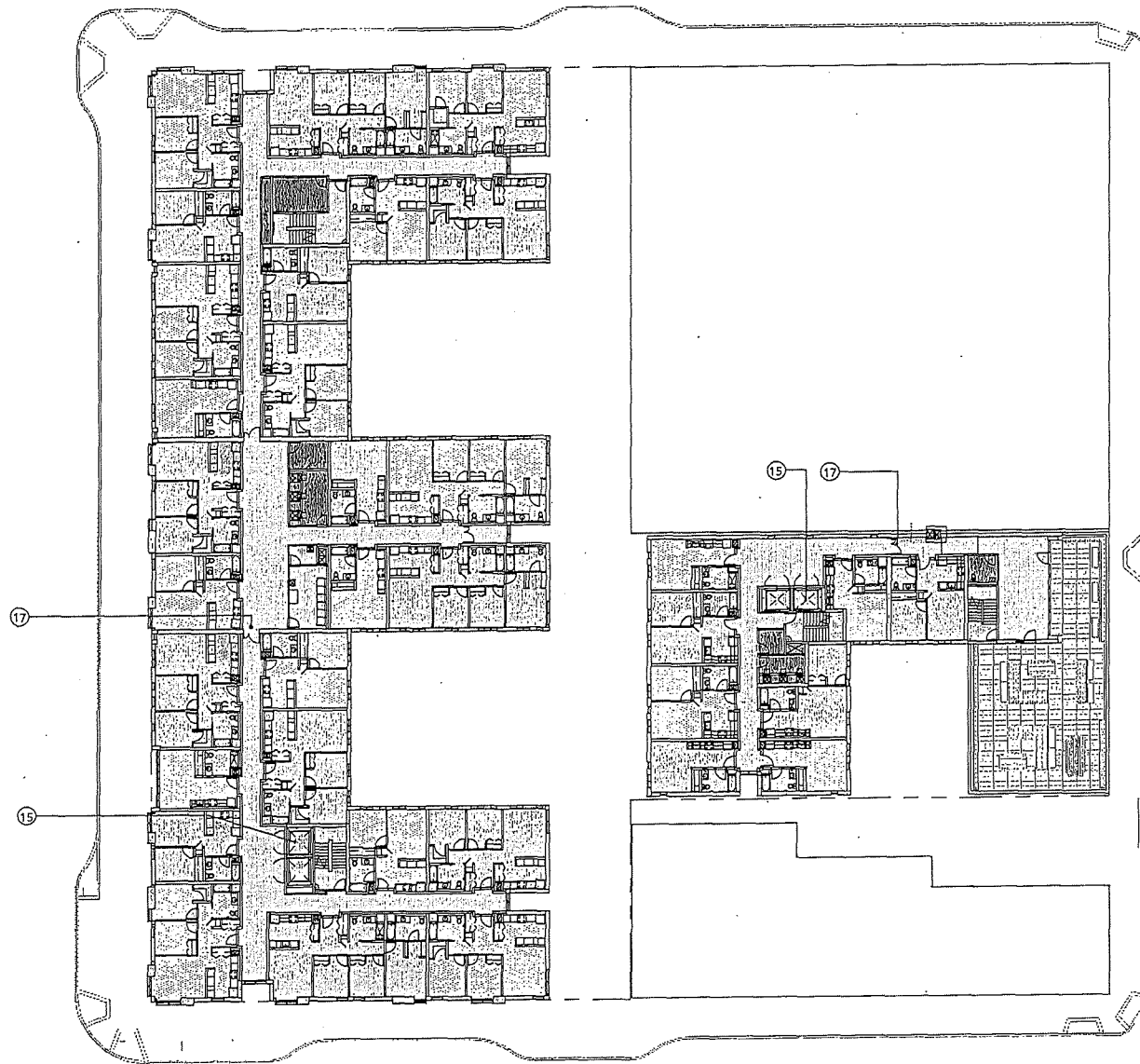
LEVEL 4 PLAN



A2.12 LMSA 88 BROADWAY / +735 DAVIS CERTIFICATE OF APPROPRIATENESS REV-5 / SECTION 315

4758

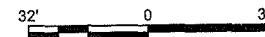
FRONT STREET



VALLEJO STREET

DAVIS STREET

BROADWAY STREET



FLOOR PLAN KEYNOTES:

- ① UNIT ENTRY GATE / FENCE
- ② TREE WELL COVER; S.L.D.
- ③ TEXTURED PAVEMENT, CONC. PAVERS; S.L.D.
- ④ MID-BLOCK GATE
- ⑤ GRADE PLANTER
- ⑥ NEW STREET TREE
- ⑦ CLASS II BIKE PARKING
- ⑧ MTL. & GLASS CANOPY
- ⑨ BENCH S.L.D.
- ⑩ COURTYARD FENCE
- ⑪ NEW CURB RAMP
- ⑫ NEW CURB CUT
- ⑬ EXISTING CURB CUT TO REMAIN
- ⑭ EXISTING CURB CUT TO BE REMOVED
- ⑮ ELEVATORS
- ⑯ PAVERS
- ⑰ HORIZONTAL EXIT
- ⑱ GREEN ROOF NOT HABITABLE
- ⑲ NEW BULB OUT
- ⑳ PLAY STRUCTURE
- ㉑ FURNITURE BY OTHERS
- ㉒ RAISED PLANTERS
- ㉓ PV SOLAR ARRAY
- ㉔ SENIOR ROOF TERRACE LVL. 5
- ㉕ STL. & CABLE RAILING

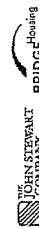
LEGEND:

- COMMERCIAL / CHILDCARE
- RESIDENTIAL UNITS
- CIRCULATION & SUPPORT
- SERVICE

03/09/18

SCALE: 1/32" = 1'-0"

LEVEL 5 PLAN



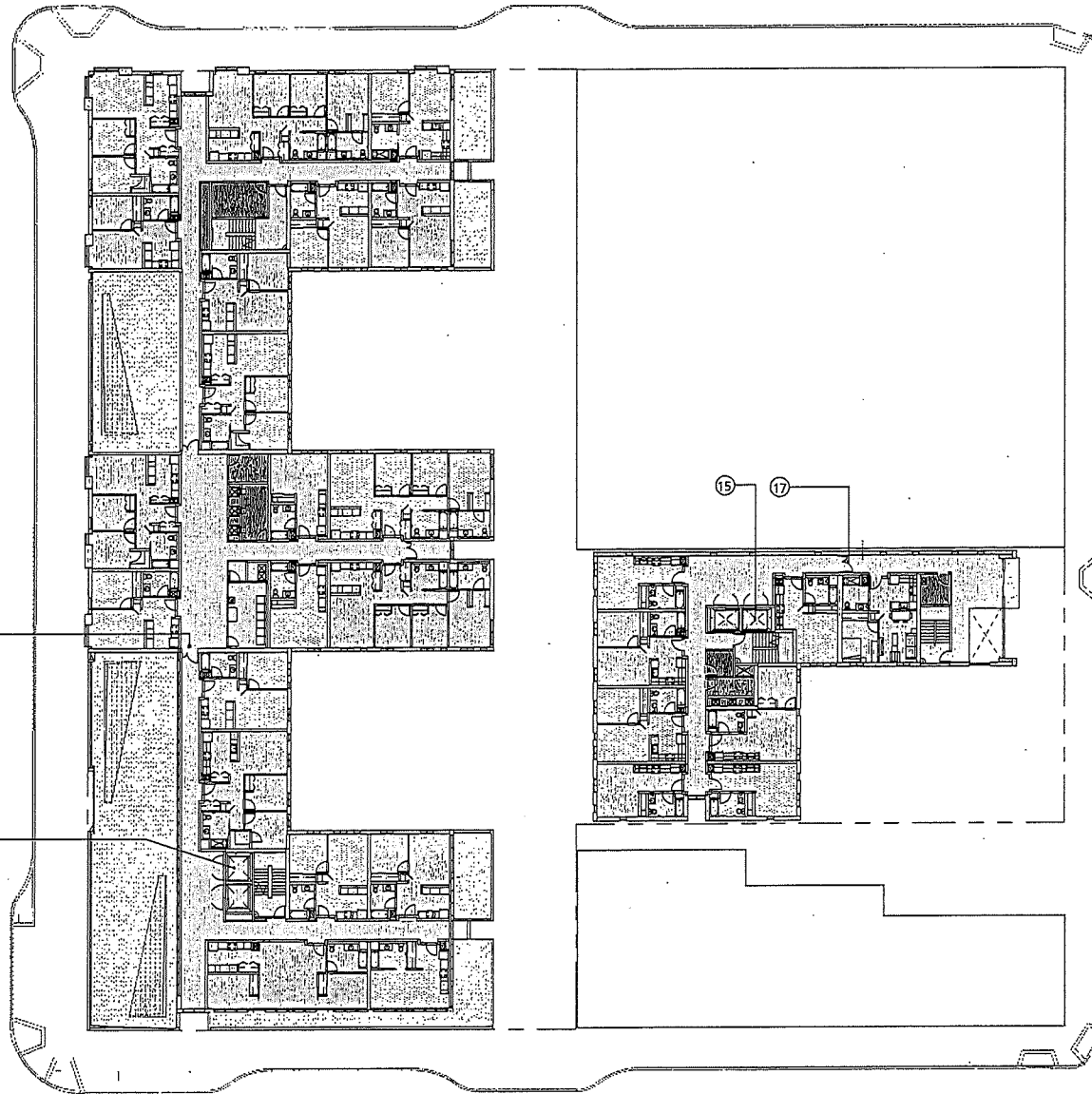
A2.13 LMSA 28 BROADWAY / +735 DAVIS CERTIFICATE OF APPROPRIATENESS REV-5 / SECTION 315

4759

FRONT STREET

17

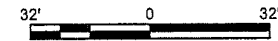
15



BROADWAY STREET

VALLEJO STREET

DAVIS STREET



FLOOR PLAN KEYNOTES:

- ① UNIT ENTRY GATE / FENCE
- ② TREE WELL COVER; S.L.D.
- ③ TEXTURED PAVEMENT, CONC. PAVERS; S.L.D.
- ④ MID-BLOCK GATE
- ⑤ GRADE PLANTER
- ⑥ NEW STREET TREE
- ⑦ CLASS II BIKE PARKING
- ⑧ MTL. & GLASS CANOPY
- ⑨ BENCH S.L.D.
- ⑩ COURTYARD FENCE
- ⑪ NEW CURB RAMP
- ⑫ NEW CURB CUT
- ⑬ EXISTING CURB CUT TO REMAIN
- ⑭ EXISTING CURB CUT TO BE REMOVED
- ⑮ ELEVATORS
- ⑯ PAVERS
- ⑰ HORIZONTAL EXIT
- ⑱ GREEN ROOF NOT HABITABLE
- ⑲ NEW BULB OUT
- ⑳ PLAY STRUCTURE
- ㉑ FURNITURE BY OTHERS
- ㉒ RAISED PLANTERS
- ㉓ PV SOLAR ARRAY
- ㉔ SENIOR ROOF TERRACE LVL. 5
- ㉕ STL. & CABLE RAILING

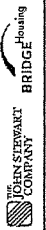
LEGEND:

- COMMERCIAL / CHILDCARE
- RESIDENTIAL UNITS
- CIRCULATION & SUPPORT
- SERVICE

03/09/18

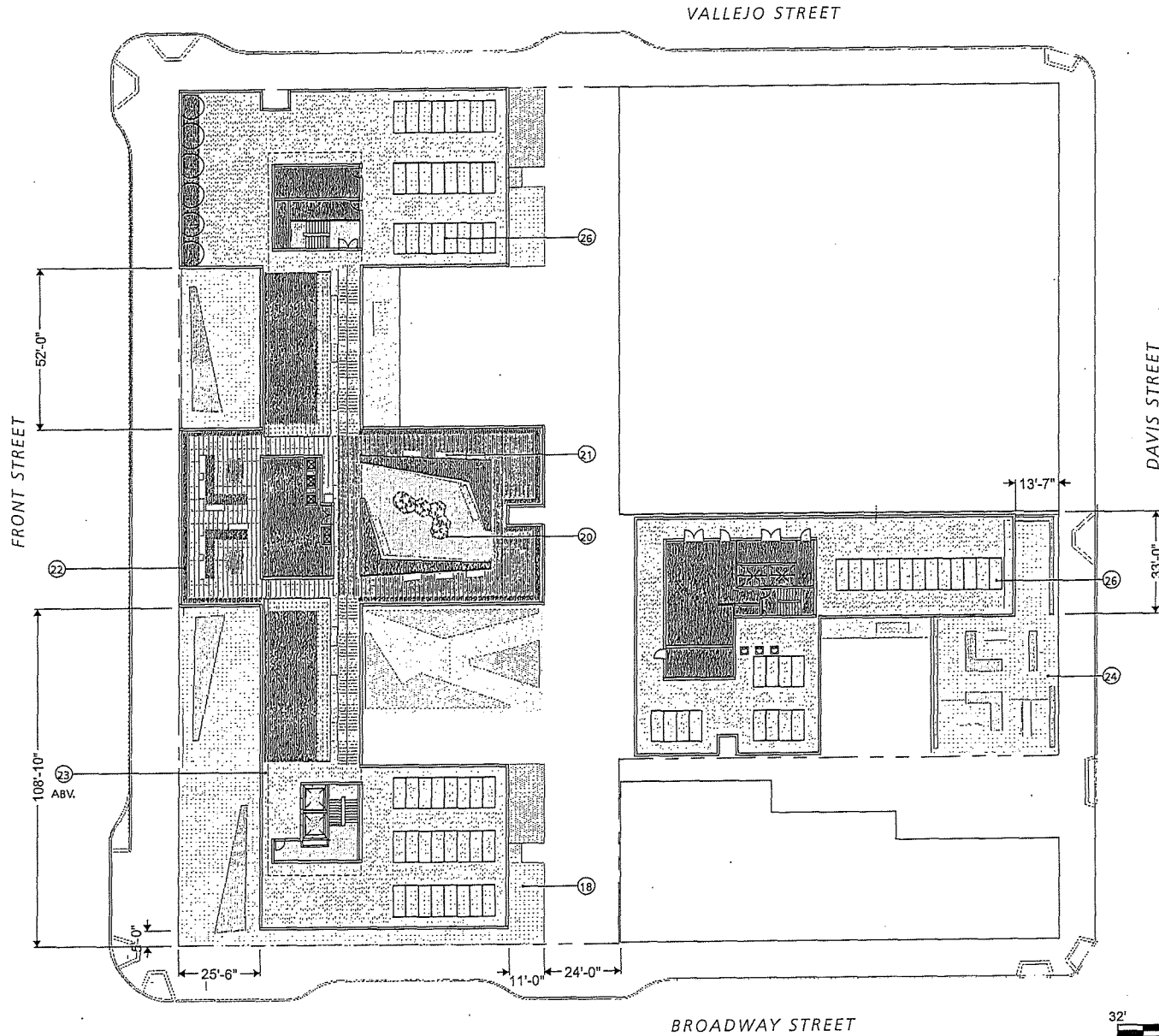
SCALE: 1/32" = 1'-0"

LEVEL 6 PLAN



A2.14 LMSA 88 BROADWAY/+735 DAVIS CERTIFICATE OF APPROPRIATENESS REV-5 / SECTION 315

4760



FLOOR PLAN KEYNOTES:

- ① UNIT ENTRY GATE / FENCE
- ② TREE WELL COVER; S.L.D.
- ③ TEXTURED PAVEMENT, CONC. PAVERS; S.L.D.
- ④ MID-BLOCK GATE
- ⑤ GRADE PLANTER
- ⑥ NEW STREET TREE
- ⑦ CLASS II BIKE PARKING
- ⑧ MTL. & GLASS CANOPY
- ⑨ BENCH S.L.D.
- ⑩ COURTYARD FENCE
- ⑪ NEW CURB RAMP
- ⑫ NEW CURB CUT
- ⑬ EXISTING CURB CUT TO REMAIN
- ⑭ EXISTING CURB CUT TO BE REMOVED
- ⑮ ELEVATORS
- ⑯ PAVERS
- ⑰ HORIZONTAL EXIT
- ⑱ GREEN ROOF NOT HABITABLE
- ⑲ NEW BULB OUT
- ⑳ PLAY STRUCTURE
- ㉑ FURNITURE BY OTHERS
- ㉒ RAISED PLANTERS
- ㉓ PV SOLAR ARRAY
- ㉔ SENIOR ROOF TERRACE LVL. 5
- ㉕ STL. & CABLE RAILING
- ㉖ SOLAR HOT WATER PANELS

LEGEND:

- COMMERCIAL / CHILDCARE
- RESIDENTIAL UNITS
- CIRCULATION & SUPPORT
- SERVICE

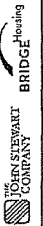


03/09/18

SCALE: 1/32" = 1'-0"

A2.15 LMSA 88 BROADWAY/+735 DAVIS CERTIFICATE OF APPROPRIATENESS REV-5 / SECTION 315

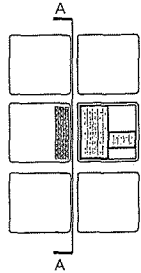
ROOF PLAN



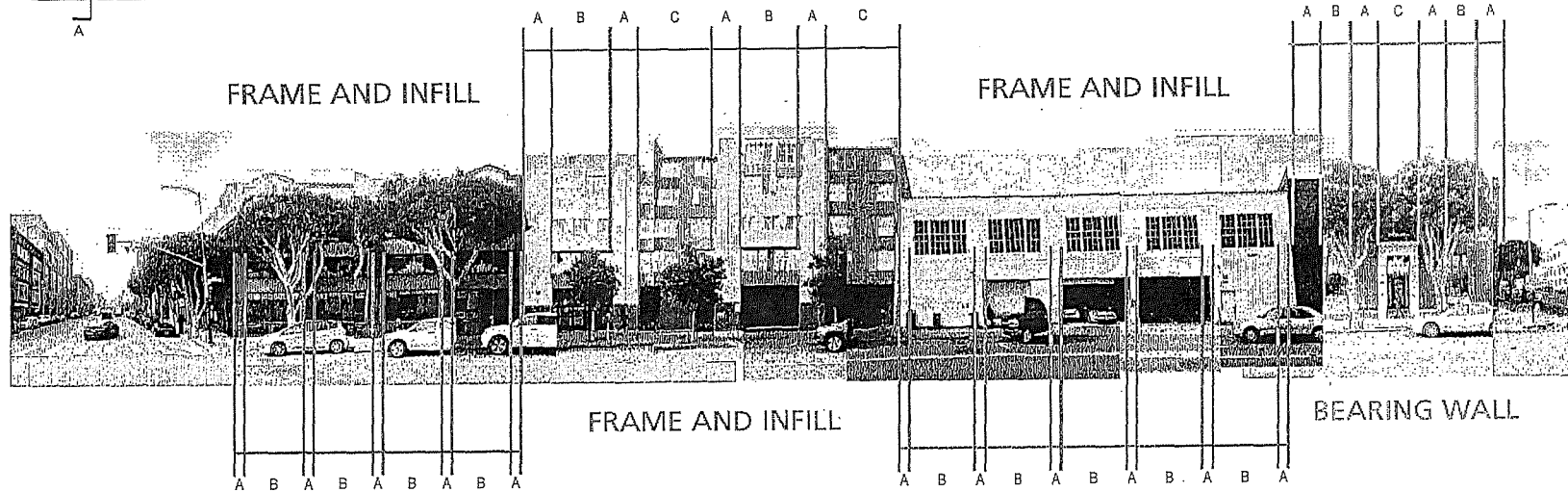
BRIDGE Housing

3 HISTORIC COMPATIBILITY

FRONT STREET
(PACIFIC THROUGH BROADWAY)



4762



BROADWAY

FRONT STREET AA

VALLEJO

**SAN FRANCISCO PLANNING CODE
SECTION 6. FEATURES:**

- (B) SCALE AND PROPORTION. THE BUILDINGS ARE OF TYPICAL **WAREHOUSE DESIGN**, LARGE IN BULK, OFTEN WITH LARGE ARCHES AND OPENINGS ORIGINALLY DESIGNED FOR EASY VEHICULAR ACCESS.
- THERE IS A **REGULARITY OF OVERALL FORM**.
- THE EARLIER BRICK STRUCTURES BLEND EASILY WITH THE SCALED-DOWN BEAUX ARTS FORMS OF THE TURN OF THE CENTURY AND THE PLAIN REINFORCED-CONCRETE STRUCTURES CHARACTERISTIC OF TWENTIETH CENTURY INDUSTRIAL ARCHITECTURE.

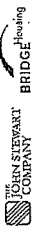
03/09/18

NEIGHBORHOOD FACADE ANALYSIS

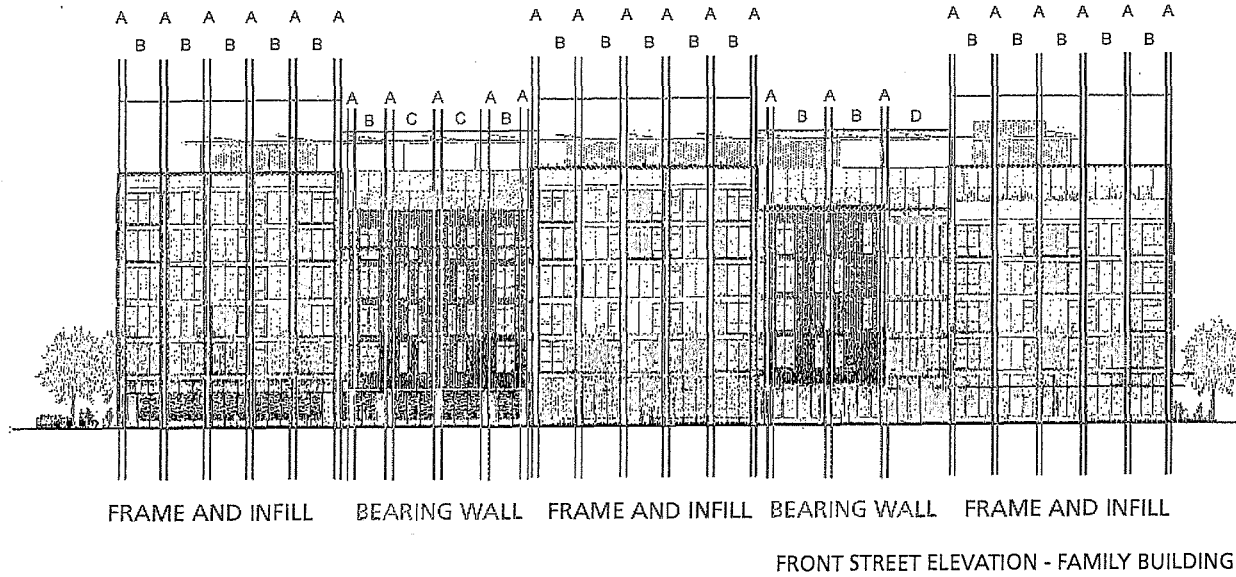
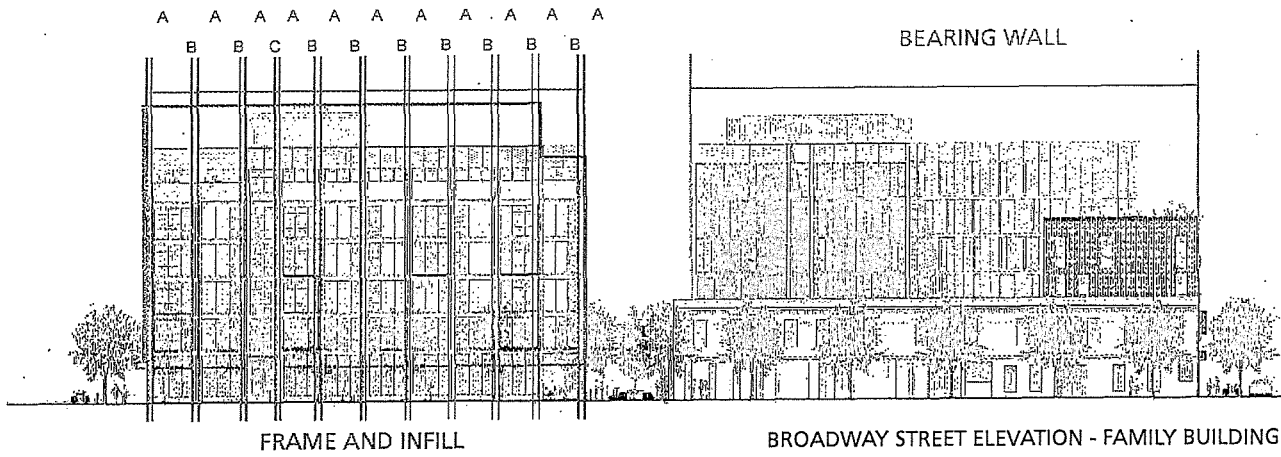
CERTIFICATE OF APPROPRIATENESS
REV-5 / SECTION 315

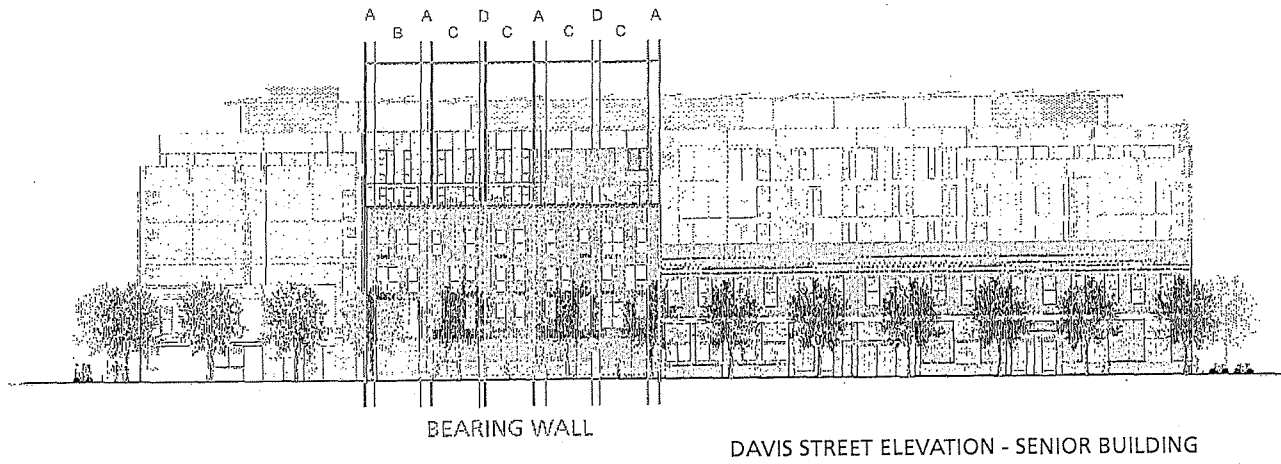
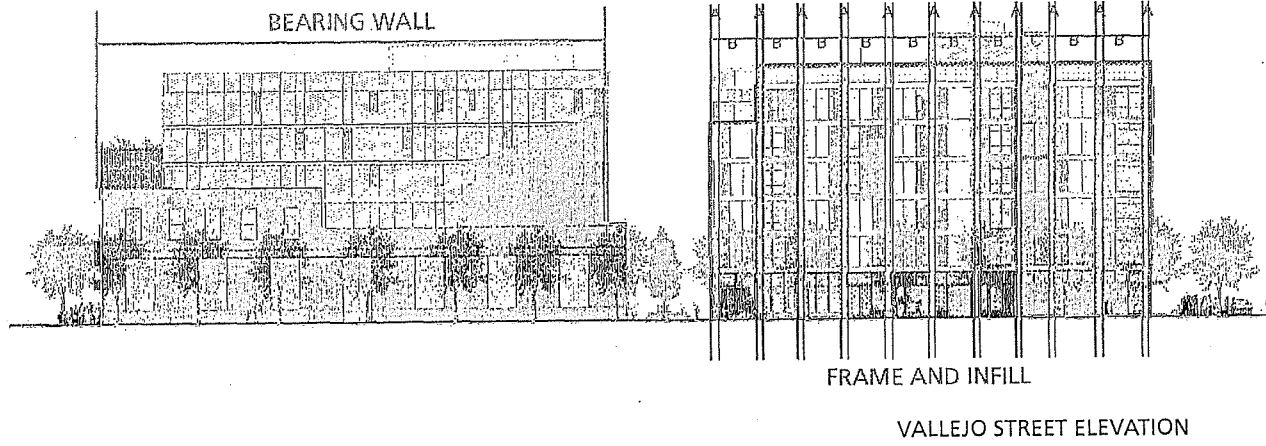
88 BROADWAY / 4735 DAVIS

A3.1



BRIDGE

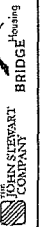




03/09/18

ELEVATIONS - SCALE AND PROPORTION

CERTIFICATE OF APPROPRIATENESS
REV-5 / SECTION 315

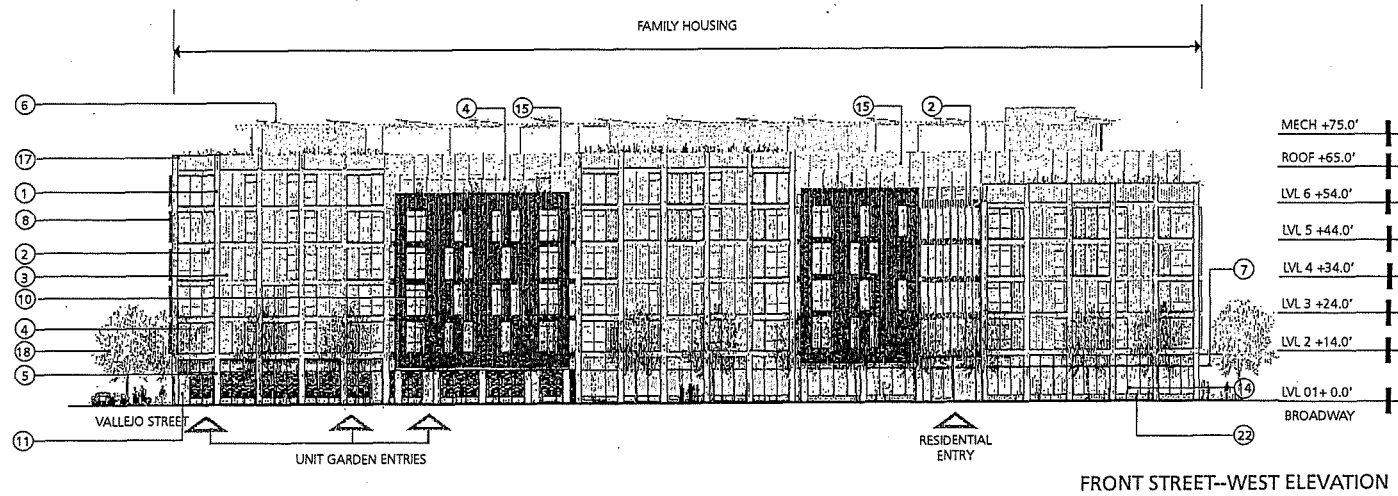
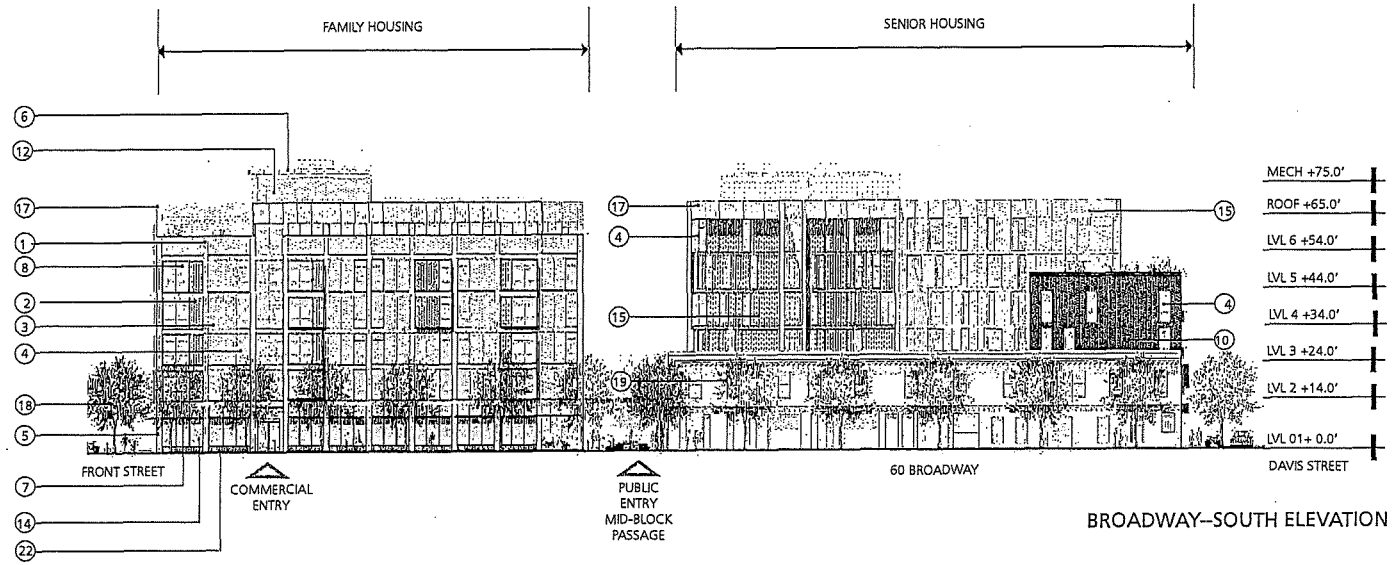


BRIDGE Housing
LMSA 88 BROADWAY / #735 DAVIS

A3.3

ELEVATION AND SECTION KEYNOTES:

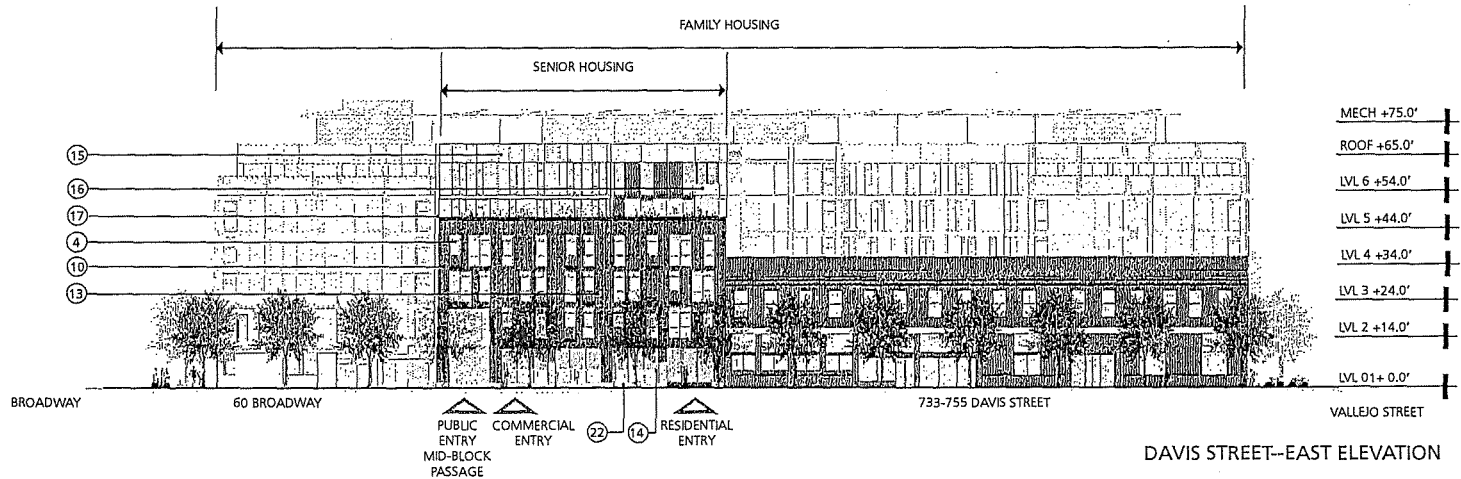
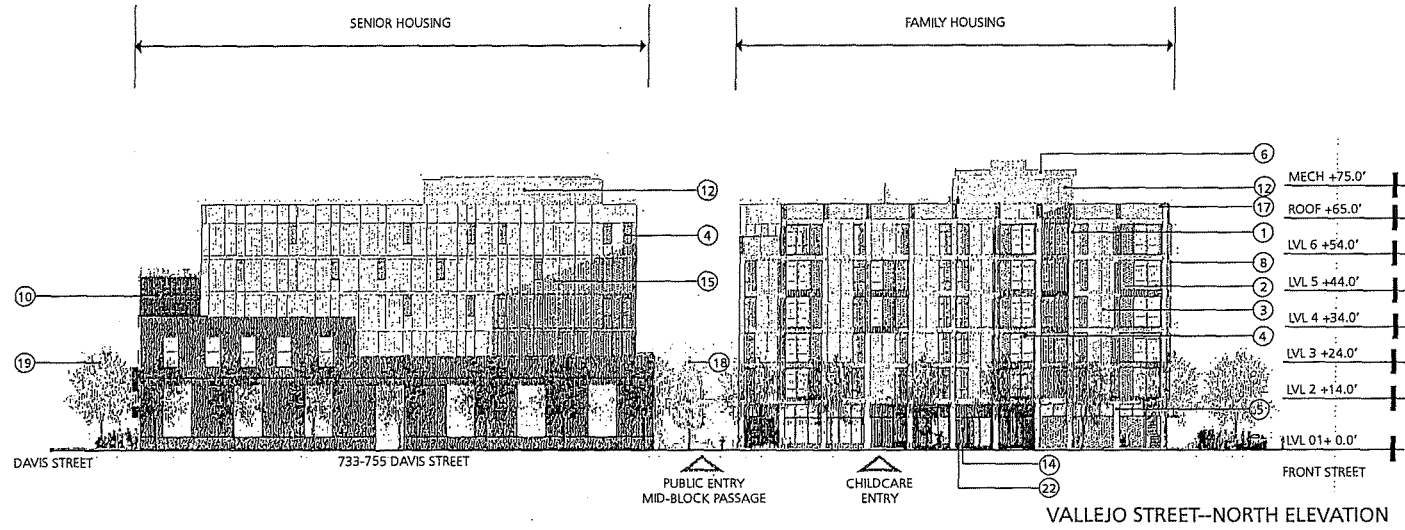
- ① TYPE 1 CEMENTITIOUS PANEL "FRAME"
- ② TYPE 2 CEMENTITIOUS PANEL "PROJECTION"
- ③ TYPE 3 CEMENTITIOUS PANEL "INFILL"
- ④ ALUMINUM WINDOW
- ⑤ CONCRETE COLUMNS
- ⑥ STANCHION MOUNTED ROOF SOLAR PANELS
- ⑦ METAL AND GLASS AWNING
- ⑧ PROJECTED WINDOW, METAL EDGE
- ⑨ METAL ROLL UP GARAGE DOOR
- ⑩ THIN BRICK
- ⑪ METAL GRATE + GLASS PANEL FENCE/GATE
- ⑫ ENCLOSED ROOFTOP MECHANICAL SPACES
- ⑬ PERFORATED METAL JULIET BALCONY
- ⑭ ALUMINUM STOREFRONT
- ⑮ PAINTED STUCCO
- ⑯ BALCONY
- ⑰ PARAPET COPING 42" ABOVE ROOF PLANE
- ⑱ PROPOSED TREE
- ⑲ EXISTING TREE
- ⑳ RAISED PLANTER
- ㉑ SIGNAGE
- ㉒ CONCRETE "BULK HEAD"
- ㉓ METAL GUARD RAIL
- ㉔ METAL PLANTER
- ㉕ PLATE METAL CANOPY



32' 0 32'

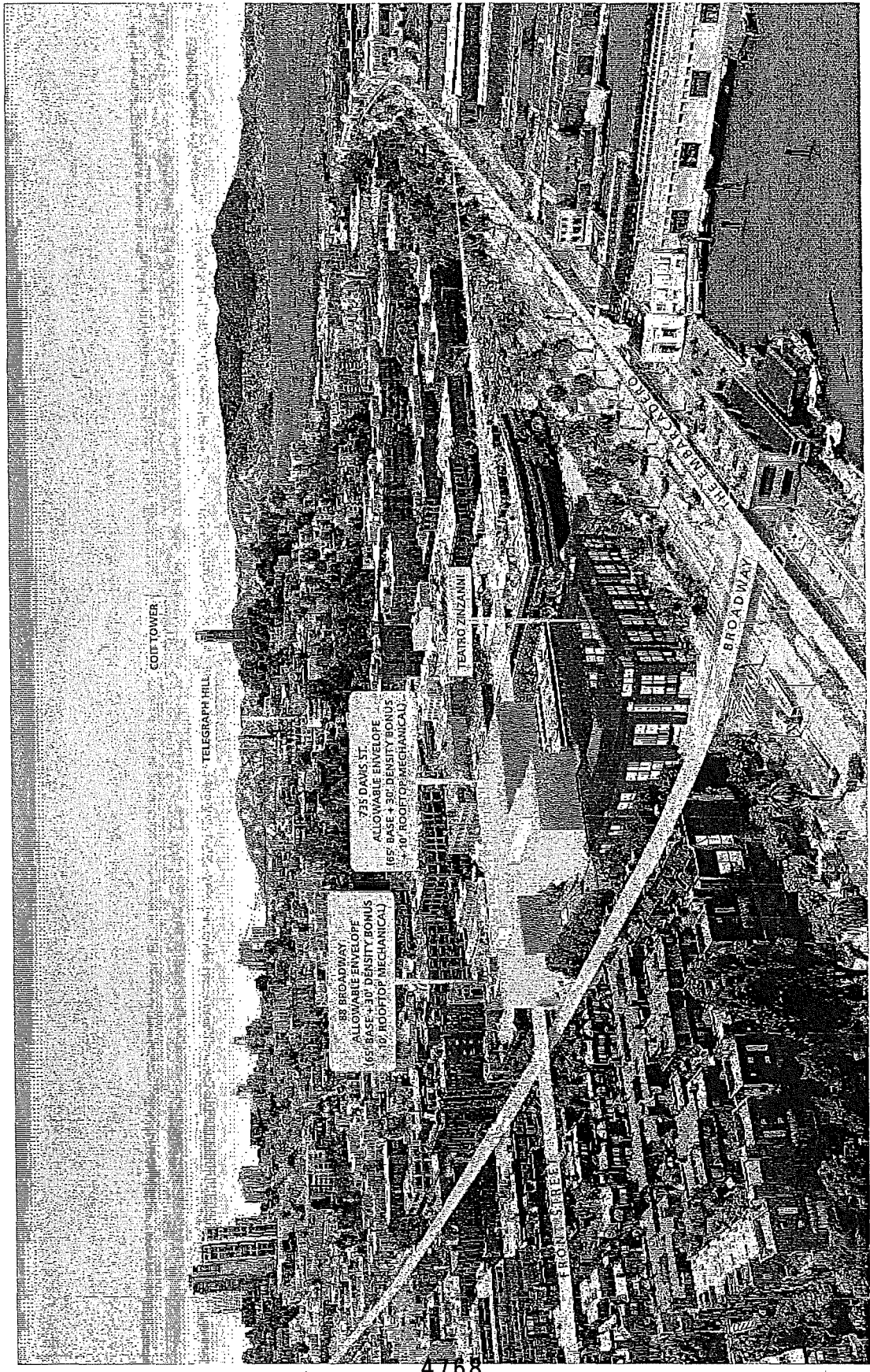
ELEVATION AND SECTION KEYNOTES:

- ① TYPE 1 CEMENTITIOUS PANEL "FRAME"
- ② TYPE 2 CEMENTITIOUS PANEL "PROJECTION"
- ③ TYPE 3 CEMENTITIOUS PANEL "INFILL"
- ④ ALUMINUM WINDOW
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- ⑥ STANCHION MOUNTED ROOF SOLAR PANELS
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- ㉔ METAL PLANTER
- ㉕ PLATE METAL CANOPY

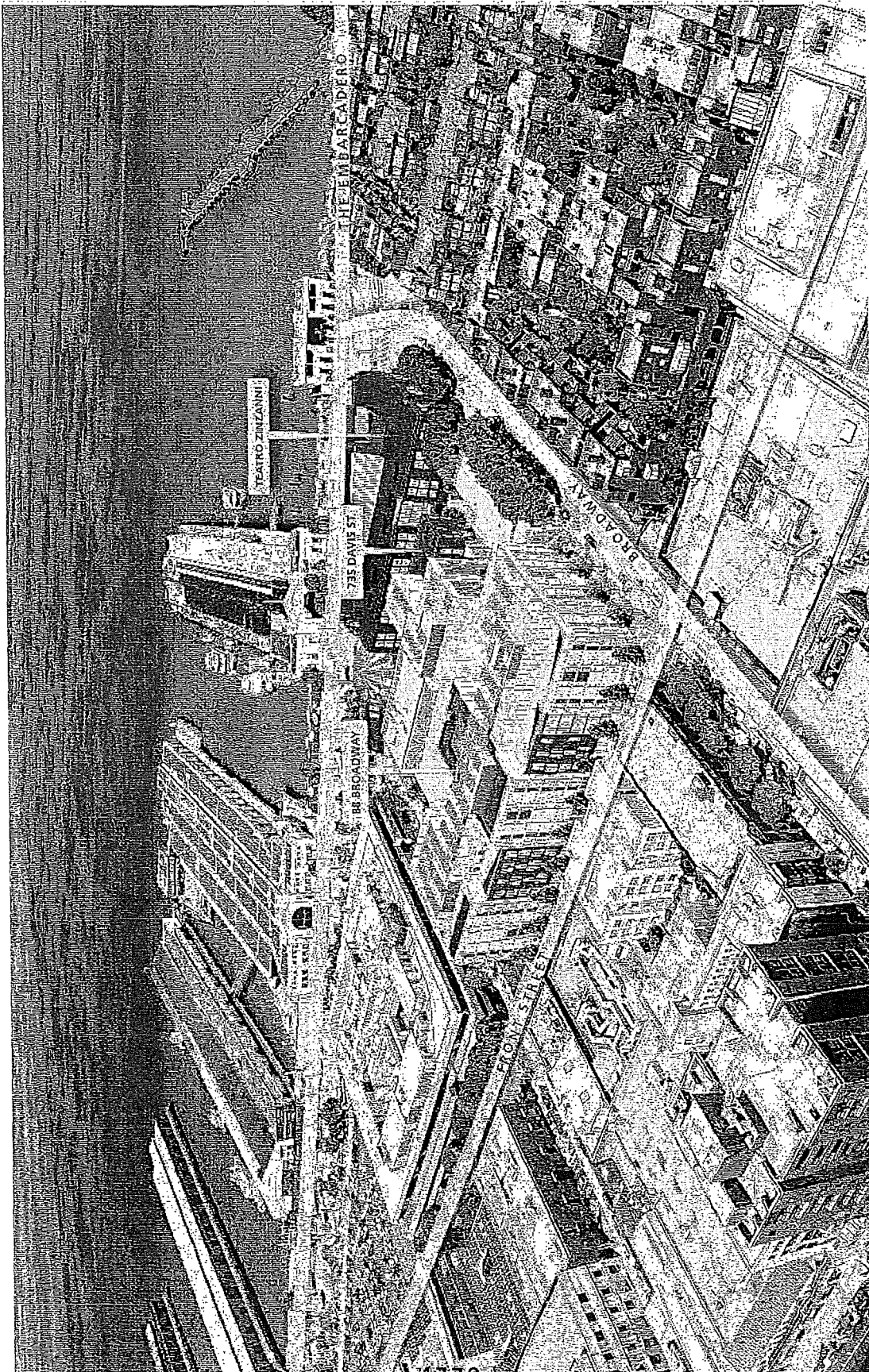


4 MASSING AND BUILDING HEIGHT

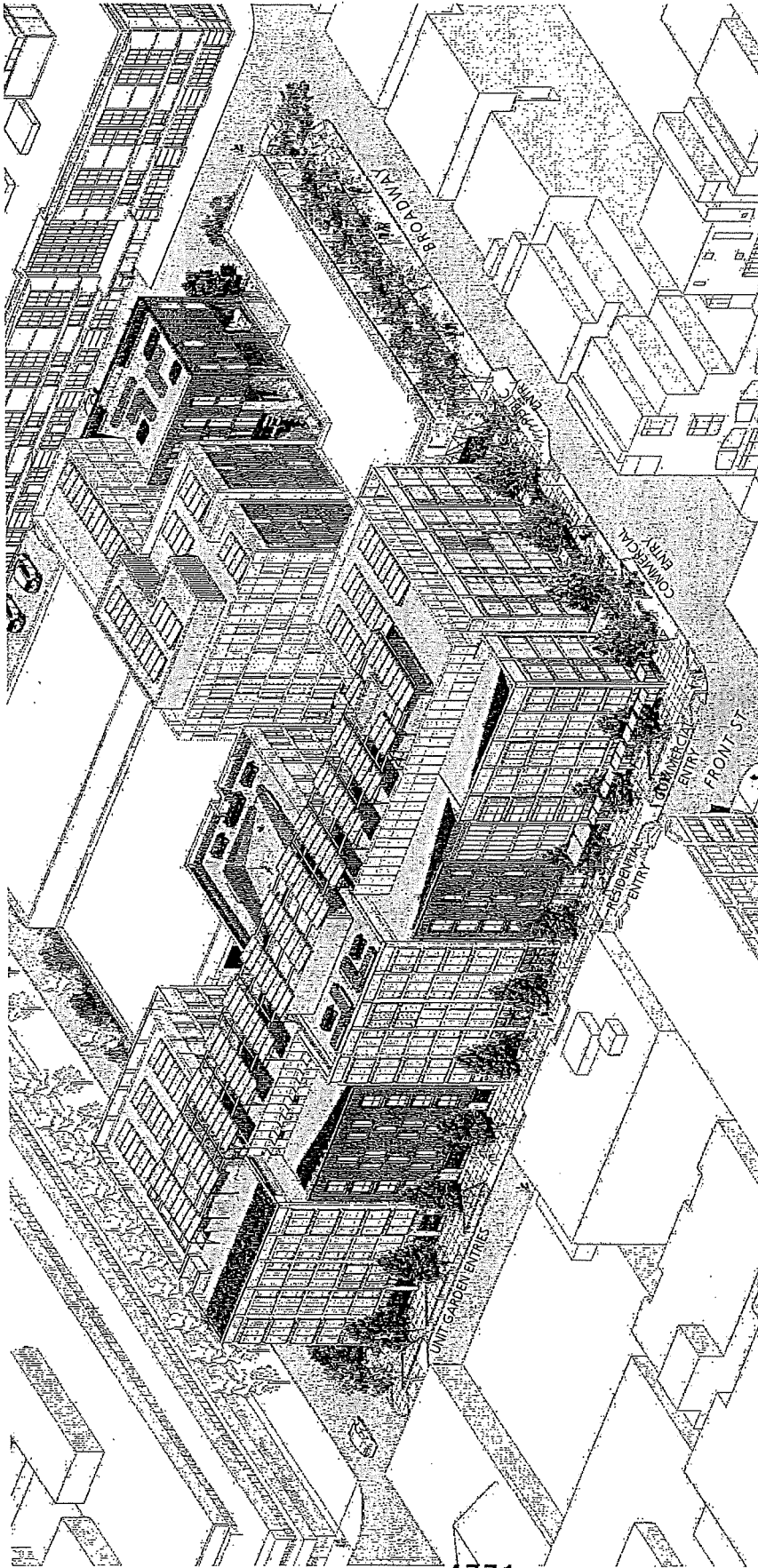
BASE ALLOWABLE ENVELOPE



[illegible]



4770

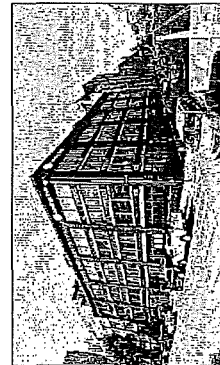


4771

SAN FRANCISCO PLANNING CODE

SECTION 6. FEATURES:

- (A) OVERALL FORM AND CONTINUITY. BUILDING HEIGHT IS GENERALLY WITHIN A SIX-STORY RANGE, WITH THE HIGHER STRUCTURES CLOSER TO THE BASE OF TELEGRAPH HILL AND LOWER BUILDINGS NEAR THE WATER.
- MANY OF THE OLDEST STRUCTURES ARE ONE OR TWO STORIES IN HEIGHT.

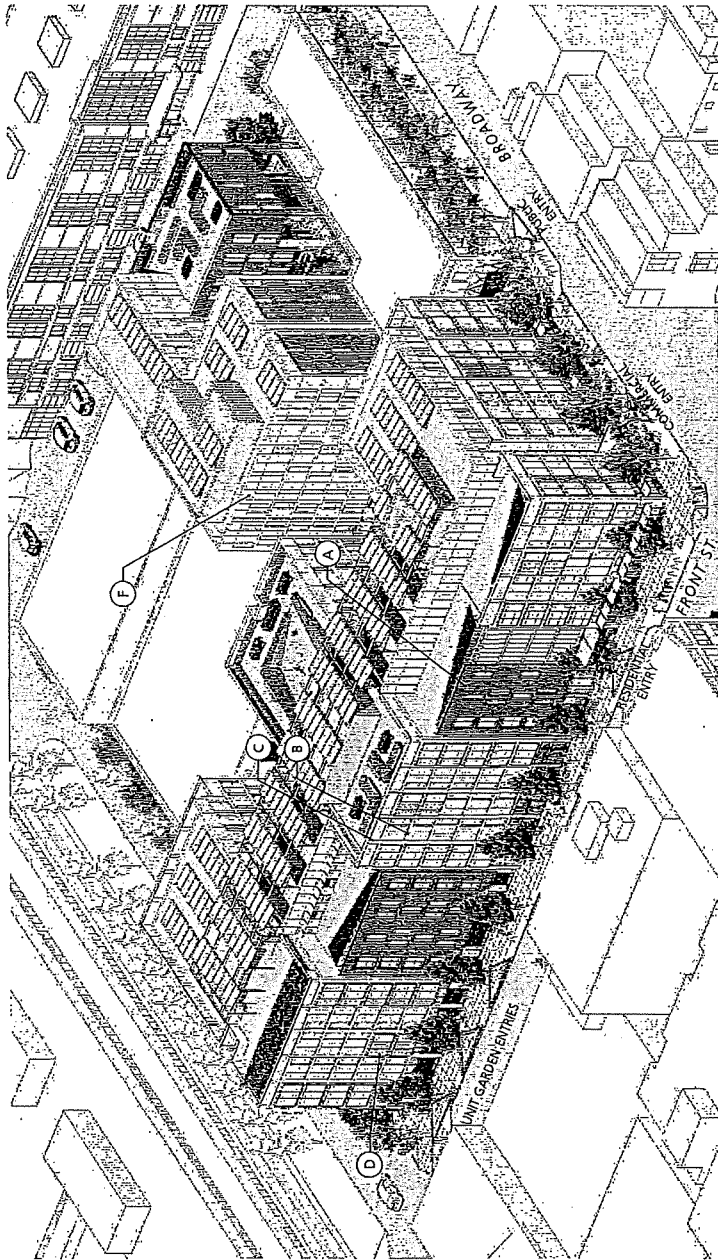
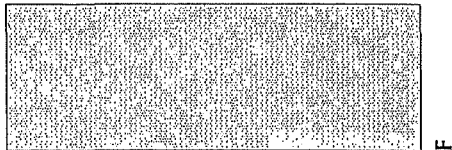
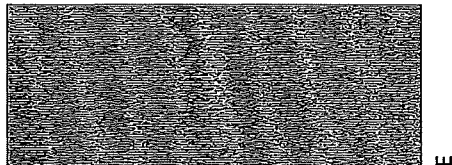
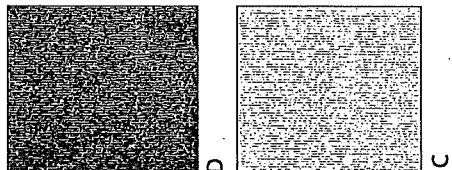
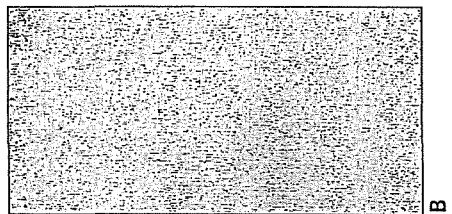
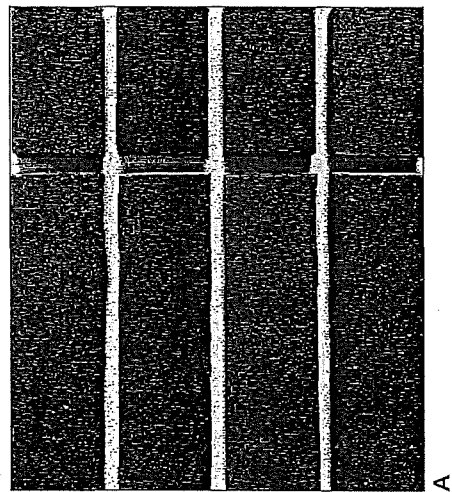
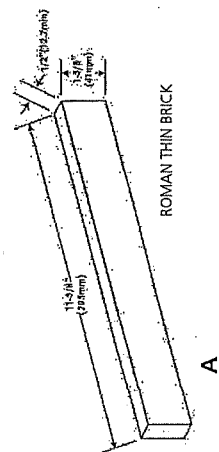


5 MATERIALS

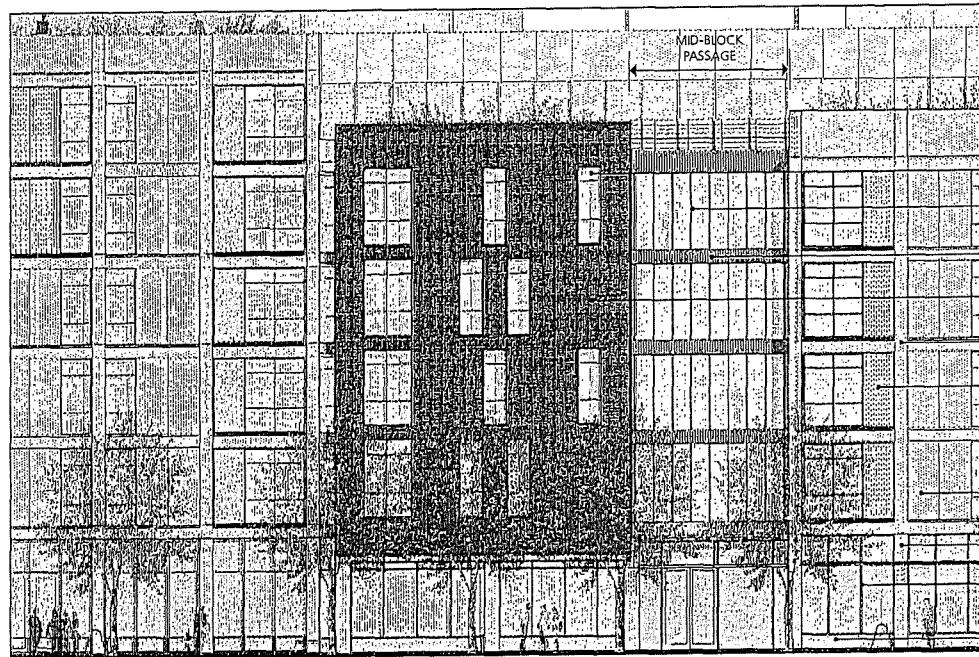
88 PROADWAY E/35 DAVIS CENTRAL RESEARCH LABORATORIES
1215 E. 12TH ST. S. MINNAPOLIS, MN 55404

MATERIAL KEY

- A. Roman Thin Brick- Autumn Sand
- B. Minerit Cement Siding - HD Grey
- C. Cembrit Patina Cement Siding - 911 Sand
- D. Cembrit Patina Cement Siding - 921 Flint
- E. Davis Concrete - Silversmoke
- F. Stucco

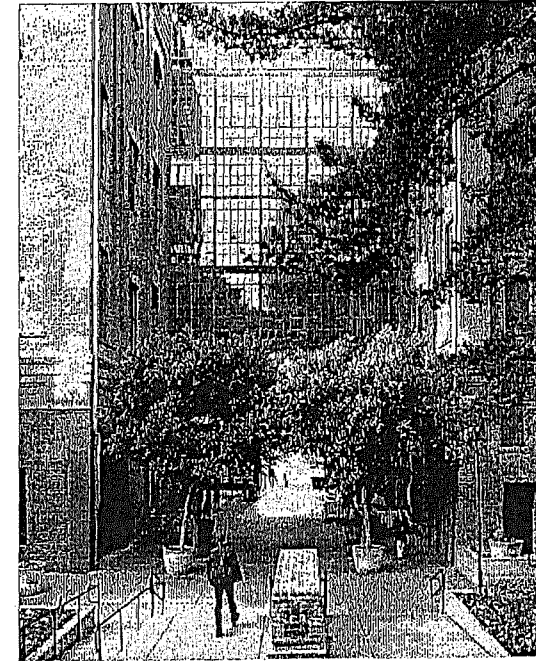


EXTERIOR MATERIAL STRATEGY

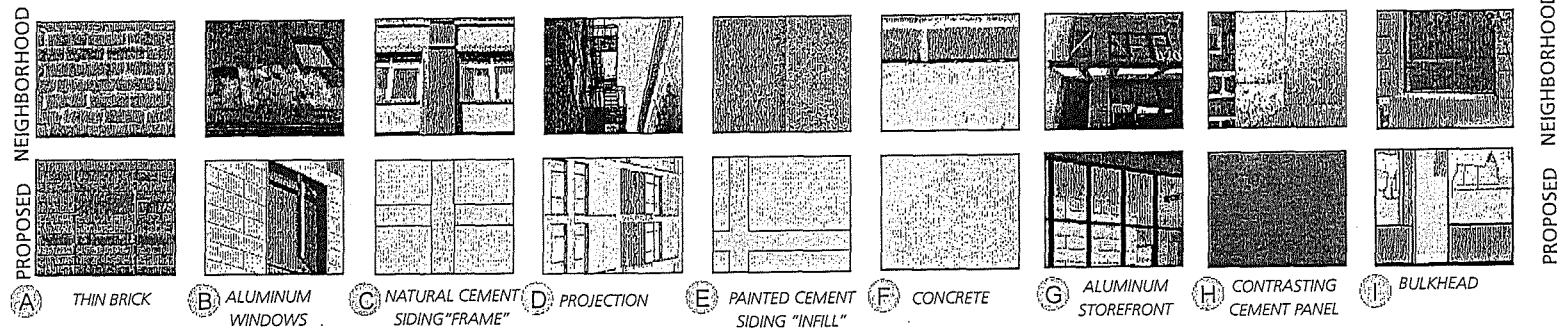


SAN FRANCISCO PLANNING CODE
SECTION 6. FEATURES:

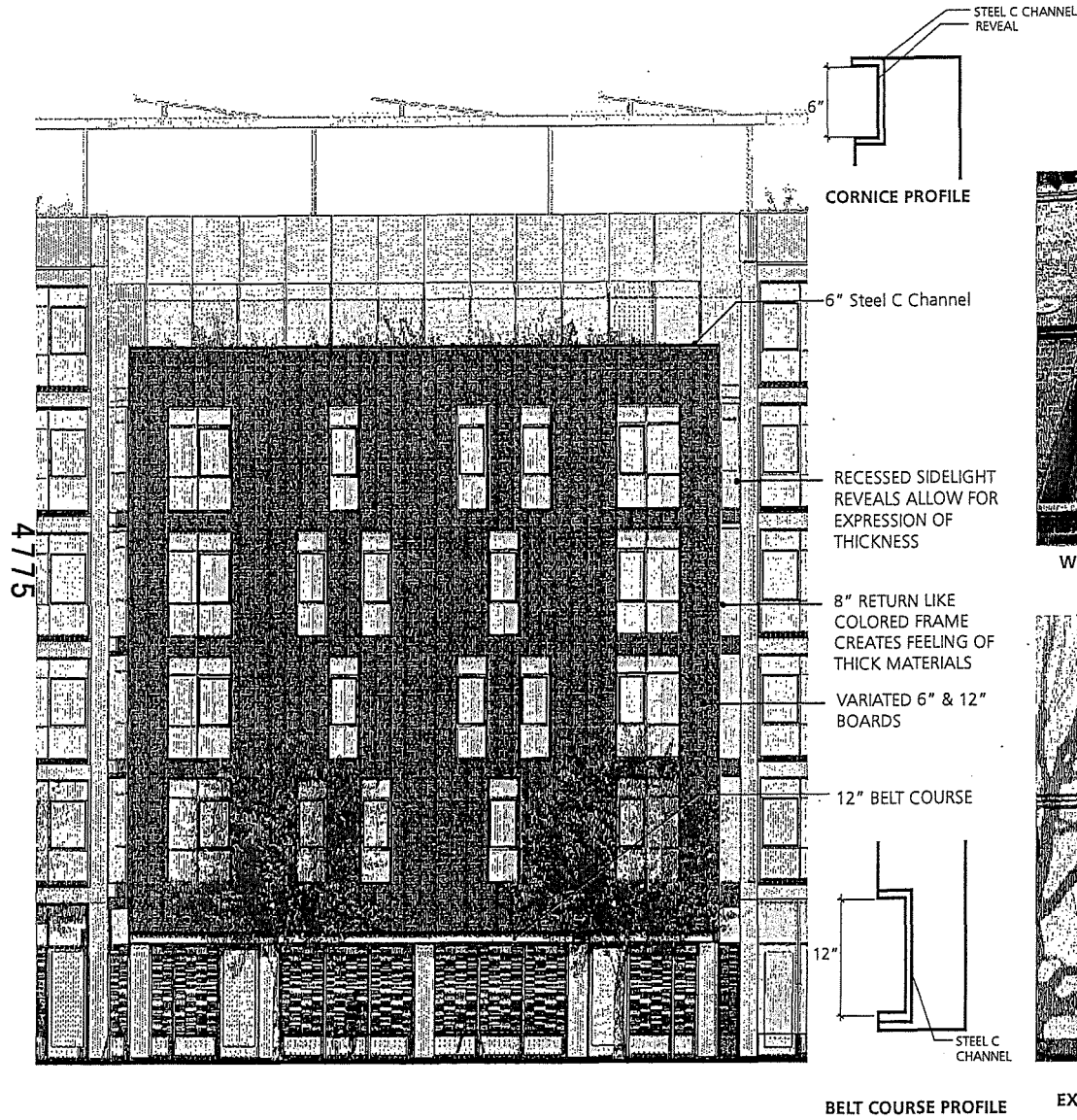
FRONT STREET ELEVATION - FAMILY BUILDING



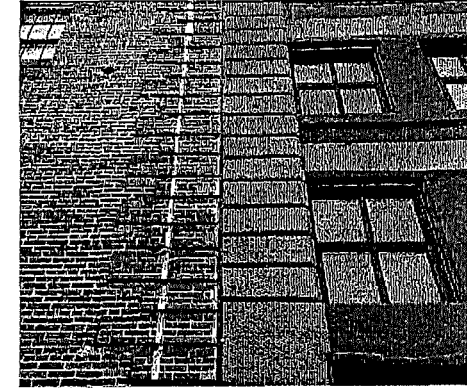
BRICK/GLASS CONTRAST EXAMPLE WITHIN DISTRICT
Ice House, 1150 Sansome St.



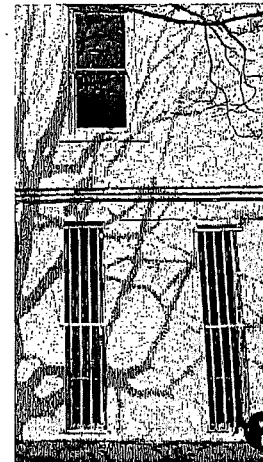
- (D) MATERIALS. STANDARD **BRICK MASONRY** IS PREDOMINANT FOR THE OLDEST BUILDINGS IN THE DISTRICT, WITH **REINFORCED CONCRETE** INTRODUCED AFTER THE 1906 FIRE.
- SOME OF THE BRICK FACADES HAVE BEEN STUCCOED OVER.
- ONE OF THE STRUCTURES STILL HAS ITS **METAL SHUTTERS**, WHICH WERE ONCE TYPICAL OF THE AREA.



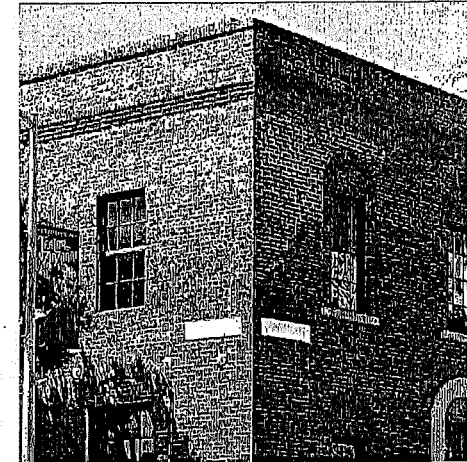
WINDOW OFFSETS WITHIN
DISTRICT 1 Union Street



BRICK CONTRAST WITHIN
DISTRICT 101 Green St.

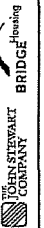


WINDOW PROPORTIONS
EXAMPLE WITHIN DISTRICT
60-70 Broadway



SIMPLE CORNICE EXAMPLE WITHIN DISTRICT
855 Front St.

'BRICK' FACADES - FAMILY BUILDING

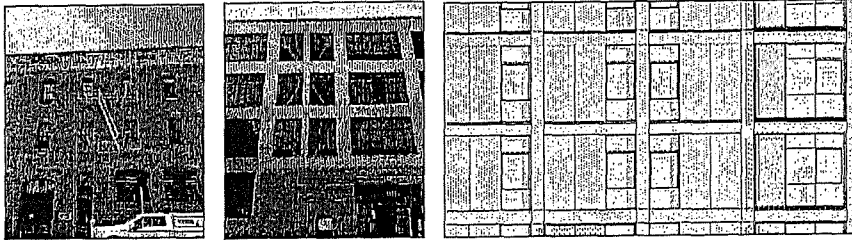


A5.3 LMSA 88 BROADWAY / 735 DAVIS
CERTIFICATE OF APPROPRIATENESS
REV-5 / SECTION 315

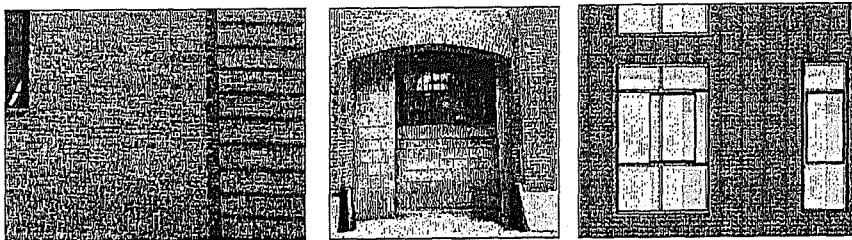
SAN FRANCISCO PLANNING CODE

SECTION 6. FEATURES:

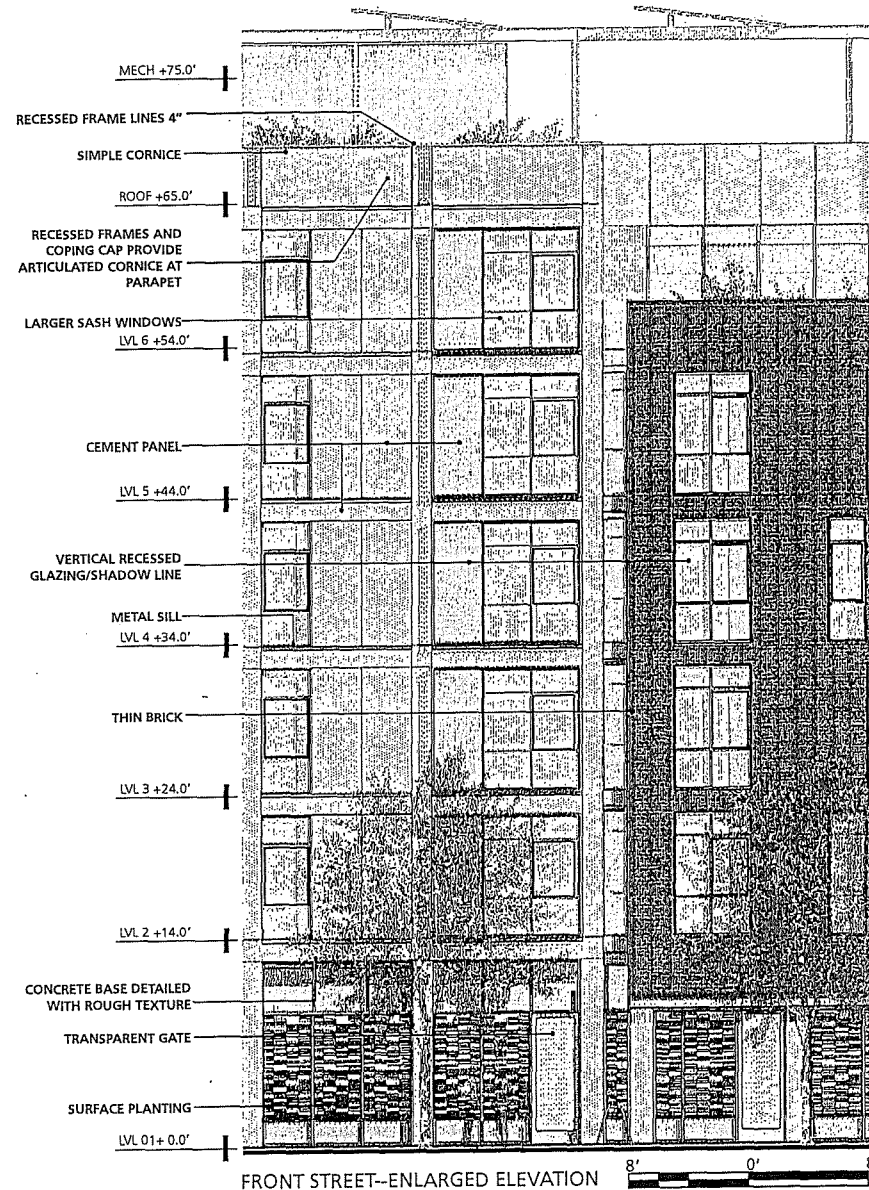
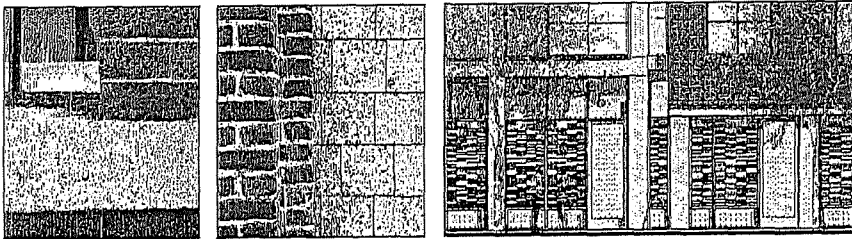
- (C) FENESTRATION. MINIMAL GLAZING IS DEEPLY RECESSED, PRODUCING A STRONG SHADOW LINE. THE EARLIEST STRUCTURES HAVE FEW WINDOWS EXPRESSING THEIR WAREHOUSE FUNCTION.
- THEY ARE VARIED IN SIZE, RHYTHMICALLY SPACED, AND RELATE IN SHAPE AND PROPORTION TO THOSE IN NEARBY BUILDINGS.
- LARGER INDUSTRIAL SASH WINDOWS BEGAN TO BE INCORPORATED IN STRUCTURES BUILT FROM THE 1920'S AND ONWARD. DOOR OPENINGS ARE OFTEN MASSIVE TO FACILITATE EASY ACCESS OF BULK MATERIALS.



- (G) DETAIL. ARCHES ARE COMMON AT THE GROUND FLOOR, AND ARE FREQUENTLY REPEATED ON UPPER FLOORS. FLATTENED ARCHES FOR WINDOW TREATMENT ARE TYPICAL.
- CORNICES ARE SIMPLE AND GENERALLY TEND TO BE ABSTRACT VERSIONS OF THE MORE ELABORATE CORNICES FOUND ON DOWNTOWN COMMERCIAL STRUCTURES FROM THE NINETEENTH CENTURY. MOST OF THE SURFACES OF THE LATER BUILDINGS ARE PLAIN AND SIMPLE, REFLECTING THEIR FUNCTION. SOME OF THE EARLIER BRICKWORK CONTAINS SUGGESTIONS OF PILASTERS, AGAIN HIGHLY ABSTRACTED.
- WHERE DETAIL OCCURS, IT IS OFTEN FOUND SURROUNDING ENTRYWAYS.



- (F) TEXTURE. TYPICAL FACING MATERIALS GIVE A ROUGH-TEXTURED APPEARANCE. THE OVERALL TEXTURE OF THE FACADES IS ROUGH-GRAINED.

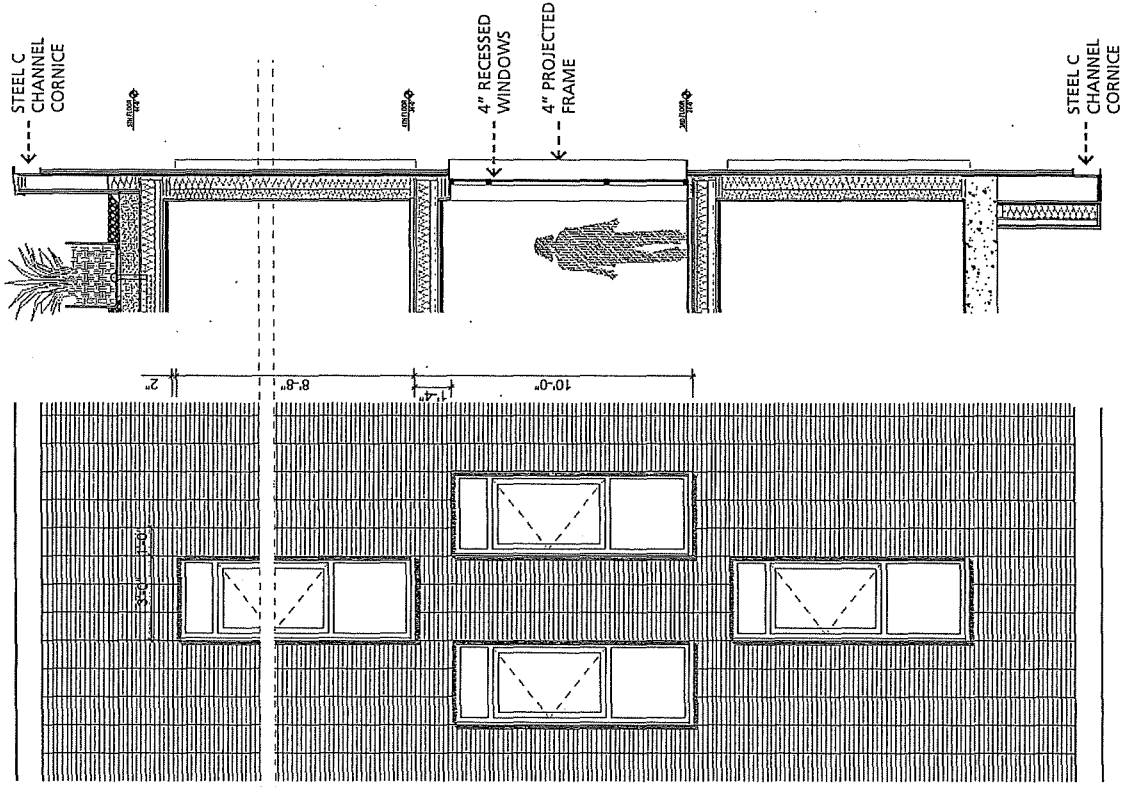


03/09/18

EXTERIOR MATERIALS - FAMILY BUILDING

JOHN STEWART COMPANY
BRIDGE

A5.4 LMSA 28 BROADWAY/+735 DAVS CERTIFICATE OF APPROPRIATENESS REV-5 / SECTION 315

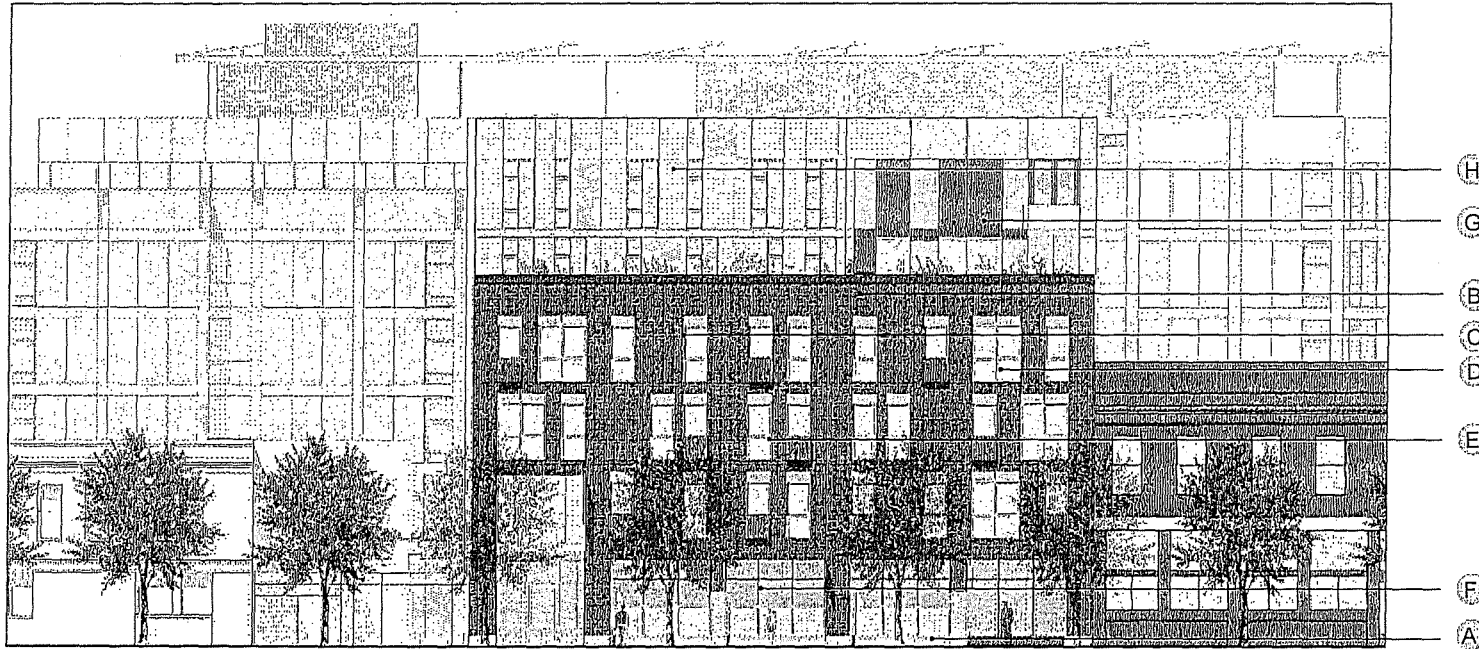


FRONT STREET ELEVATION DETAIL



FRONT STREET ELEVATION ENLARGEMENT

4778



DAVIS STREET ELEVATION - SENIOR BUILDING

SAN FRANCISCO PLANNING CODE
SECTION 6. FEATURES:

NEIGHBORHOOD									NEIGHBORHOOD						
PROPOSED									PROPOSED						
(A)	BULKHEAD	(B)	THIN BRICK	(C)	ALUMINUM WINDOWS	(D)	JULIETTE BALCONY	(E)	STAGGERED WINDOWS	(F)	ALUMINUM STOREFRONT	(G)	CONTRASTING CEMENT PANEL	(H)	STUCCO

- (D) MATERIALS. STANDARD **BRICK MASONRY** IS PREDOMINANT FOR THE OLDEST BUILDINGS IN THE DISTRICT, WITH **REINFORCED CONCRETE** INTRODUCED AFTER THE 1906 FIRE.
- SOME OF THE BRICK FACADES HAVE BEEN STUCCOED OVER.
- ONE OF THE STRUCTURES STILL HAS ITS **METAL SHUTTERS**, WHICH WERE ONCE TYPICAL OF THE AREA.

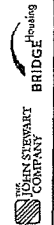
03/09/18

EXTERIOR MATERIALS - SENIOR BUILDING

CERTIFICATE OF APPROPRIATENESS
REV-5 / SECTION 315

88 BROADWAY / +735 DAVIS

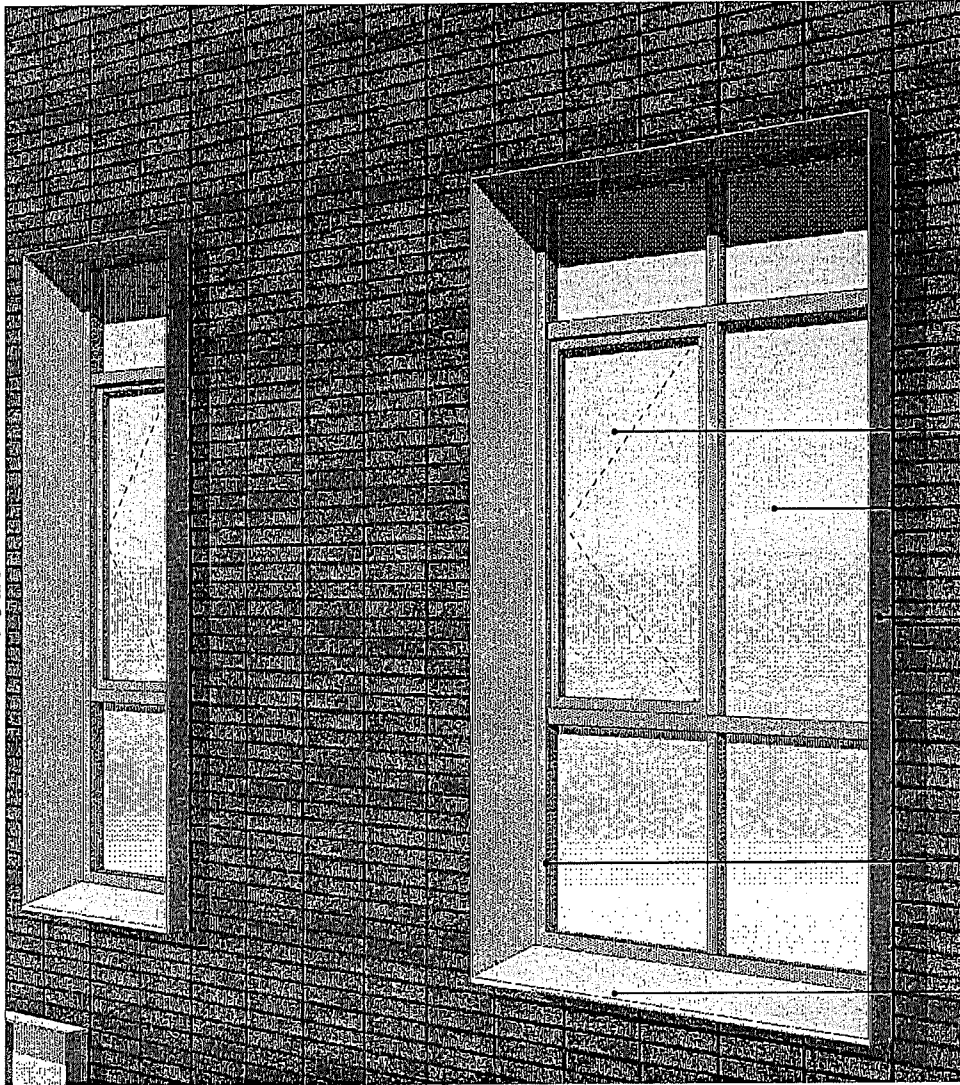
A5.6 LMSA





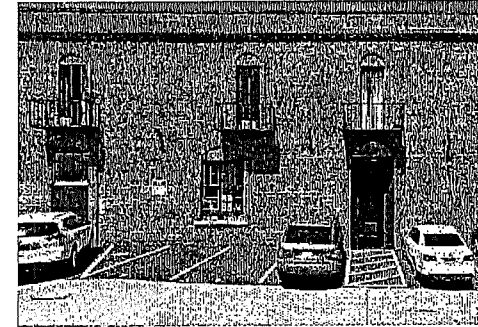
6 FENESTRATION

4781



88 BROADWAY FACADE DETAIL

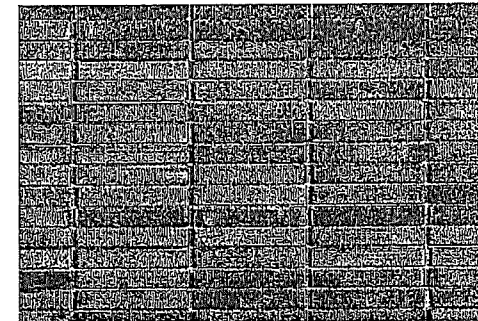
- OPERABLE WINDOW
- HIGH PERFORMANCE GLAZING, TYP.
- 4" RECESS + 4" PROJECTION PAINTED ALUMINUM FRAME
- ROMAN THIN BRICK
- ALUMINUM WINDOW WITH GLAZING RECESSED APPROX. 1-1/4"
- ALUMINUM SILL



OFFSET WINDOWS EXAMPLE WITHIN DISTRICT
915 Front St.



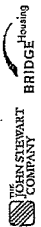
PROJECTED WINDOW FRAME WITHIN DISTRICT
915 Battery St.



STACK BOND BRICK WALL

03/09/18

WINDOWS AT 'BRICK' FACADES

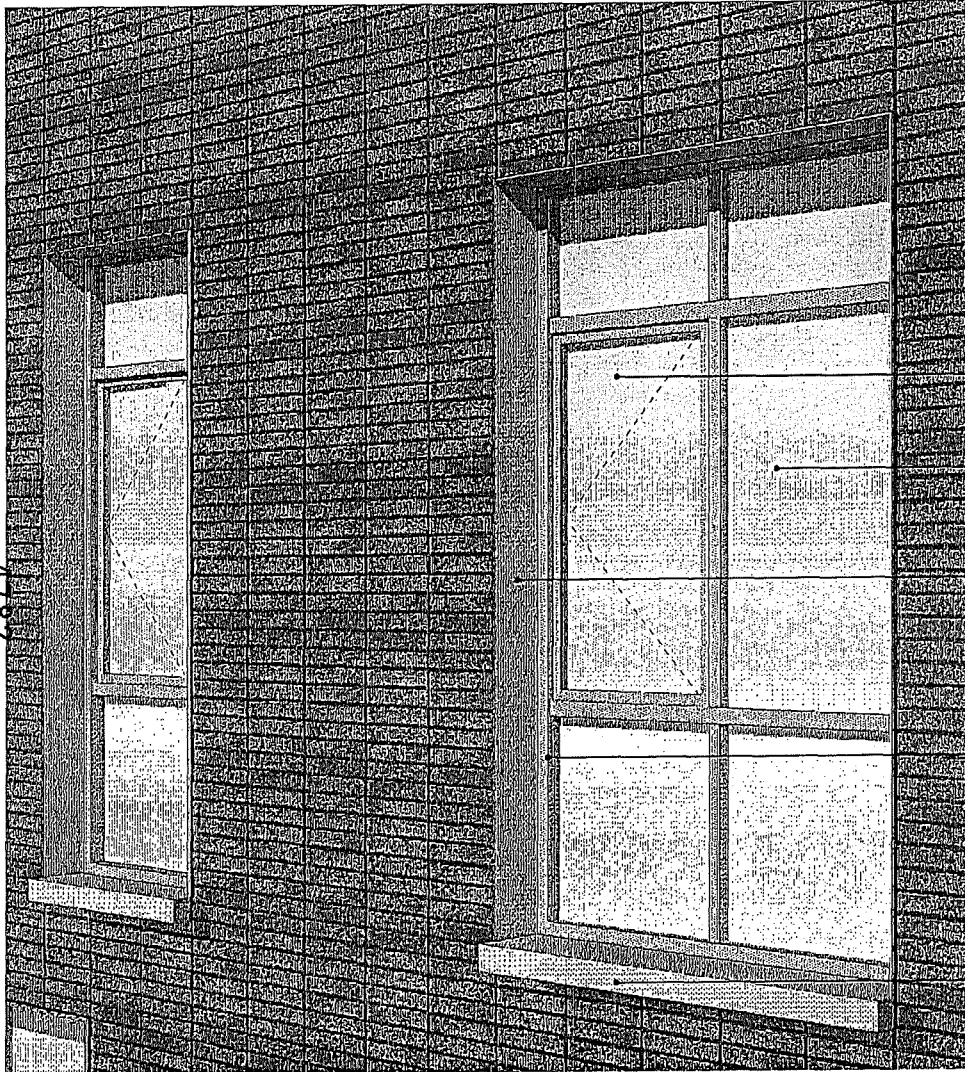


CERTIFICATE OF APPROPRIATENESS
REV-5 / SECTION 315

88 BROADWAY / 735 DAVIS

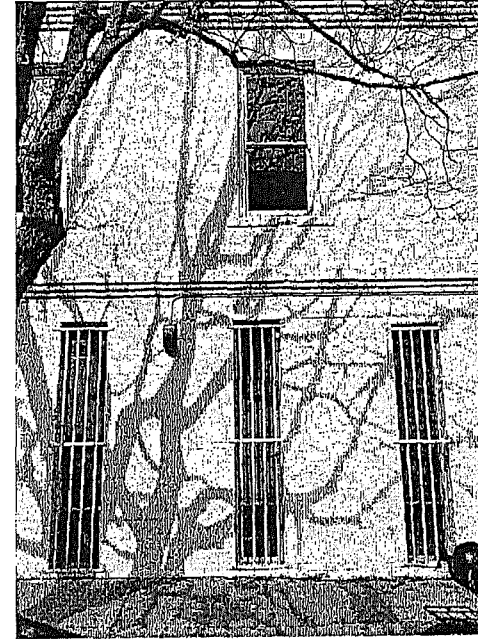
A6.1

78/7

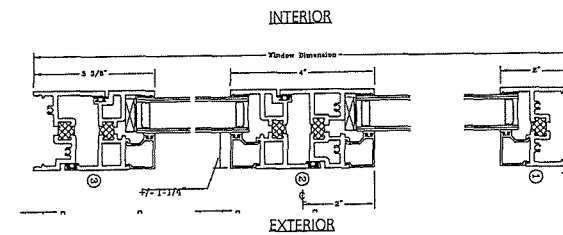


735 DAVIS FACADE DETAIL

- OPERABLE WINDOW
- HIGH PERFORMANCE GLAZING, TYP.
- 4" RECESS, PAINTED ALUMINUM FRAME
- ROMAN THIN BRICK
- ALUMINUM WINDOW WITH GLAZING RECESSED APPROX. 1-1/4"
- PROJECTED ALUMINUM SILL

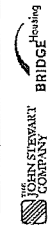


WINDOW PROPORTION
EXAMPLE WITHIN DISTRICT
60-70 Broadway



WINDOW FRAME EXAMPLE
Graham Series 6500
casement window detail (N.T.S.)

WINDOWS AT 'BRICK' FACADES

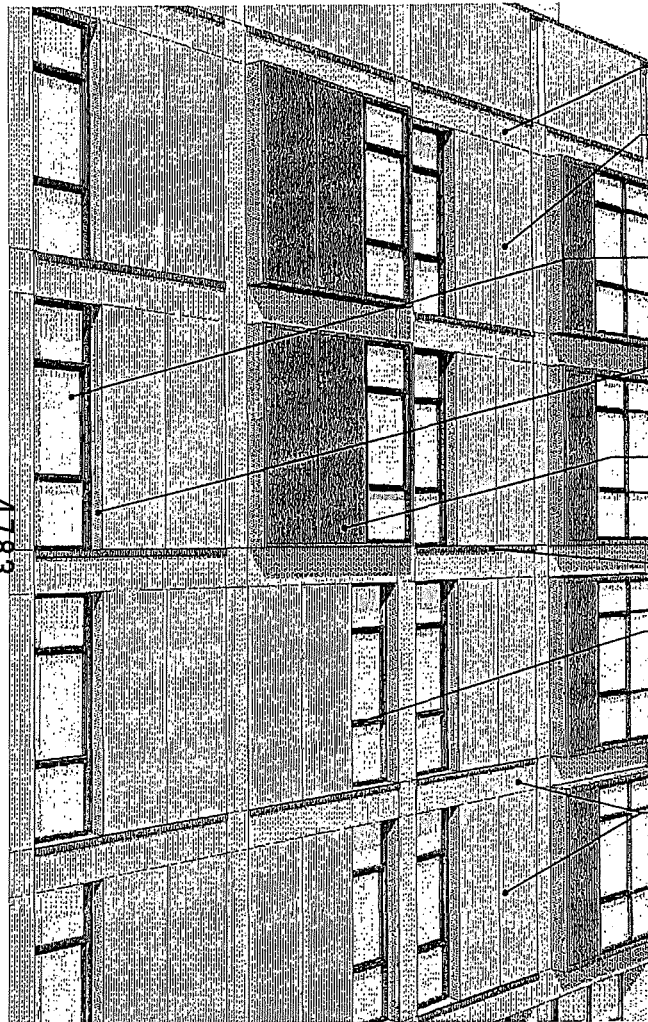


CERTIFICATE OF APPROPRIATENESS
REV-5 / SECTION 315

LMSA 88 BROADWAY / 735 DAVIS

A6.2

4783



- NATURAL CEMENT PANEL W/ FASTENERS
- PAINTED CEMENT PANEL W/ FASTENERS
- ALUMINUM WINDOW, GLAZING RECESSED FROM FRAME APPROX. 1-1/4"
- 4" MIN RECESS METAL
- DARK GRAY CEMENT PANEL AT FACE OF PROJECTION
- BELT COURSE
- TRIPARTITE WINDOW AND PANEL SYSTEM IS EXPRESSIVE OF FRAME AND INFILL
- SUBTLE CONTRAST IN COLOR BETWEEN FRAME AND INFILL SIMILAR TO DISTRICT EXAMPLES

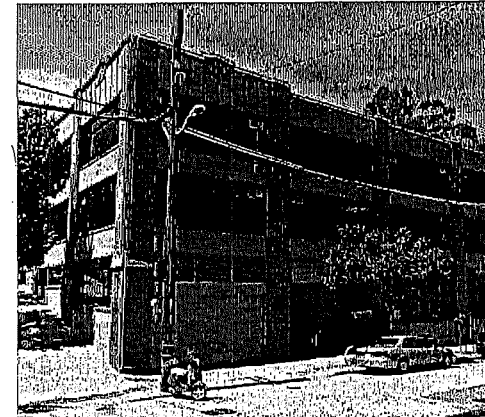
88 BROADWAY - ENHANCED "BELT COURSE"



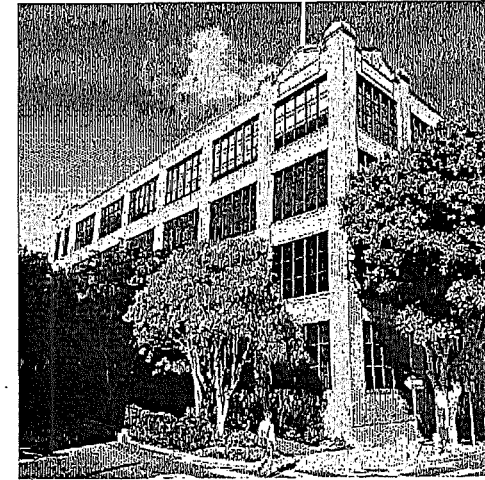
FRAME AND INFILL WITHIN DISTRICT
100-120 Broadway



FRAME AND INFILL WITHIN DISTRICT
300 Broadway



FRAME AND INFILL WITHIN DISTRICT
1005 Sansome St.



FRAME AND INFILL WITHIN DISTRICT
901 Battery St.

03/09/18

WINDOWS AT 'FRAME & INFILL' FACADES

JOHN STEWART COMPANY
BRIDGE Housing

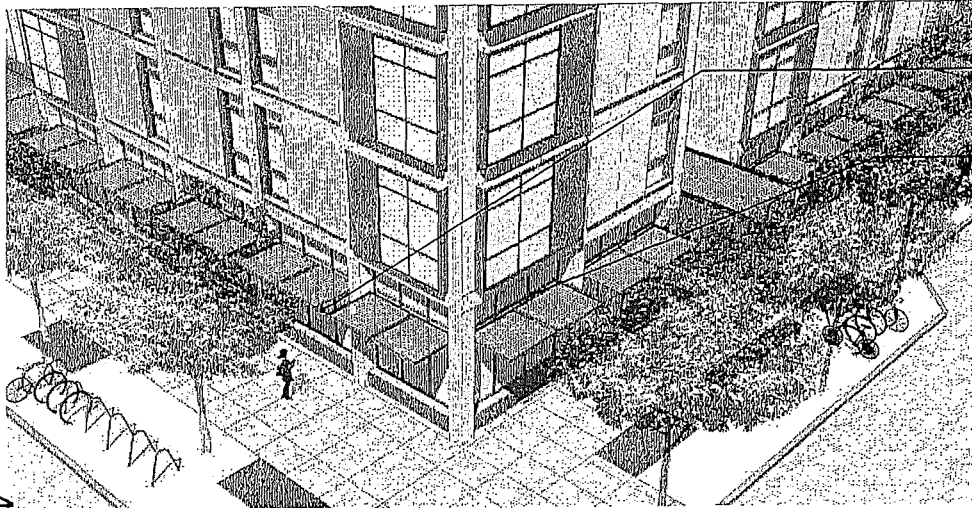
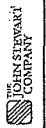
A6.3 LMSA 88 BROADWAY/+735 DAVIS
CERTIFICATE OF APPROPRIATENESS
REV.5 / SECTION 315

STOREFRONTS AND CANOPIES

CERTIFICATE OF APPROPRIATENESS
REV-5 / SECTION 315

88 BROADWAY / 735 DAVIS

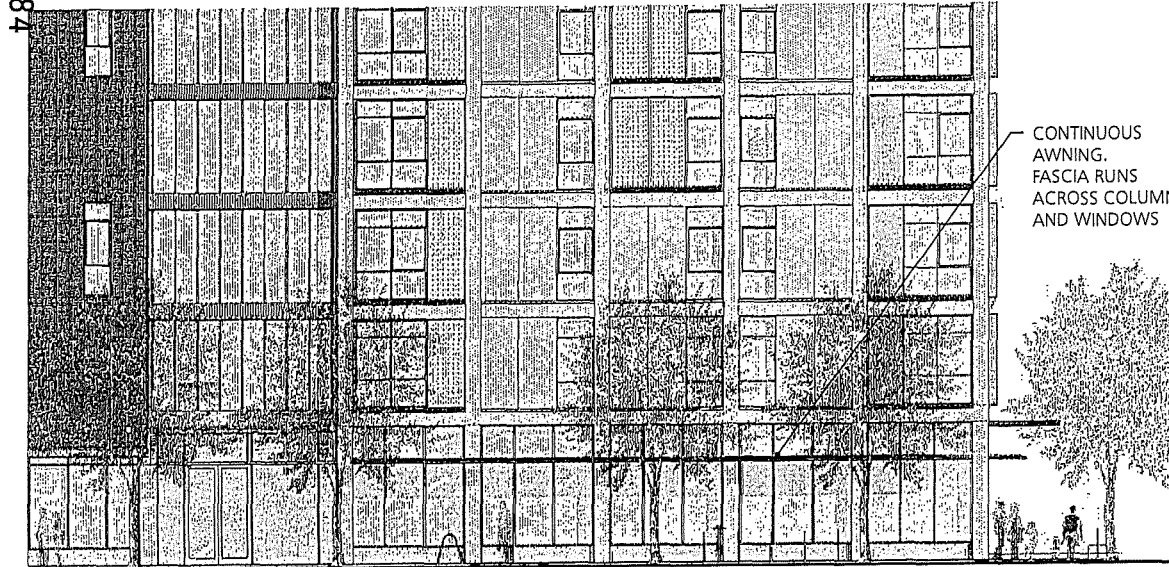
A6.4



CONTINUOUS
AWNING ACCENTS

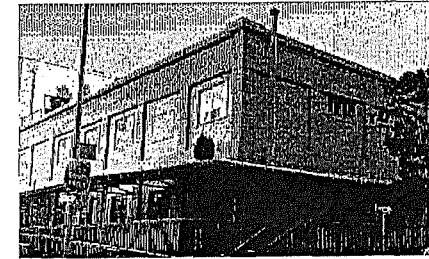
STOREFRONTS
W/ TRANSOM

PROJECTING AWNINGS - BROADWAY AND FRONT STREET CORNER

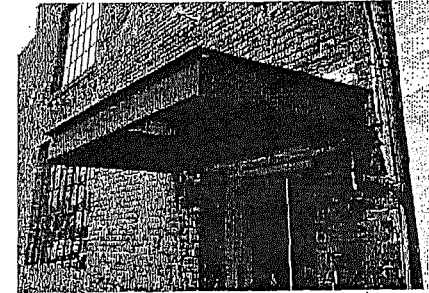


CONTINUOUS
AWNING.
FASCIA RUNS
ACROSS COLUMNS
AND WINDOWS

PROJECTING AWNINGS - BROADWAY ELEVATION



CANOPY EXAMPLE ADJACENT TO DISTRICT
Lombard St and Montgomery St.



CANOPY EXAMPLE WITHIN DISTRICT
1025 Battery St.



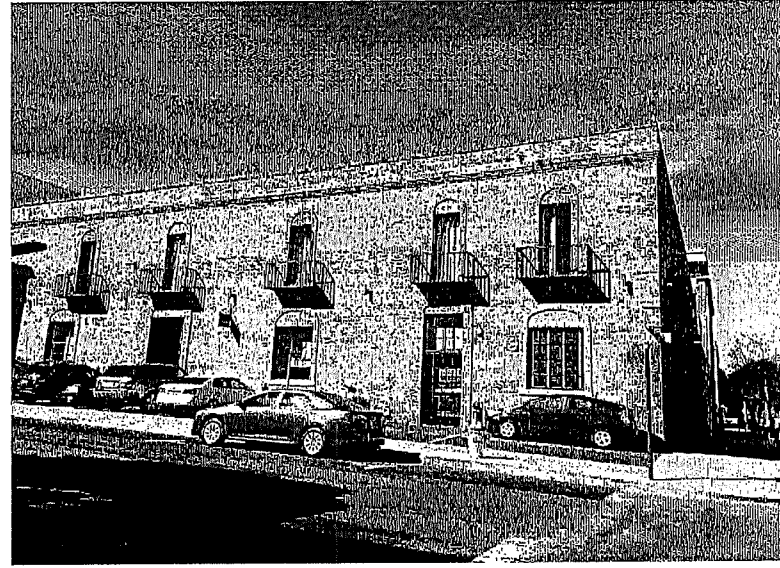
CANOPY WITHIN ANOTHER HISTORIC DISTRICT
BAKER HAMILTON
SHOWPLACE SQUARE/NE MISSION HISTORIC DISTRICT



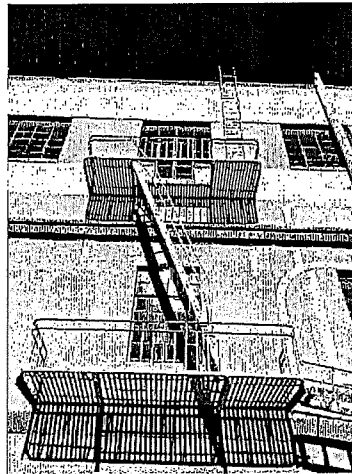
4785

PROPOSED PROJECT JULIET BALCONIES DAVIS ST. ELEVATION

SMALL, TRANSPARENT, SOMETIMES RANDOM,
BALCONIES PROVIDE VARIATION, SHADOW, AND
VISUAL INTEREST TO FACADES



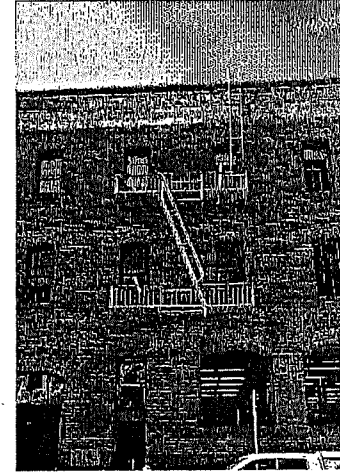
BALCONIES EXAMPLE WITHIN DISTRICT
915 Front Street (Balconies later addition)



4 Vallejo St.



402 Jackson St.



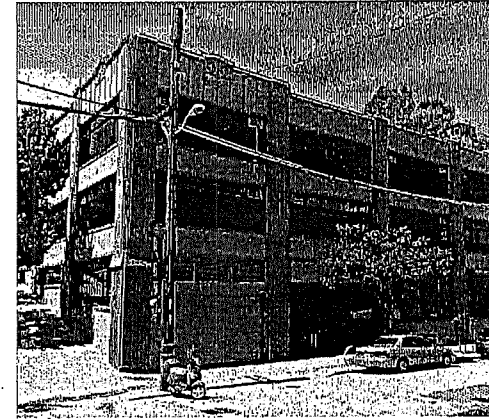
945 Battery St.

FIRE ESCAPE EXAMPLES WITHIN DISTRICT

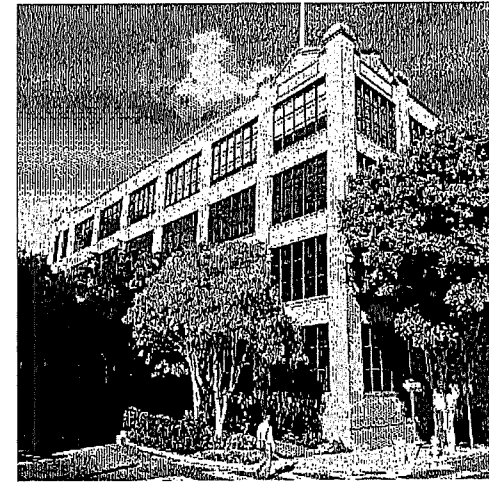
7 CORNER TREATMENT



CORNER TREATMENT AT BROADWAY AND FRONT STREET



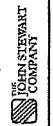
FRAME AND INFILL CORNER WITHIN DISTRICT
1005 Sansome St.



FRAME AND INFILL CORNER WITHIN DISTRICT
901 Battery St.

03/09/18

CORNER TREATMENT



CERTIFICATE OF APPROPRIATENESS
REV-5 / SECTION 315

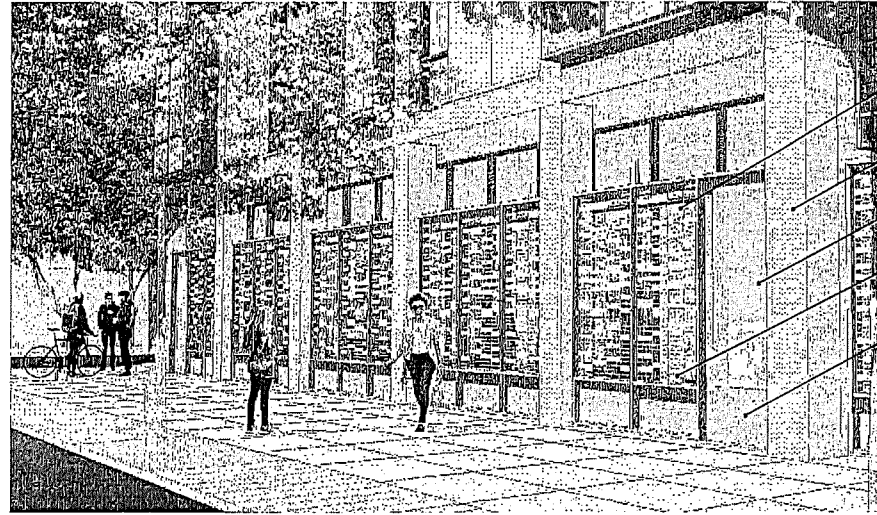
88 BROADWAY / +735 DAVIS

A7.1

LMISA

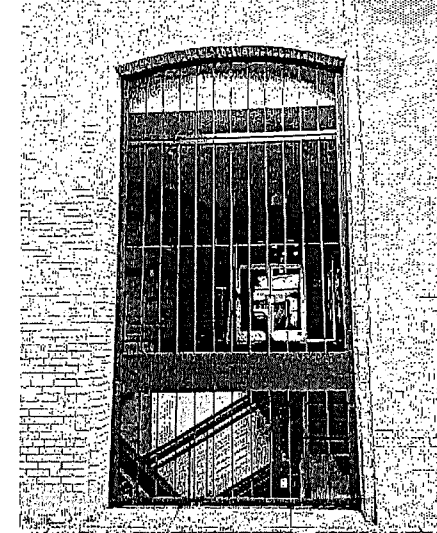
88 BROADWAY 785 DAVIS HEALTH CARE CORPORATION
NEW YORK, NY 10013

8 GROUND FLOOR UNITS

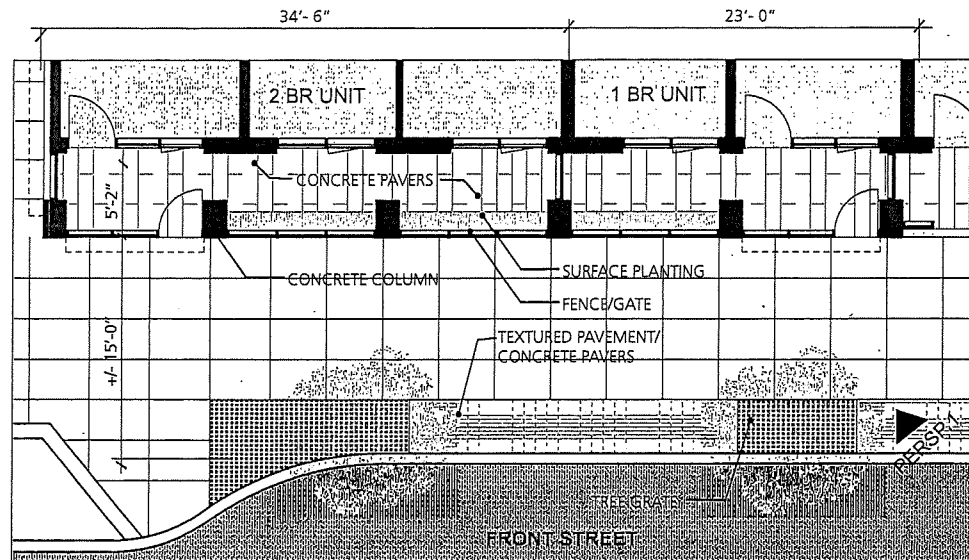


PERSPECTIVE 1

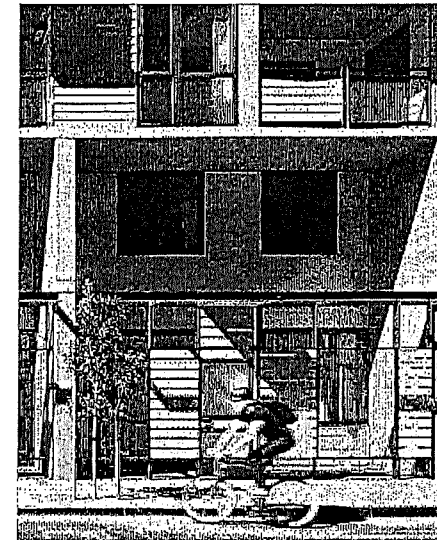
- METAL GRATE SCREEN
- CONCRETE COLUMNS
- TRANSLUCENT GLAZED DOOR
- LANDSCAPING INSIDE
- SOLID METAL PANELS, 1'-10" HIGH



TRANSPARENCY/GATES WITHIN DISTRICT
55 Union St.



1. STREETScape PLAN
SCALE: 1/8"=1'-0"

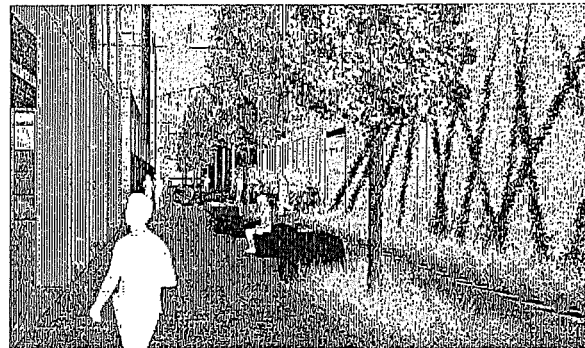
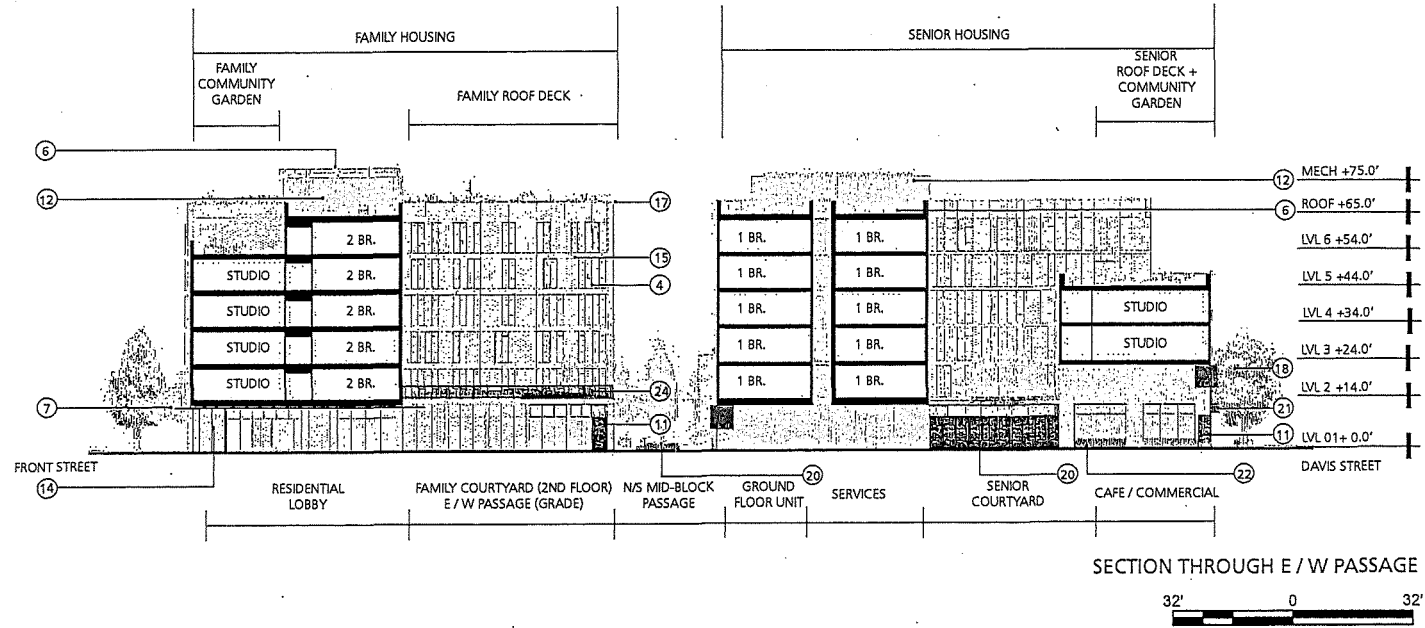


EXAMPLE OUTSIDE DISTRICT
474 NATOMA STREET, LEDDY MAYTUM STACY ARCHITECTS

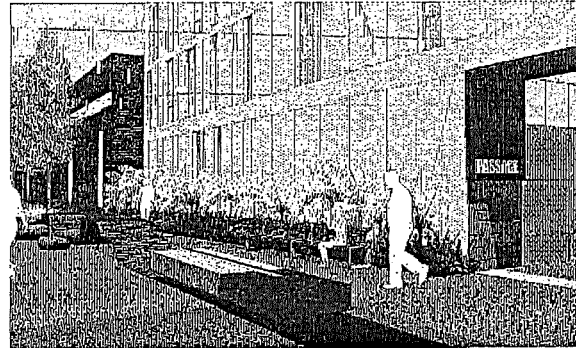
9 MID-BLOCK PASSAGES

ELEVATION AND SECTION KEYNOTES:

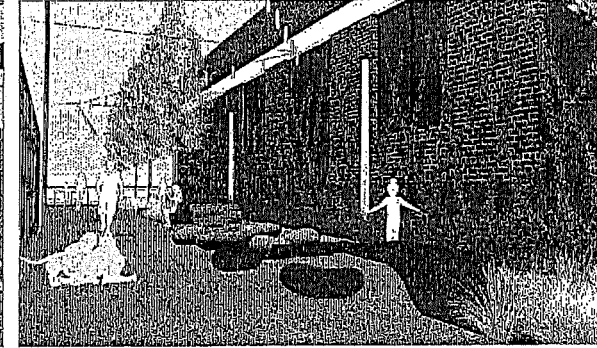
- ① TYPE 1 CEMENTITIOUS PANEL "FRAME"
- ② TYPE 2 CEMENTITIOUS PANEL "PROJECTION"
- ③ TYPE 3 CEMENTITIOUS PANEL "INFILL"
- ④ ALUMINUM WINDOW
- ⑤ CONCRETE COLUMNS
- ⑥ STANCHION MOUNTED ROOF SOLAR PANELS
- ⑦ METAL AND GLASS AWNING
- ⑧ PROJECTED WINDOW, METAL EDGE
- ⑨ METAL ROLL UP GARAGE DOOR
- ⑩ THIN BRICK
- ⑪ METAL GRATE + GLASS PANEL FENCE/GATE
- ⑫ ENCLOSED ROOFTOP MECHANICAL SPACES
- ⑬ PERFORATED METAL JULIET BALCONY
- ⑭ ALUMINUM STOREFRONT
- ⑮ PAINTED STUCCO
- ⑯ BALCONY
- ⑰ PARAPET COPING 42" ABOVE ROOF PLANE
- ⑱ PROPOSED TREE
- ⑲ EXISTING TREE
- ⑳ RAISED PLANTER
- ㉑ SIGNAGE
- ㉒ CONCRETE "BULK HEAD"
- ㉓ METAL GUARD RAIL
- ㉔ METAL PLANTER
- ㉕ PLATE METAL CANOPY



BROADWAY MID-BLOCK PASSAGE LOOKING NORTH



BROADWAY MID-BLOCK PASSAGE LOOKING NORTH AT INTERSECTION WITH DAVIS PASSAGE



BROADWAY MID-BLOCK PASSAGE LOOKING NORTH

SCALE: 1/32" = 1'-0"

SECTIONS - MID-BLOCK PASSAGE

CERTIFICATE OF APPROPRIATENESS
REV-5 / SECTION 315

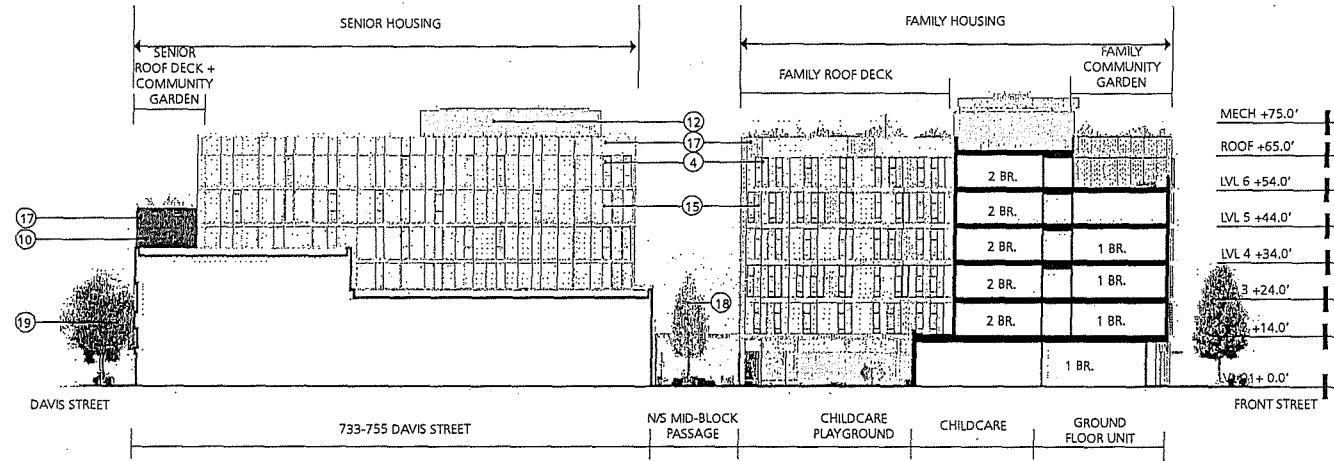
03/09/18

ELEVATION AND SECTION KEYNOTES:

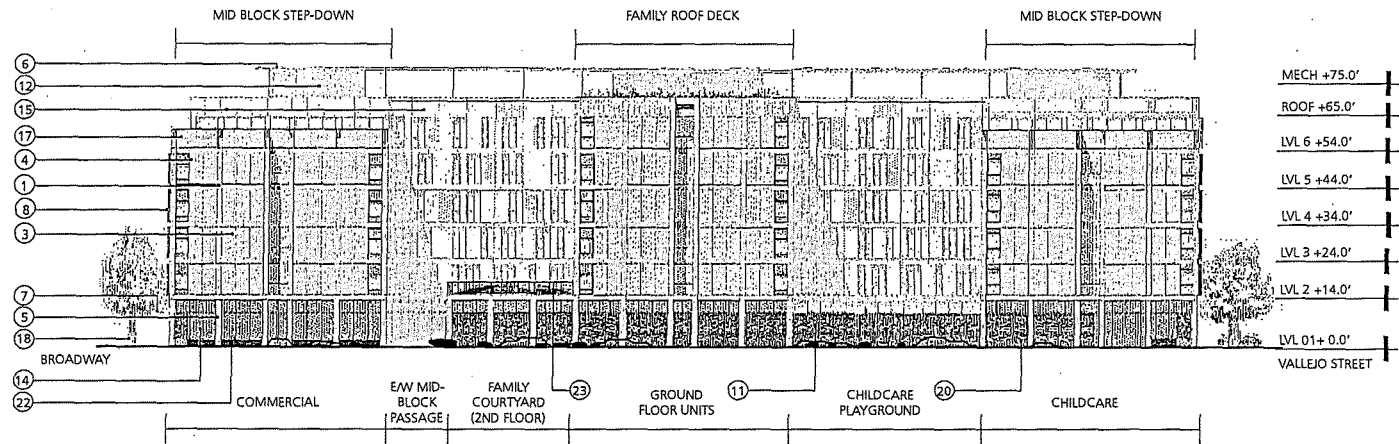
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- 2 TYPE 2 CEMENTITIOUS PANEL "PROJECTION"
- 3 TYPE 3 CEMENTITIOUS PANEL "INFILL"
- 4 ALUMINUM WINDOW
- 5 CONCRETE COLUMNS
- 6 STANCHION MOUNTED ROOF SOLAR PANELS
- 7 METAL AND GLASS AWNING
- 8 PROJECTED WINDOW, METAL EDGE
- 9 METAL ROLL UP GARAGE DOOR
- 10 THIN BRICK
- 11 METAL GRATE + GLASS PANEL FENCE/GATE
- 12 ENCLOSED ROOFTOP MECHANICAL SPACES
- 13 PERFORATED METAL JULIET BALCONY
- 14 ALUMINUM STOREFRONT
- 15 PAINTED STUCCO
- 16 BALCONY
- 17 PARAPET COPING 42" ABOVE ROOF PLANE
- 18 PROPOSED TREE
- 19 EXISTING TREE
- 20 RAISED PLANTER
- 21 SIGNAGE
- 22 CONCRETE "BULK HEAD"
- 23 METAL GUARD RAIL
- 24 METAL PLANTER
- 25 PLATE METAL CANOPY



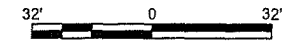
JOHN MAHER STREET



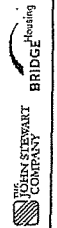
SECTION - E/W FAMILY BUILDING



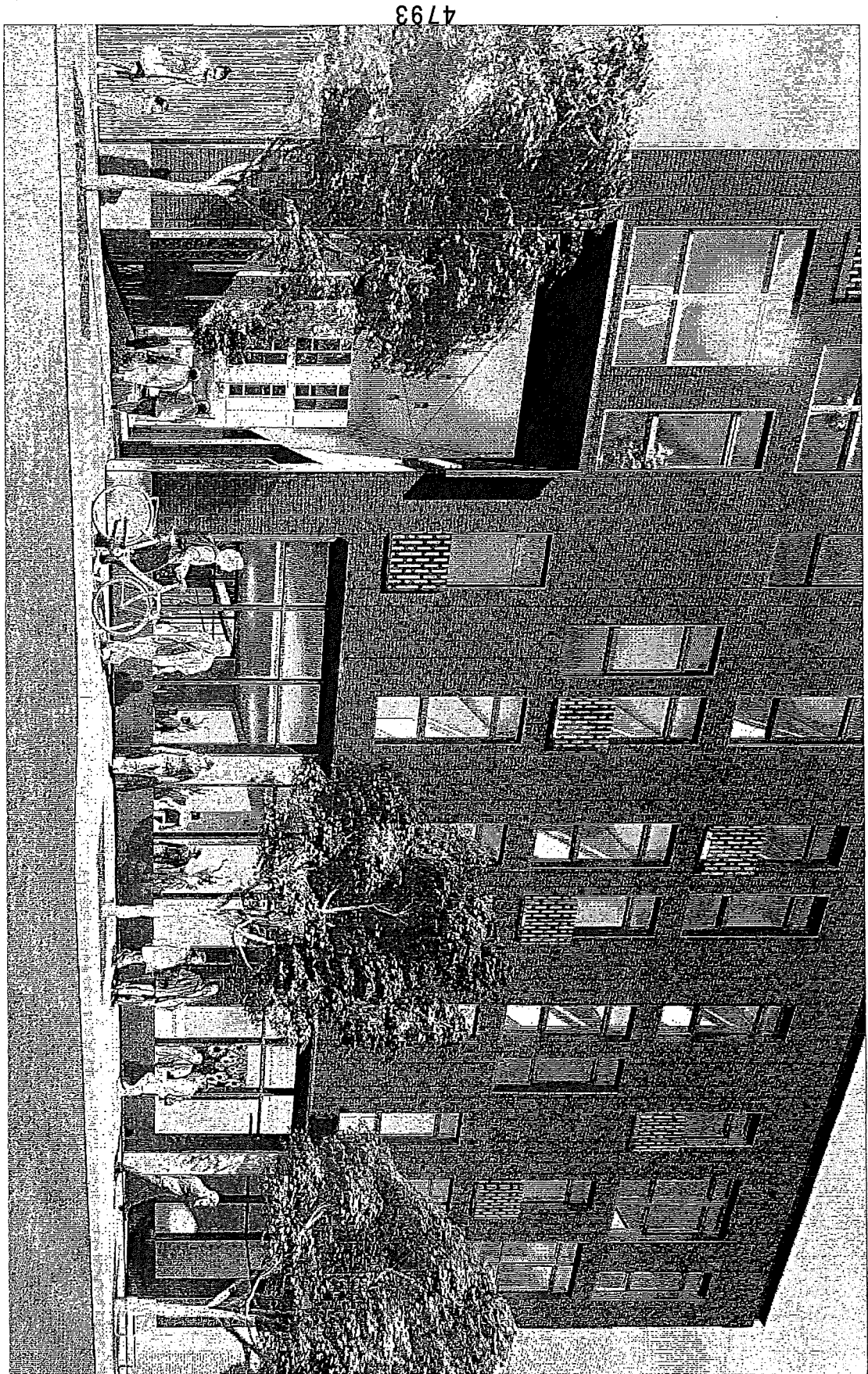
SECTION THROUGH N / S PASSAGE



SECTIONS - MID-BLOCK PASSAGE

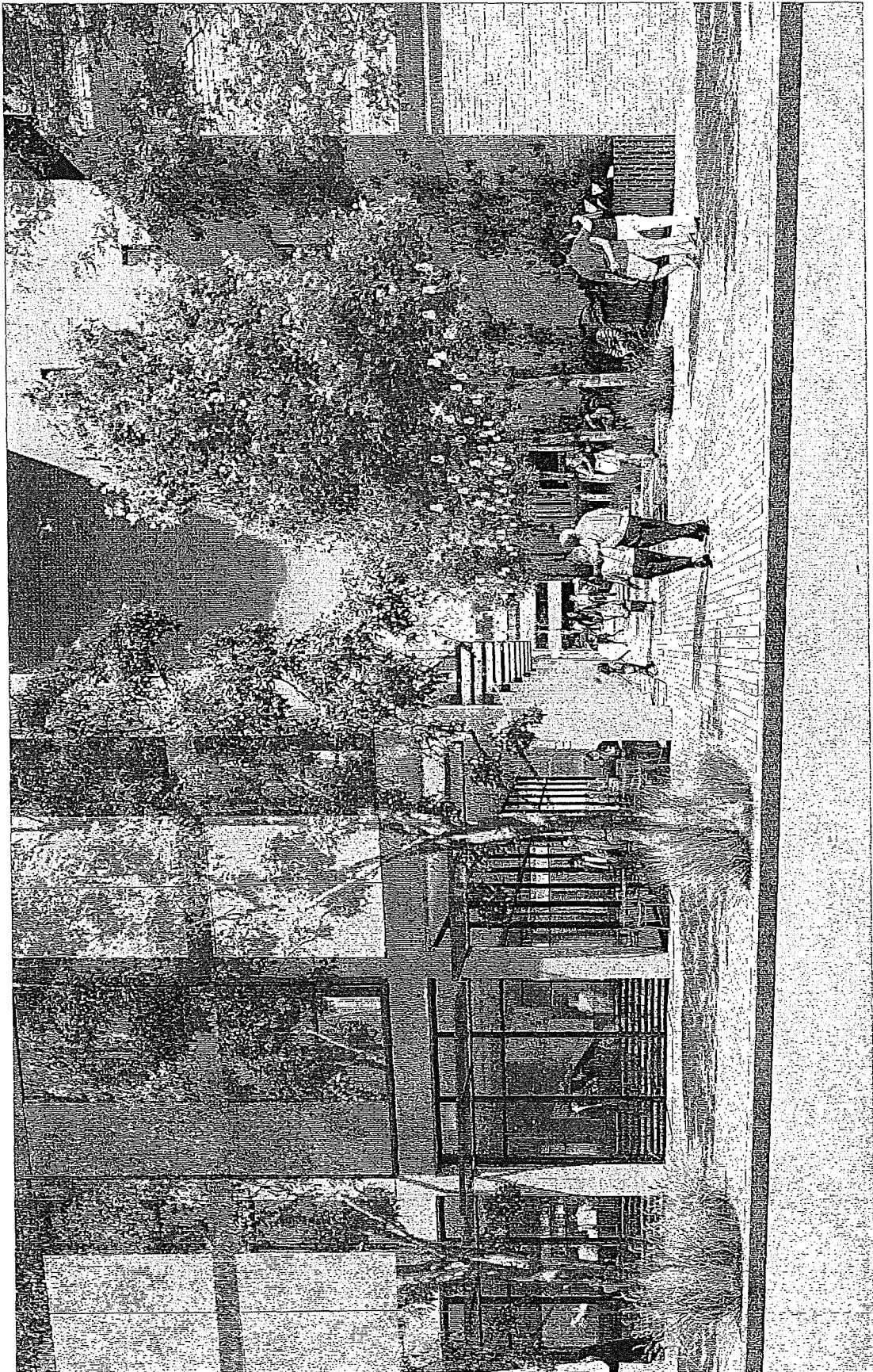


A9.2 CMSA 88 BROADWAY/+735 DAVIS CERTIFICATE OF APPROPRIATENESS REV-5 / SECTION 315



BROADWAY MID-BLOCK PASSAGE

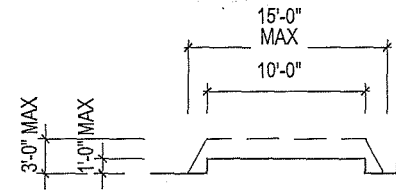
THE JOHNS STEWART
 COMPANY
 BRIDGE
 ENGINEERING



10 PLANNING ANALYSIS

	REQUIRED	PROPOSED: Family BLDG.	PROPOSED: Senior BLDG.	COMPLIANCE
PUD - PLANNED UNIT DEVELOPMENT (Sec. 304)		Proposed PUD Modifications: Rear Yd. configuration Open Space configuration Rear Yard Off-Street Loading	Proposed PUD Modifications: Rear Yd. configuration Open Space configuration Rear Yard Exposure	
LOT SIZE (Sec. 121)	10,000 SF	37,812 SF Approximately 275' X 137.5'	10,805 SF Approximately 137.5' X 78.58'	Applying for Conditional Use Permit (Sec. 303)
HEIGHT- BULK (Sec. 250-252)	65'-X: Front st. + Broadway st. + Vallejo st. + Davis st. 10' Mechanical Exemption 16' Elevator Exemption	Front: 65'-0" Broadway: 65'-0" Vallejo: 65'-0"	Davis: 65'-0" Broadway: 65'-0" Vallejo: 65'-0"	Complies
ACTIVE USE DEPTH (145.1)	25'-0" Active Use Depth Setback			Complies
OFF ST. PARKING (Table 151)	none required in affordable housing project Commercial (Restaurant) Not required Childcare 1:25	0 0 2	0 0 0	Complies
OFF ST. LOADING (Table 152)	Req'd for apartments: 1: 100,000 - 200,000 10' wide X 25' deep X 12' high	0 On-Street Loading (Front Street)	0 On-Street Loading (Davis Street)	PUD Modification for 88 Broadway only
RESIDENTIAL DENSITY (Sec 209.3)	RC-4 1 Unit per 200 SF of Lot Area Senior: Permitted up to 2x allowable meeting 202.2(f)	189 Units Allowed 135 Units Proposed	108 Units Allowed 54 Units Proposed	Complies
DWELLING UNIT DENSITY (Sec 207 (c)(2))	Affordable units do not count toward density + not limited by lot area.	n/a	n/a	Complies
BAY WINDOWS (sect. 136(c)(2))	Max. width: 15 ft.	Largest Width: 12 ft.	n/a	PUD Modification
FRONT SETBACK (Sec. 132)	NONE	NONE	Stepdown on Davis St. frontage as condition of the RFP	Complies
OBSTRUCTIONS (Sunshades) (Sec 136(c)(1))	Min. Headroom: 7'-6" Max Projection: 4'-0"	Min. Headroom: 8'-0" Max Projection: 4'-0"		Complies
OBSTRUCTIONS (Awnings) (Sec 136.1(a)(2))	Min. Headroom: 8'-0" Max. Height above Grade: 16'-0" Max. Projection: 4'-0"	Min. Headroom: 8'-0" Max. Height above Grade: 16'-0" Max. Projection: 4'-0"	Min. Headroom: 8'-6" Max. Height above Grade: 12'-0" Max. Projection: 4'-0"	Complies

SECTION 136: OBSTRUCTIONS & PROJECTIONS



TYPICAL PROJECTING BAY

03/09/18

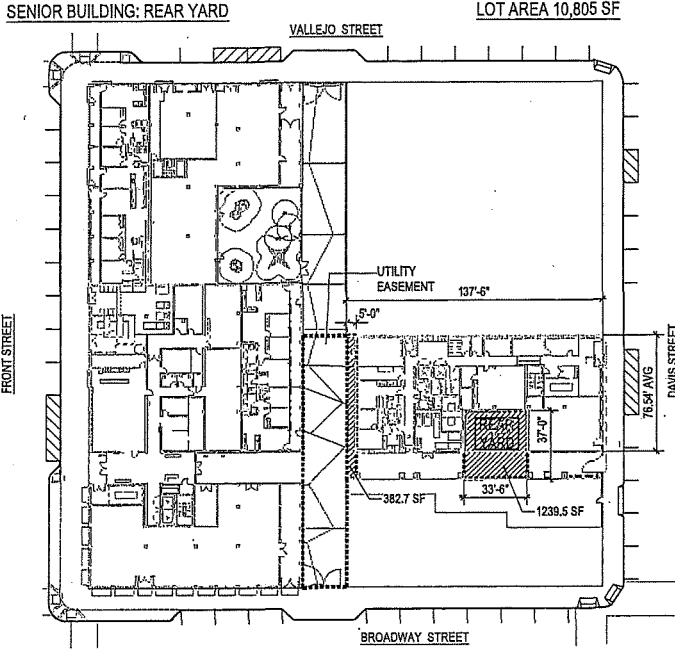
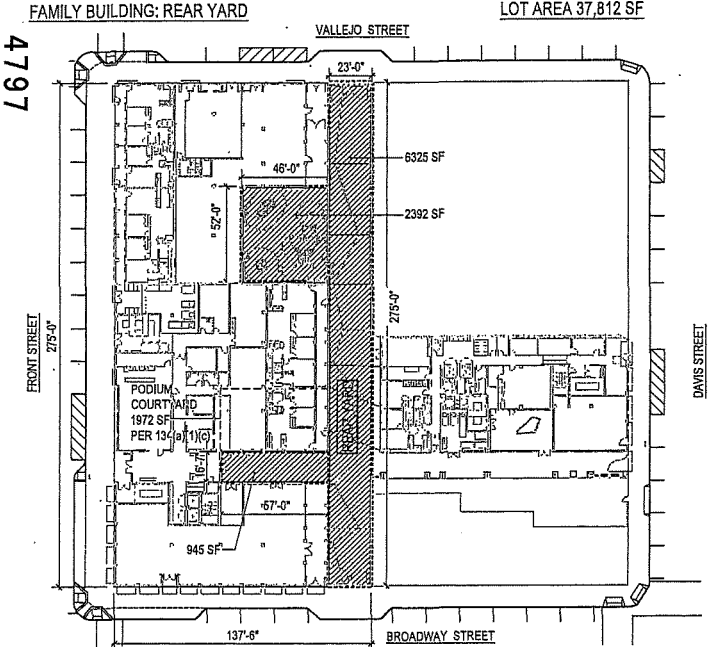
PLANNING ANALYSIS

 THE JOHN STEWART
COMPANY

 A10.1 LMSA 88 BROADWAY/+735 DAVIS
 CERTIFICATE OF APPROPRIATENESS
 REV-5 / SECTION 315

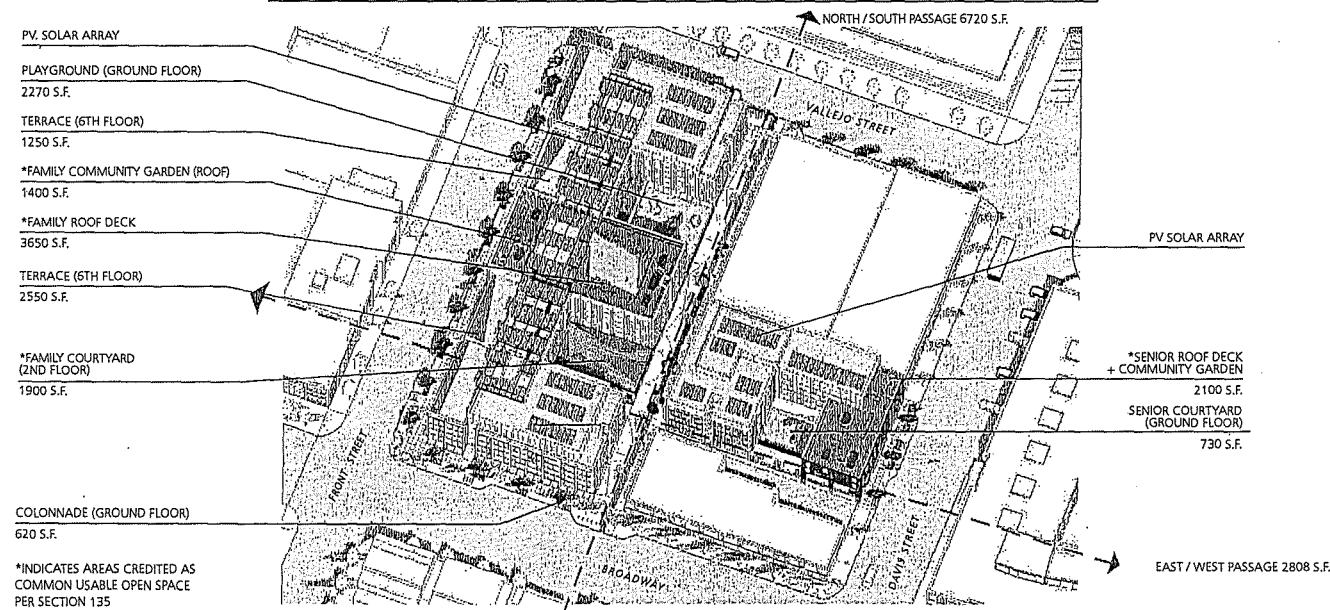
SECTION 134: REAR YARD

REQUIRED	PROPOSED: Family BLDG.	PROPOSED: Senior BLDG.	COMPLIANCE
25% Lot Depth	25% LOT DEPTH (137.5 SF) = 34.38' 275' X 34.38' = 9,454.5 SF REQ'D 9,662.0 SF PROVIDED (25.6%)	25% LOT DEPTH (137.5 SF) = 34.38' 76.54' X 34.38' = 2,631 SF REQUIRED 1,622 PROVIDED (15%) *PORTION OF REAR YARD LOCATED AJDACENT	PUD Modification for configuration for 88 Broadway PUD Modification for configuration & size for 735 Davis



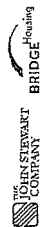
SECTION 135: OPEN SPACE

REQUIRED	PROPOSED: Family BLDG.	PROPOSED: Senior BLDG.	COMPLIANCE
Common Open Space Area: 48 SF/Unit FAMILY BLDG. 1/2 AMOUNT SENIOR BLDG. FAMILY (135 x 48) = 6,480 SF SENIOR (135(d)(3)) (54 x 48) x .5 = 1,296 SF	Common Usable Open Space Family Roof Deck 3650 SF Family Community Garden (Roof) 1400 SF Family Courtyard 1900 SF TOTAL: 6950 SF	Common Usable Open Space Senior Roof Deck + Community Garden 2100 SF TOTAL: 2100 SF	Complies
FAMILY ROOF DECK Min. Dimensions: 15'-0" Min. Area: 300 SF	FAMILY ROOF DECK Min. Dimensions: 56'-0" Min. Area: 3201 SF		
FAMILY COMMUNITY GARDEN Min. Dimensions: 15'-0" Min. Area: 300 SF	FAMILY COMMUNITY GARDEN Min. Dimensions: 47'-0" Min. Area: 1448 SF		
5th Floor Terrace Min. Dimensions: 15'-0" Min. Area: 300 SF	5th Floor Terrace Min. Dimensions: 19'-0" Min. Area: 1066 SF		
6th Floor Terrace Min. Dimensions: 15'-0" Min. Area: 300 SF	6th Floor Terrace Min. Dimensions: 22'-0" Min. Area: 1178 SF		
SENIOR ROOF DECK + GARDEN Min. Dimensions: 15'-0" Min. Area: 300 SF		SENIOR ROOF DECK + GARDEN Min. Dimensions: 33'-0" Min. Area: 2108 SF	



03/09/18

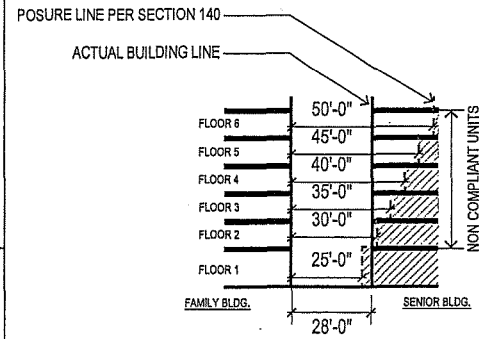
PLANNING ANALYSIS - OPEN SPACE



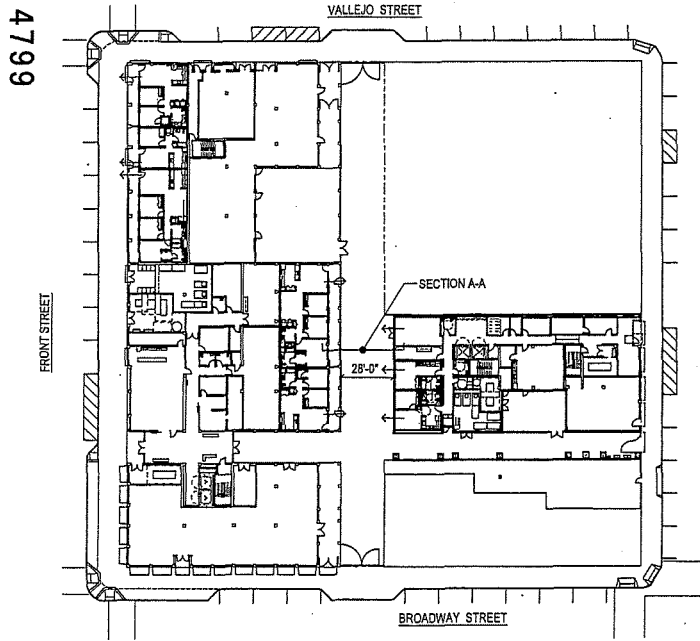
A10.3 LMSA 88 BROADWAY / 735 DAVIS CERTIFICATE OF APPROPRIATENESS REV-5 / SECTION 315

SECTION 140: Exposure

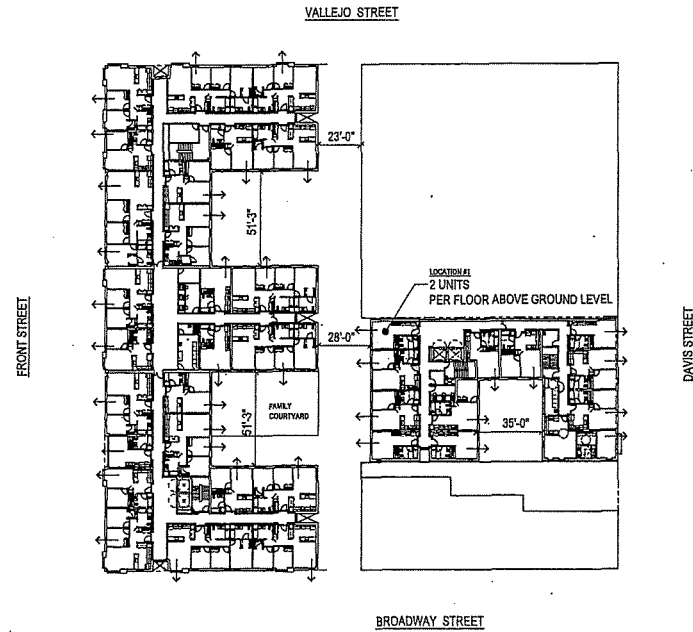
REQUIRED	PROPOSED: Family BLDG.	PROPOSED: Senior BLDG.	COMPLIANCE
At least one 120 SF min. room per dwelling unit shall face directly on an open area: 1. Public Street, 20' wide public alley, 25' side yard or rear yard 2. Open area which is unobstructed and is no less than 25' in every horizontal dimension for the floor at which the dwelling unit in question is located and the floor immediately above it, with an increase of 5' in every horizontal dimension at each subsequent floor.	All units are compliant except those described below:	LOCATION #1: Section A-A Faces 28'-0" wide rear yard with neighboring Family Building	SENIOR BLDG. Floor 1: Complies Floor 2: PUD Modification/ 2 Units Floor 3: PUD Modification/ 2 Units Floor 4: PUD Modification/ 2 Units Floor 5: PUD Modification/ 2 Units Floor 6: PUD Modification/ 2 Units TOTAL: 135 Family Units Compliant 10 Senior Units Non-Compliant 44 Senior Units Compliant



GROUND FLOOR PLAN



TYPICAL UPPER FLOOR PLAN (FLOORS 2-6)



03/09/18

PLANNING ANALYSIS - EXPOSURE

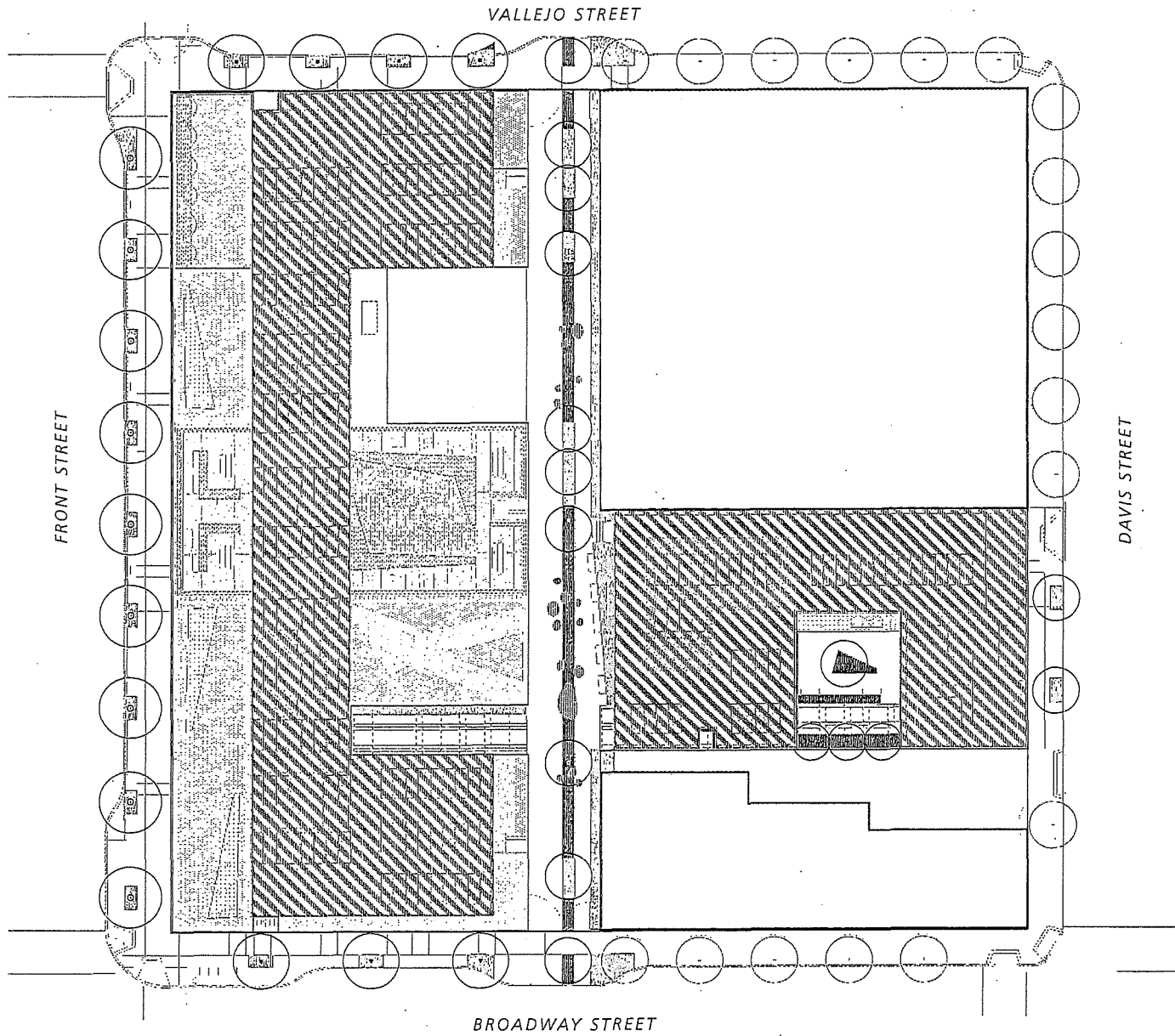
THE JOHN STEWART COMPANY

A10.4 LMSA 88 BROADWAY/735 DAVIS CERTIFICATE OF APPROPRIATENESS REV-5 / SECTION 315

4800



4801



SECTION 149 SOLAR ZONE

TOTAL SOLAR ZONE PER CALIFORNIA TITLE 24 PART SIX 110.10 (b) THROUGH (e) 15% OF TOTAL ROOF AREA

FAMILY BUILDING

Total roof area: 28,110 S.F.

Solar zone required: 4,216 S.F.

Solar zone provided: 8,122 S.F.



SENIOR BUILDING

Total roof area: 8,657 S.F.

Solar zone required: 1,299 S.F.

Solar zone provided: 1,742 S.F.

LEGEND

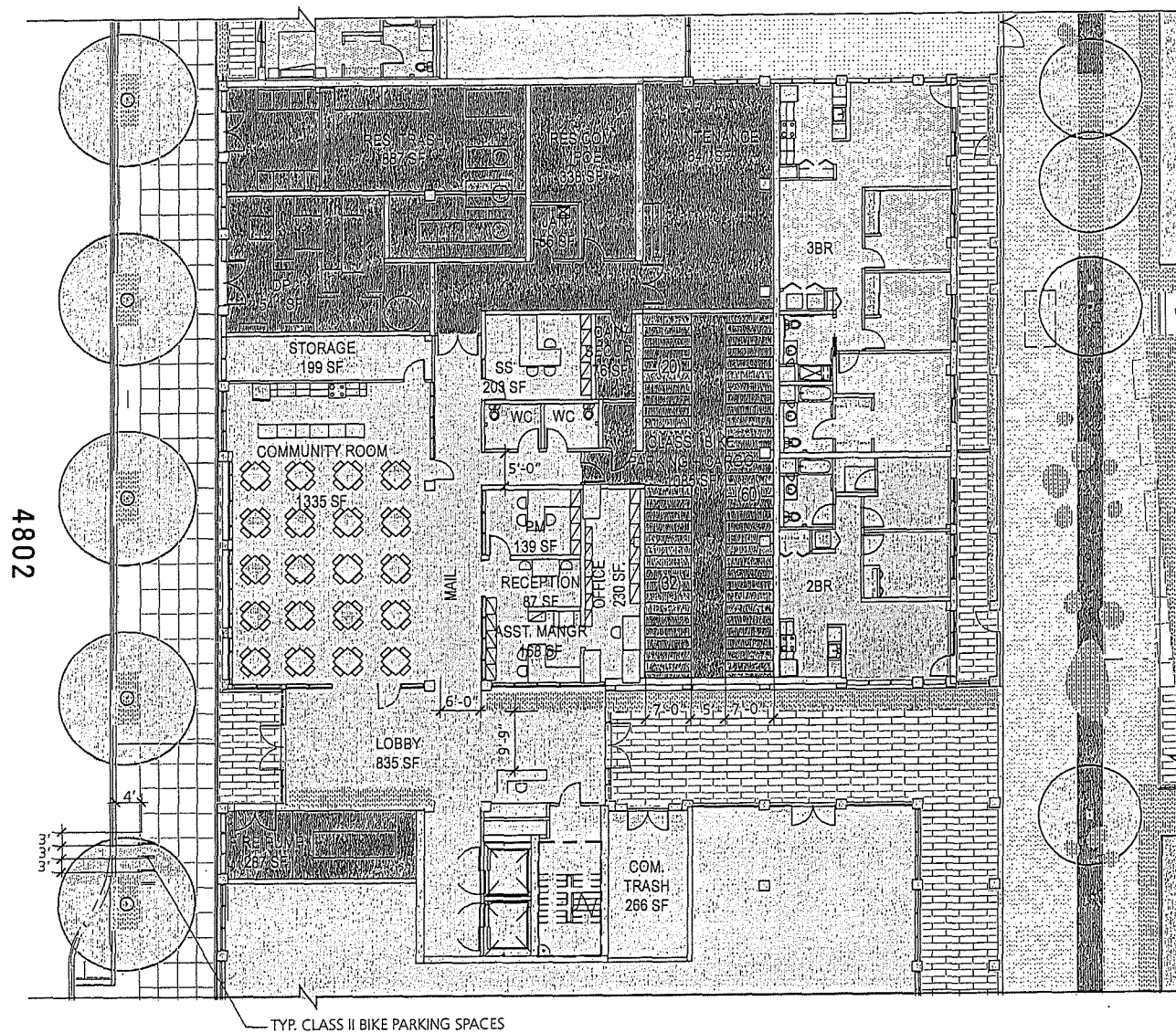
-  SOLAR ZONE
-  TOTAL ROOF AREA

03/09/18

PLANNING ANALYSIS - SOLAR ZONE

THE JOHN STEWART COMPANY
BRIDGE housing

A10.6 LMSA 88 BROADWAY / +735 DAVIS CERTIFICATE OF APPROPRIATENESS REV-5 / SECTION 315



SECTION 151 CLASS I & II BICYCLE PARKING

108 DERO DECKER LIFT ASSIST SPACES

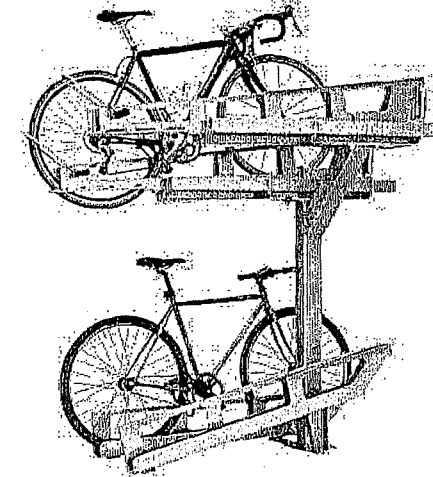
4 CARGO BIKE SPACES

112 SPACES TOTAL

LEGEND:

COMMERCIAL /
CHILDCARE
RESIDENTIAL UNITS

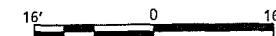
CIRCULATION & SUPPORT
SERVICE



CLASS I SPACES - DERO DECK LIFT ASSIST BIKE RACK

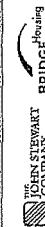


CLASS II - INVERTED 'U' BIKE RACK WITH SQUARE TUBE



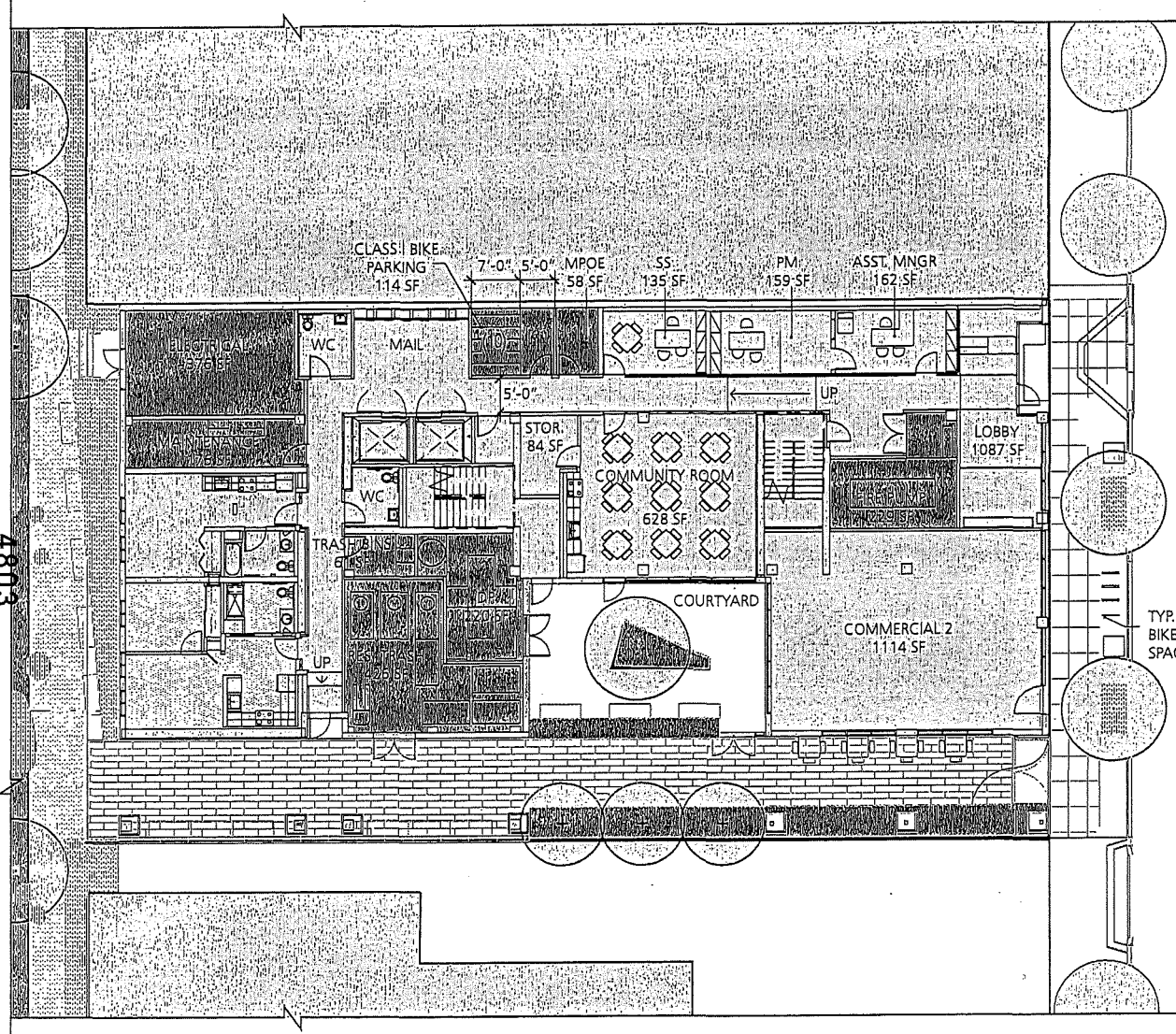
03/09/18

FAMILY BUILDING BIKE PARKING



A10.7 LMSA 88 BROADWAY / +735 DAVIS
CERTIFICATE OF APPROPRIATENESS
REV.5 / SECTION 315

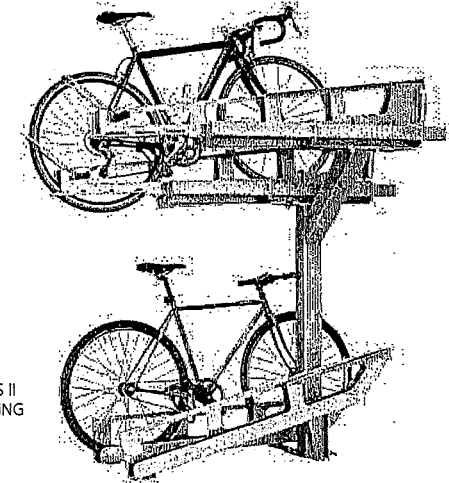
4803



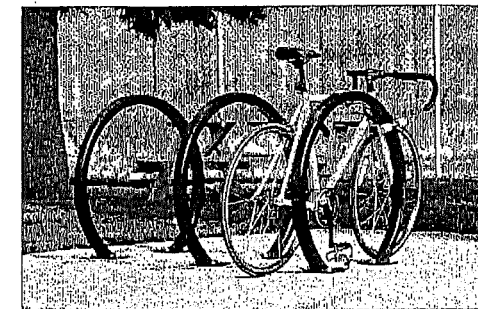
SECTION 151 CLASS I & II BICYCLE PARKING

10 DERO DECKER LIFT ASSIST SPACES

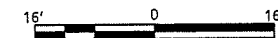
- LEGEND:**
- COMMERCIAL / CHILDCARE
 - RESIDENTIAL UNITS
 - CIRCULATION & SUPPORT
 - SERVICE



CLASS I SPACES - DERO DECK LIFT ASSIST BIKE RACK



CLASS II - INVERTED 'U' BIKE RACK WITH SQUARE TUBE

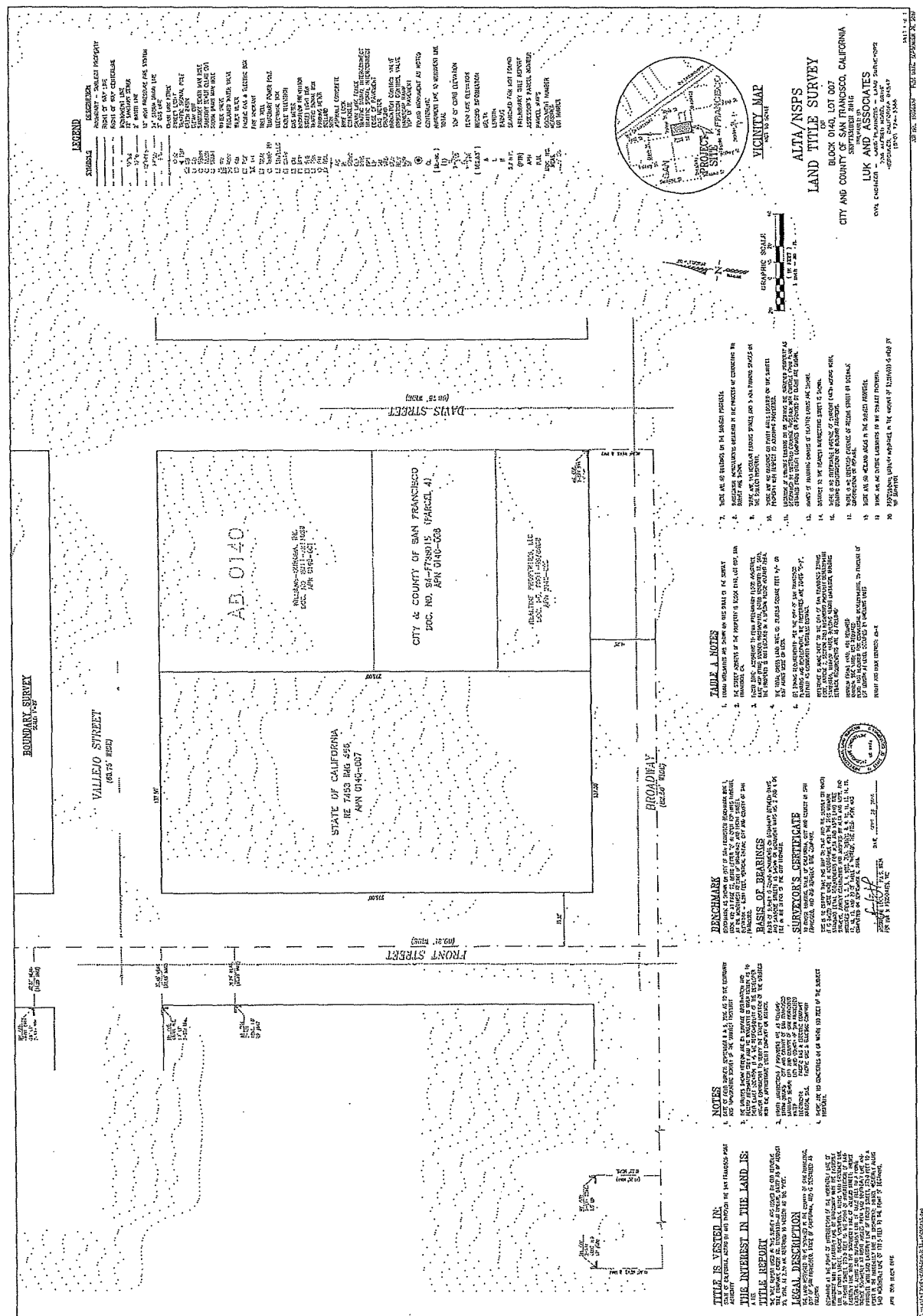


03/09/18

SENIOR BUILDING BIKE PARKING

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BRIDGE Housing

A10.8 LMSA 88 BROADWAY / +735 DAVIS
CERTIFICATE OF APPROPRIATENESS
REV-5 / SECTION 315



03/09/18

CERTIFICATE OF APPROPRIATENESS
REV-5 / SECTION 315

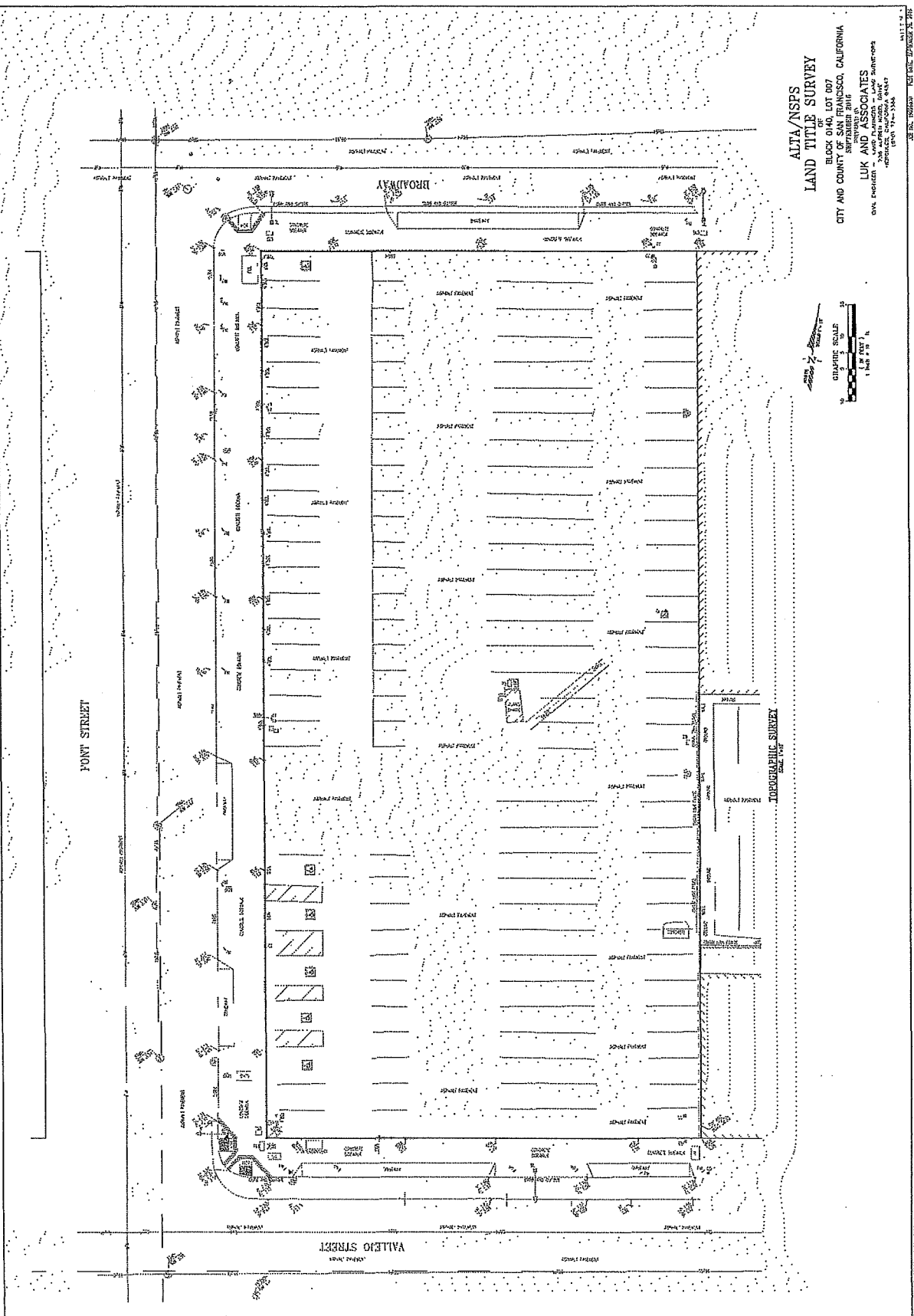
SITE SURVEY - FAMILY LOT

BRIDGE Housing

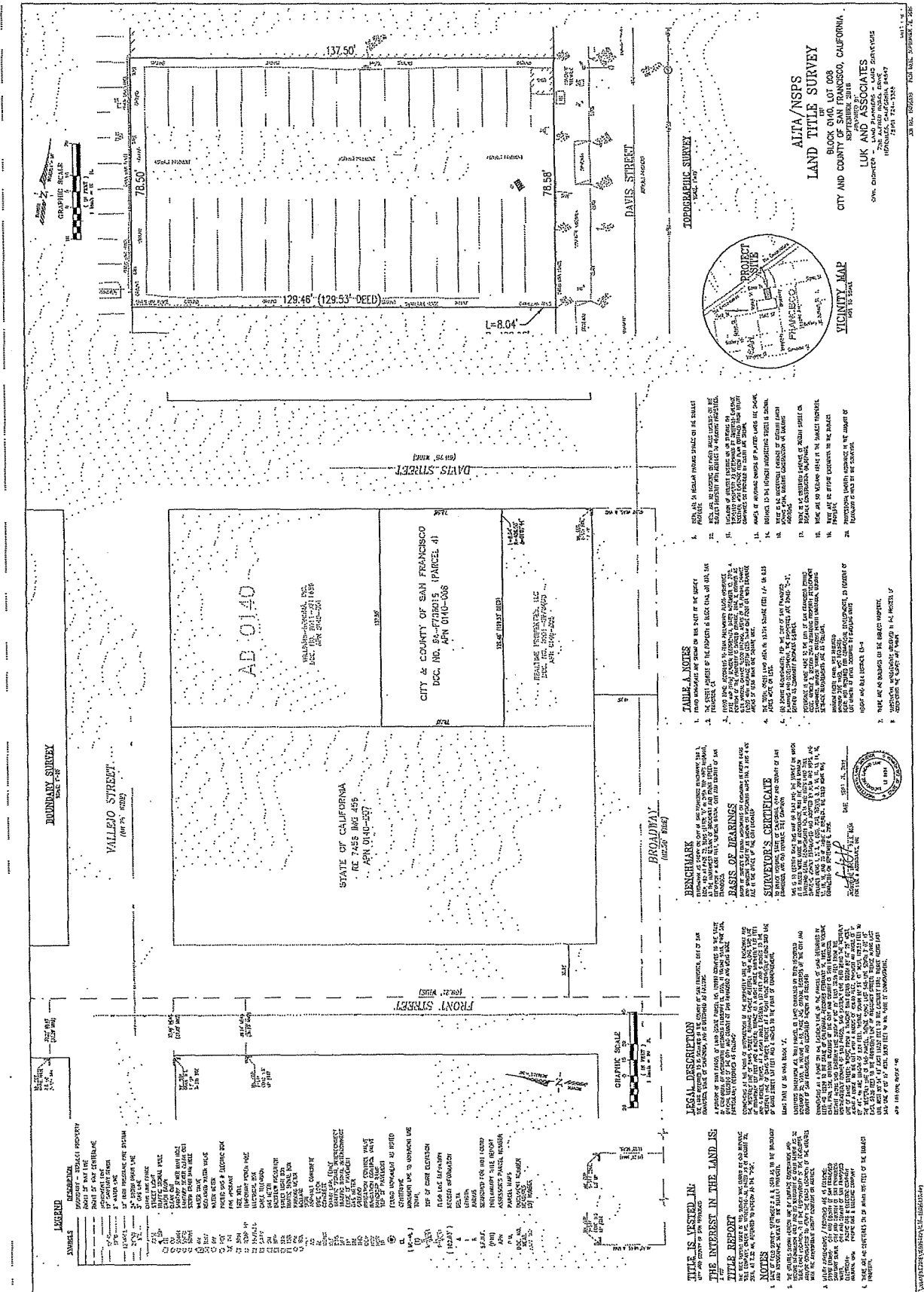
JOHN STEWART
COMPANY

A10.10 LMSA

88 BROADWAY/+735 DAVIS



SITE SURVEY - SENIOR LOT



11 APPENDIX

- To provide separation and visual transition between adjacent buildings by providing publicly accessible mid-block pedestrian alleys and pocket parks or equivalent alternative design concepts.

c) HEIGHT, BULK AND MASSING:

- To build within the 65 ft. height limit on the Port Site with massing step-downs toward the waterfront and build within 50 ft. height on the Davis Street frontage of the DPW Site.
- To avoid creating a "wall-like" effect on any façade facing a public street, but particularly Broadway and Front Streets by breaking the façade with setbacks on the upper floors and/or other architectural details to reduce apparent visual massing.
- To ensure that the construction type and materials relate to the Developments' context and location in the Northeast Waterfront Historic District as outlined in the Neighborhood Analysis findings in the community design workshop presentation. See: <http://www.sfmohcd.org/index.aspx?page=322>.
- To consider the scale of neighborhood warehouse buildings when making massing adjustments.
- To consider the appearance of the roof(s) from above (i.e. from Telegraph Hill) by minimizing roof structures, including elevators, stair and mechanical penthouses, and incorporating attractive potential resident amenities such as roof decks, landscaping, open space.

d) FACILITATION OF ACTIVE USES ALONG STREET FRONTAGES:

- To comply with the site's C-2 zoning requirements for active uses along the Broadway, Front, Vallejo and Davis Street frontages by exceeding the code required minimum 25 ft. depth for such uses wherever feasible.
- To design the commercial spaces at ground level in a manner that will facilitate neighborhood-serving retail such as a cafe, small market, hardware store, or bookstore with an emphasis on commercial uses on Broadway.
- To further encourage activation of street frontages where feasible by maintaining sidewalks wide enough to accommodate seating for commercial space customers.

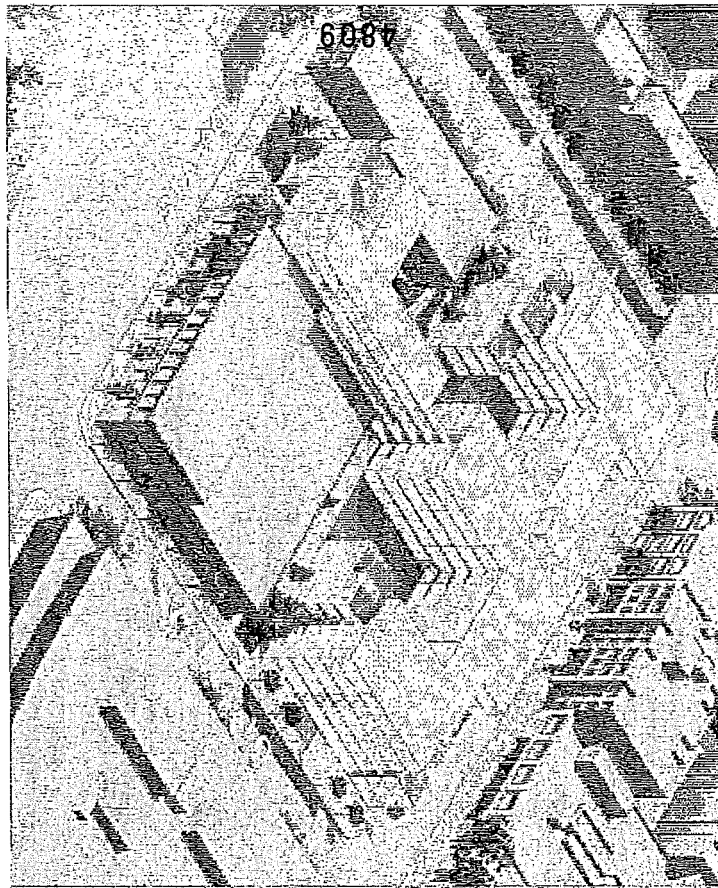
e) NEIGHBORHOOD/COMMUNITY AMENITIES:

- To provide benefits to the broader community by incorporating, to the extent they are feasible, community-oriented amenities such as an after-school program open to older non-resident children and a senior center open to non-resident seniors.
- To provide design amenities such as "pocket parks", landscaped open space at least visually accessible to the public, or a mid-block corridor or alley for pedestrian passage through the Development during daylight hours.

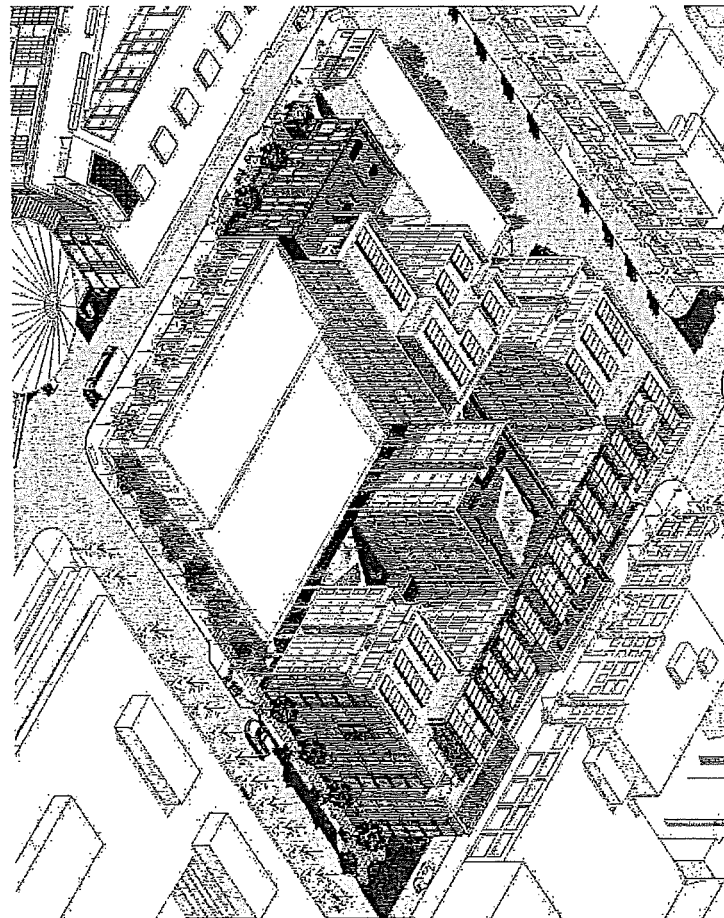
f) SUSTAINABILITY:

- To maximize the overall sustainability of the Development to the extent possible through the integrated use of sustainable building elements, including those that improve indoor air quality, reduce resource consumption, and approach zero-energy consumption.

NEIGHBORHOOD MASSING STUDY - PRE RFP



CURRENT MASSING





March 3, 2017

Aaron Thornton, AIA
LMS
677 Harrison St
San Francisco, California, 94107

Project: 88 Broadway St, San Francisco, CA
Project No.: 16-1902

Dear Aaron:

PAE has completed our initial Title 24 Initial Schematic Design Energy Model for the 88 Broadway project. The results indicate the building will minimally pass Title 24 requirements based on the initial building envelope and MEP systems.

One of the key factors in Title 24 compliance is optimizing the Window to Wall ratio (WWR). The 2016 Building Energy Efficiency Standards (Title 24, Part 6) prescriptively allow 40% WWR.

Figure 1: Title 24 Part 6 - 140.3

CONTINUED: TABLE 140.3-C - PRESCRIPTIVE ENVELOPE CRITERIA FOR HIGH-RISE RESIDENTIAL BUILDINGS AND GUEST ROOMS OF HOTEL/MOTEL BUILDINGS

Envelope	Penetration	All Climate Zones						
			Fixed Window	Operable Window	Curtainwall/Storefront	Glazed Doors ^a		
		Vertical	Area-Weighted Performance Rating	Max U-factor	0.36	0.46	0.41	0.43
				Max SHGC	0.25	0.22	0.26	0.23
			Area-Weighted Performance Rating	Min VT	0.42	0.32	0.46	0.17
			Maximum WWR%	40%				
		Sluggish		Glass, Curb Mounted ^b	Glass, Deck Mounted	Plastic, Curb Mounted ^b		
			Area-Weighted Performance Rating	Max U-factor	0.58	0.46	0.85	
				Max SHGC	0.25	0.25	0.01	
			Area-Weighted Performance Rating	Min VT	0.49	0.49	0.64	
Maximum SHGC	5%							

Notes:

1. Light mass walls are walls with a heat capacity of at least 7.0 Btu/ft²-°F and less than 15.0 Btu/ft²-°F. Heavy mass walls are walls with a heat capacity of at least 15.0 Btu/ft²-°F.

2. Glazed Doors applies to both site-built and in factory-assembled glazed doors.

- Notes:
1. Light color walls are walls with a heat capacity of at least 7.0 Btu/ft²-°F and less than 15.0 Btu/ft²-°F. Heavy mass walls are walls with a heat capacity of at least 15.0 Btu/ft²-°F.
 2. Glazed Doors applies to both pre-built and in factory-assembled glazed doors.

It is acceptable to follow the performance approach of energy compliance where a higher WWR is allowed. If our design was to proceed with a higher WWR, our performance energy model would be compared to a Standard Title 24 building with a 40% WWR. As such to have a higher WWR the building has to trade off energy efficiency measures with MEP systems to overcome this challenge.

On our 88 Broadway St project increasing the WWR from the currently designed 35% WWR to 50% WWR would have a significant impact on the energy model results. The currently selected MEP systems with a 50% WWR would fail to pass a Title 24 Energy model by the required 10% as stipulated by Green Building Ordinance in San Francisco.

March 3, 2017

In summary any request to increase the project WWR will a negative impact on energy efficiency and achieving the required City of San Francisco ordinances regarding Green Building Design.

Please let us know if you have any questions.

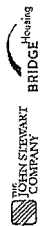
Sincerely,

Grant Craig
Associate Principal

03/09/18

PAE ENGINEERS - ENERGY MODEL MEMO

CERTIFICATE OF APPROPRIATENESS
REV-5 / SECTION 3.15



88 BROADWAY / 735 DAVIS
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Trinity Phase IV 2

MITIGATION MONITORING AND REPORTING PROGRAM FOR 88 Broadway & 735 Davis Street Project (Includes Text for Adopted Mitigation Measures and Improvement Measures)				
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Responsibility for Implementation	Schedule	Monitoring/Reporting Actions and Responsibility	Status/Date Completed
MITIGATION MEASURES				
E.3 Cultural Resources				
Mitigation Measure M-CR-2: Vibration Monitoring Program for Adjacent Historical Resources The project sponsor shall retain the services of a qualified structural engineer and preservation architect that meet the Secretary of the Interior's Historic Preservation Professional Qualification Standards to conduct a Pre-Construction Assessment of the adjacent historical resources at 753 Davis Street and 60 Broadway prior to any ground-disturbing activity. The Pre-Construction Assessment shall be prepared to establish a baseline, and shall contain written and/or photographic descriptions of the existing condition of the visible exteriors of the adjacent buildings. The structural engineer and/or preservation architect shall also develop and the project sponsor shall prepare and implement a Vibration Management and Monitoring Plan to protect the adjacent historical resources against damage caused by vibration or differential settlement caused by vibration during project construction activities. In this plan, the maximum vibration level not to be exceeded at each building shall be determined by the structural engineer and/or preservation architect for the project. The Vibration Management and Monitoring Plan shall document the criteria used in establishing the maximum vibration level for the project. The Vibration Management and Monitoring Plan shall include vibration monitoring and regular periodic inspections at the project site by the structural engineer and/or historic preservation consultant throughout the duration of the major structural project activities to ensure that vibration levels do not exceed the established standard. The Pre-Construction Assessment and Vibration Management and Monitoring Plan shall be submitted to the Planning Department Preservation staff prior to issuance of any construction permits. Should damage to 753 Davis Street or 60 Broadway be observed, construction shall be halted and alternative techniques put in practice, to the extent feasible, and/or repairs shall be completed as part of	Project Sponsor, contractor(s).	Prior to the issuance of building permits; implementation ongoing during construction.	Project Sponsor, contractor(s) to submit the Construction Noise and Vibration Control Plan to the Planning Department.	Considered complete upon Planning Department approval of the Construction Noise and Vibration Control Plan and receipt of final monitoring report at completion of construction.

MITIGATION MONITORING AND REPORTING PROGRAM FOR
88 Broadway & 735 Davis Street Project
(Includes Text for Adopted Mitigation Measures and Improvement Measures)

MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Responsibility for Implementation	Schedule	Monitoring/Reporting Actions and Responsibility	Status/Date Completed
project construction. A final report on the vibration monitoring of 753 Davis Street and 60 Broadway shall be submitted to Planning Department Preservation staff prior to the issuance of a Certificate of Occupancy for the project.				
<p>Mitigation Measure M-CR-3: Archeological Testing</p> <p>The project sponsor shall retain the services of an archeological consultant from the rotational Department Qualified Archeological Consultants List (QACL) maintained by the Planning Department archeologist. The project sponsor shall contact the Department archeologist to obtain the names and contact information for the next three archeological consultants on the QACL. The archeological consultant shall undertake an archeological testing program as specified herein. In addition, the consultant shall be available to conduct an archeological monitoring and/or data recovery program if required pursuant to this measure. The archeological consultant's work shall be conducted in accordance with this measure at the direction of the Environmental Review Officer (ERO). All plans and reports prepared by the consultant as specified herein shall be submitted first and directly to the ERO for review and comment, and shall be considered draft reports subject to revision until final approval by the ERO. Archeological monitoring and/or data recovery programs required by this measure could suspend construction of the project for up to a maximum of four weeks. At the direction of the ERO, the suspension of construction can be extended beyond four weeks only if such a suspension is the only feasible means to reduce to a less than significant level potential effects on a significant archeological resource as defined in CEQA Guidelines section 15064.5(a) and (c).</p> <p><i>Consultation with Descendant Communities:</i> On discovery of an archeological site associated with descendant Native Americans, the Overseas Chinese, or other potentially interested descendant group, an appropriate representative of the descendant group and the ERO shall be contacted. The representative of the descendant group shall be given the opportunity to monitor archeological field investigations of the site and to offer recommendations to the ERO regarding</p>	Project sponsor, contractor, Planning Department's archeologist or qualified archeological consultant, and Planning Department's ERO.	Prior to issuance of any permit for soil-disturbing activities and during construction.	Project sponsor, contractor(s), sponsor's archeologist (if applicable), ERO.	Considered complete upon ERO's approval of the FARR.

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<p align="center">MITIGATION MONITORING AND REPORTING PROGRAM FOR 88 Broadway & 735 Davis Street Project (Includes Text for Adopted Mitigation Measures and Improvement Measures)</p>				
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Responsibility for Implementation	Schedule	Monitoring/ Reporting Actions and Responsibility	Status/Date Completed
<p>appropriate archeological treatment of the site, of recovered data from the site, and, if applicable, any interpretative treatment of the associated archeological site. A copy of the Final Archeological Resources Report shall be provided to the representative of the descendant group.</p> <p><i>Archeological Testing Program.</i> The archeological consultant shall prepare and submit to the ERO for review and approval an archeological testing plan (ATP). The archeological testing program shall be conducted in accordance with the approved ATP. The ATP shall identify the property types of the expected archeological resource(s) that potentially could be adversely affected by the proposed project, the testing method to be used, and the locations recommended for testing. The purpose of the archeological testing program will be to determine to the extent possible the presence or absence of archeological resources and to identify and to evaluate whether any archeological resource encountered on the site constitutes an historical resource under CEQA.</p> <p>At the completion of the archeological testing program, the archeological consultant shall submit a written report of the findings to the ERO. If based on the archeological testing program the archeological consultant finds that significant archeological resources may be present, the ERO in consultation with the archeological consultant shall determine if additional measures are warranted. Additional measures that may be undertaken include additional archeological testing, archeological monitoring, and/or an archeological data recovery program. No archeological data recovery shall be undertaken without the prior approval of the ERO or the Planning Department archeologist. If the ERO determines that a significant archeological resource is present and that the resource could be adversely affected by the proposed project, at the discretion of the project sponsor either:</p> <p>A. The proposed project shall be re-designed so as to avoid any adverse effect on the significant archeological resource; or</p>				

**MITIGATION MONITORING AND REPORTING PROGRAM FOR
88 Broadway & 735 Davis Street Project
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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Responsibility for Implementation	Schedule	Monitoring/ Reporting Actions and Responsibility	Status/Date Completed
<p>B. A data recovery program shall be implemented, unless the ERO determines that the archeological resource is of greater interpretive than research significance and that interpretive use of the resource is feasible.</p> <p><i>Archeological Monitoring Program.</i> If the ERO in consultation with the archeological consultant determines that an archeological monitoring program (AMP) shall be implemented the archeological monitoring program shall minimally include the following provisions:</p> <ul style="list-style-type: none"> • The archeological consultant, project sponsor, and ERO shall meet and consult on the scope of the AMP reasonably prior to any project-related soils disturbing activities commencing. The ERO in consultation with the archeological consultant shall determine what project activities shall be archeologically monitored. In most cases, any soils- disturbing activities, such as demolition, foundation removal, excavation, grading, utilities installation, foundation work, site remediation, etc., shall require archeological monitoring because of the risk these activities pose to potential archeological resources and to their depositional context; • The archeological consultant shall advise all project contractors to be on the alert for evidence of the presence of the expected resource(s), of how to identify the evidence of the expected resource(s), and of the appropriate protocol in the event of apparent discovery of an archeological resource; • The archeological monitor(s) shall be present on the project area according to a schedule agreed upon by the archeological consultant and the ERO until the ERO has, in consultation with project archeological consultant, determined that project construction activities could have no effects on significant archeological deposits; • The archeological monitor shall record and be authorized to collect soil samples and artefactual/ecofactual material as warranted for analysis; • If an intact archeological deposit is encountered, all soils-disturbing activities in the vicinity of the deposit shall cease. The archeological monitor shall be empowered to temporarily redirect demolition/excavation/construction 				

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<p align="center">MITIGATION MONITORING AND REPORTING PROGRAM FOR 88 Broadway & 735 Davis Street Project (Includes Text for Adopted Mitigation Measures and Improvement Measures)</p>				
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Responsibility for Implementation	Schedule	Monitoring/Reporting Actions and Responsibility	Status/Date Completed
<p>activities and equipment until the deposit is evaluated. The archeological consultant shall immediately notify the ERO of the encountered archeological deposit. The archeological consultant shall make a reasonable effort to assess the identity, integrity, and significance of the encountered archeological deposit, and present the findings of this assessment to the ERO.</p> <p>Whether or not significant archeological resources are encountered, the archeological consultant shall submit a written report of the findings of the monitoring program to the ERO.</p> <p>4816 Archeological Data Recovery Program. If required based on the results of the ATP, an archeological data recovery program shall be conducted in accord with an archeological data recovery plan (ADRP). The archeological consultant, project sponsor, and ERO shall meet and consult on the scope of the ADRP prior to preparation of a draft ADRP. The archeological consultant shall submit a draft ADRP to the ERO. The ADRP shall identify how the proposed data recovery program will preserve the significant information the archeological resource is expected to contain. That is, the ADRP will identify what scientific/historical research questions are applicable to the expected resource, what data classes the resource is expected to possess, and how the expected data classes would address the applicable research questions. Data recovery, in general, should be limited to the portions of the historical property that could be adversely affected by the proposed project. Destructive data recovery methods shall not be applied to portions of the archeological resources if nondestructive methods are practical.</p> <p>If required, the scope of the ADRP shall include the following elements:</p> <ul style="list-style-type: none"> • <i>Field Methods and Procedures</i>—Descriptions of proposed field strategies, procedures, and operations. • <i>Cataloguing and Laboratory Analysis</i>—Description of selected cataloguing system and artifact analysis procedures. • <i>Discard and Deaccession Policy</i>—Description of and rationale for field and 				

**MITIGATION MONITORING AND REPORTING PROGRAM FOR
88 Broadway & 735 Davis Street Project
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MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Responsibility for Implementation	Schedule	Monitoring/ Reporting Actions and Responsibility	Status/Date Completed
<p>post-field discard and deaccession policies.</p> <ul style="list-style-type: none"> <i>Interpretive Program</i>—Consideration of an on-site/off-site public interpretive program during the course of the archeological data recovery program. <i>Security Measures</i>—Recommended security measures to protect the archeological resource from vandalism, looting, and non-intentionally damaging activities. <i>Final Report</i>—Description of proposed report format and distribution of results. <i>Curation</i>—Description of the procedures and recommendations for the curation of any recovered data having potential research value, identification of appropriate curation facilities, and a summary of the accession policies of the curation facilities. <p><i>Final Archeological Resources Report.</i> The archeological consultant shall submit a Draft Final Archeological Resources Report (FARR) to the ERO that evaluates the historical significance of any discovered archeological resource and describes the archeological and historical research methods employed in the archeological testing/monitoring/data recovery program(s) undertaken. Information that may put at risk any archeological resource shall be provided in a separate removable insert within the final report.</p> <p>Once approved by the ERO, copies of the FARR shall be distributed as follows: California Archeological Site Survey Northwest Information Center (NWIC) shall receive one (1) copy and the ERO shall receive a copy of the transmittal of the FARR to the NWIC. The Environmental Planning division of the Planning Department shall receive one bound, one unbound and one unlocked, searchable PDF copy on CD of the FARR along with copies of any formal site recordation forms (CA DPR 523 series) and/or documentation for nomination to the National Register of Historic Places/California Register of Historical Resources. In instances of high public interest in or the high interpretive value of the resource, the ERO may require a different final report content, format, and distribution than that</p>				

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MITIGATION MONITORING AND REPORTING PROGRAM FOR 88 Broadway & 735 Davis Street Project (Includes Text for Adopted Mitigation Measures and Improvement Measures)				
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presented above.				

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MITIGATION MONITORING AND REPORTING PROGRAM FOR
88 Broadway & 735 Davis Street Project
(Includes Text for Adopted Mitigation Measures and Improvement Measures)

MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Responsibility for Implementation	Schedule	Monitoring/Reporting Actions and Responsibility	Status/Date Completed
<p>Mitigation Measure M-CR-4: Inadvertent Discovery of Human Remains</p> <p>The treatment of human remains and of associated or unassociated funerary objects discovered during any soils disturbing activity shall comply with applicable State and federal laws. This shall include immediate notification of the Coroner of the City and County of San Francisco and the Environmental Review Officer (ERO), and in the event of the Coroner's determination that the human remains are Native American remains, notification of the California State Native American Heritage Commission (NAHC) who shall appoint a Most Likely Descendant (MLD) (Public Resources Code section 5097.98). The archeological consultant, project sponsor, ERO, and MLD shall have up to but not beyond six days of discovery to make all reasonable efforts to develop an agreement for treating or disposing of, with appropriate dignity, the human remains and any associated items (CEQA Guidelines section 15064.5(d)). The agreement should take into consideration the appropriate excavation, removal, recordation, analysis, custodianship, curation, and final disposition of the human remains and associated or unassociated funerary objects. Nothing in existing State regulations or in this mitigation measure compels the project sponsor and the ERO to accept recommendations of an MLD. The archeological consultant shall retain possession of any Native American human remains and associated or unassociated burial objects until completion of any scientific analyses of the human remains or objects as specified in the treatment agreement if such as agreement has been made or, otherwise, as determined by the archeological consultant and the ERO.</p>	<p>Project sponsor, contractor(s), Planning Department's archeologist or qualified archeological consultant in consultation with the California State Native American Heritage Commission, and Planning Department's ERO.</p>	<p>During construction, if human remains are encountered during soils disturbing activities.</p>	<p>Project sponsor, contractor(s), Planning Department's archeologist or qualified archeological consultant, and ERO.</p>	<p>Considered complete upon notification of San Francisco County Coroner, ERO, and California State Native American Heritage Commission, if necessary, and completion of treatment agreement and/or analysis.</p>

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MITIGATION MONITORING AND REPORTING PROGRAM FOR 88 Broadway & 735 Davis Street Project (Includes Text for Adopted Mitigation Measures and Improvement Measures)				
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Responsibility for Implementation	Schedule	Monitoring/Reporting Actions and Responsibility	Status/Date Completed
<p>Mitigation Measure M-CR-5: Tribal Cultural Resources Interpretive Program</p> <p>If the Environmental Review Officer (ERO) determines that a significant archeological resource is present, and if in consultation with the affiliated Native American tribal representatives, the ERO determines that the resource constitutes a tribal cultural resource (TCR) and that the resource could be adversely affected by the proposed project, the proposed project shall be redesigned so as to avoid any adverse effect on the significant tribal cultural resource, if feasible.</p> <p>If the ERO, in consultation with the affiliated Native American tribal representatives and the project sponsor, determines that preservation-in-place of the tribal cultural resources is not a sufficient or feasible option, the project sponsor shall implement an interpretive program of the TCR in consultation with affiliated tribal representatives. An interpretive plan produced in consultation with the ERO and affiliated tribal representatives, at a minimum, and approved by the ERO would be required to guide the interpretive program. The plan shall identify, as appropriate, proposed locations for installations or displays, the proposed content and materials of those displays or installation, the producers or artists of the displays or installation, and a long- term maintenance program. The interpretive program may include artist installations, preferably by local Native American artists, oral histories with local Native Americans, artifacts displays and interpretation, and educational panels or other informational displays.</p>	<p>Project sponsor or contractors (as applicable) and archaeological consultant, and ERO, in consultation with the affiliated Native American tribal representatives.</p>	<p>Prior to issuance of any permit for soil-disturbing activities and during construction.</p>	<p>Project sponsor, contractor(s), Native American tribal representatives, ERO.</p>	<p>Considered complete upon approval of an interpretive plan, if required.</p>
IMPROVEMENT MEASURES FOR THE 88 BROADWAY/735 DAVIS STREET PROJECT <i>(Improvement measures are not required under CEQA. The EIR identifies Improvement Measures to avoid or reduce the less-than-significant impacts of the proposed project. The decision-makers may adopt these Improvement Measures as conditions of approval.)</i>				
E.4 Transportation and Circulation				

MITIGATION MONITORING AND REPORTING PROGRAM FOR
88 Broadway & 735 Davis Street Project
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<p>Improvement Measure I-TR-2a: Passenger Loading Zone Management</p> <p>Passenger loading would occur on Vallejo Street and Davis Street adjacent to the proposed daycare and proposed mid-block passageway respectively. The project sponsor should ensure that project-generated passenger loading activities along Vallejo Street and Davis Street are accommodated within the confines of the on-street passenger loading zones. Specifically, the project sponsor should monitor passenger loading activities at the proposed zones to ensure that such activities are in compliance with the following requirements:</p> <ul style="list-style-type: none"> • That double parking, queuing, or other project-generated activities do not result in intrusions into the adjacent travel lane or obstruction of the adjacent sidewalk. Any Project-generated vehicle conducting, or attempting to conduct, passenger pick-up or drop-off activities should not occupy the adjacent travel lane such that free-flow traffic circulation is inhibited, and associated passengers and pedestrian activity should not occupy the adjacent sidewalk such that free-flow pedestrian circulation is inhibited. • That vehicles conducting passenger loading activities are not stopped in the passenger loading zone for an extended period of time. In this context, an "extended period of time" shall be defined as more than 5 consecutive minutes. <p>Should passenger loading activities at the proposed on-street passenger loading zones not be in compliance with the above requirements, the Project Sponsor should employ abatement methods as needed to ensure compliance. Suggested abatement methods may include, but are not limited to, employment or deployment of staff to direct passenger loading activities; use of off-site parking facilities or shared parking with nearby uses; travel demand management strategies such as additional bicycle parking; and / or limiting hours of access to the passenger loading zones. Any new abatement measures should be reviewed and approved by the Planning Department.</p> <p>If the Planning Director, or his or her designee, suspects that Project-generated passenger loading activities in the proposed passenger loading zones are not in</p>	Project sponsor.	During operation of the project, during weekday AM and PM peak hours (7:00 AM to 9:00 AM and 4:00 PM to 6:00 PM).	Project sponsor.	Ongoing.

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MITIGATION MONITORING AND REPORTING PROGRAM FOR 88 Broadway & 735 Davis Street Project (Includes Text for Adopted Mitigation Measures and Improvement Measures)				
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Responsibility for Implementation	Schedule	Monitoring/ Reporting Actions and Responsibility	Status/Date Completed
<p>compliance with the above requirements, the Planning Department should notify the property owner in writing. The property owner, or his or her designated agent (such as building management), should hire a qualified transportation consultant to evaluate conditions at the site for no less than seven total days. The consultant should submit a report to the Planning Department documenting conditions. Upon review of the report, the Planning Department should determine whether or not Project-generated passenger loading activities are in compliance with the above requirements, and should notify the property owner of the determination in writing.</p> <p>4822 If the Planning Department determines that passenger loading activities are not in compliance with the above requirements, upon notification, the property owner or his or her designated agent should have 90 days from the date of the written determination to carry out abatement measures. If after 90 days the Planning Department determines that the property owner or his or designated agent has been unsuccessful at ensuring compliance with the above requirements, use of the on-street passenger loading zone should be restricted during certain time periods or events to ensure compliance. These restrictions should be determined by the Planning Department in coordination with SFMTA, as deemed appropriate based on the consultant's evaluation of site conditions, and communicated to the property owner in writing. The property owner or his or her designated agent should be responsible for relaying these restrictions to building tenants to ensure compliance.</p>				

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Improvement Measure I-TR-2b: Construction Traffic Management The project sponsor should implement measures to minimize the effects of project-related construction activities on traffic, transit, bicycle, and pedestrian circulation. Potential measures could include (but are not limited to) the following: <ul style="list-style-type: none"> Limit hours of construction-related traffic, including, but not limited to, truck movements, to avoid the weekday AM and PM peak hours (7:00 to 9:00 a.m. and 4:00 to 6:00 p.m.) (or other times, if approved by the San Francisco Municipal Transportation Agency). Construction contractor(s) for the project should coordinate construction activities with other construction activities that may take place concurrently in the vicinity of the project site, including the Seawall Lots 323/324 and 940 Battery Street project. Potential measures could include establishing regular coordination protocols (e.g., a weekly liaison meeting between general contractors to discuss upcoming activities and resolve conflicts); offsetting schedules (e.g., scheduling materials deliveries, concrete pours, crane assembly/ disassembly, and other major activities at different hours or on different days to avoid direct overlap); shared travel and/or parking solutions for construction workers (e.g., helping establish an informal vanpool/carpool program); and other measures. The project sponsor should require that the construction contractor(s) for the project encourage workers to take transit, rideshare, bicycle, or walk when traveling to and from the construction site.	Project sponsor, contractor(s).	During construction activities.	Project sponsor, contractor(s).	Completed when construction is complete.
E.5 Noise				
Improvement Measure I-NO-2: Construction Noise Reduction The project sponsor will incorporate the following practices into the construction contract agreement documents to be implemented by the construction contractor during the entire construction phase of the proposed project: <ul style="list-style-type: none"> Conduct noise monitoring at the beginning of major construction phases (e.g., demolition, excavation) to determine the need and the effectiveness of 	Project Sponsor, contractor(s).	Prior to the issuance of building permits; implementation ongoing during construction.	Project Sponsor, contractor(s) to submit the Construction Noise and Vibration Control Plan to the	Considered complete upon Planning Department approval of the Construction Noise and Vibration Control Plan and

**MITIGATION MONITORING AND REPORTING PROGRAM FOR
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<p>noise-attenuation measures. The project sponsor and contractor will apply as many mitigating features as needed to reduce noise from the simultaneous operation of multiple pieces of construction equipment to meet the noise criteria of 90 dBA during the day at sensitive (residential) receptors and 100 dBA at any time for non-sensitive (commercial) receptors, and should not exceed 10 dBA above the ambient noise conditions at either sensitive or non-sensitive receptors at any time. Mitigating features could include, but are not limited to plywood barriers, suspended construction blankets, or other screening devices to break line of sight to noise-sensitive receivers.</p> <ul style="list-style-type: none"> At least 90 days prior to the start of construction activities, all offsite businesses and residents within 300 feet of the project site will be notified of the planned construction activities. The notification will include a brief description of the project, the activities that would occur, the hours when construction would occur, and the construction period's overall duration. The notification should include the telephone numbers of the City's and contractor's authorized representatives that are assigned to respond in the event of a noise or vibration complaint. The project sponsor and contractors will prepare a Construction Noise and Vibration Control Plan. The details of the Construction Noise and Vibration Control Plan, including those details listed herein, will be included as part of the permit application drawing set and as part of the construction drawing set. At least 10 days prior to the start of construction activities, a sign will be posted at the entrance(s) to the job site, clearly visible to the public, which includes permitted construction days and hours, as well as the telephone numbers of the City's and contractor's authorized representatives that are assigned to respond in the event of a noise or vibration complaint. If the authorized contractor's representative receives a complaint, he/she will investigate, take appropriate corrective action, and report the action to the City. During the entire active construction period, equipment and trucks used for project construction will utilize the best available noise control techniques 			Planning Department.	receipt of final monitoring report at completion of construction.

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<p align="center">MITIGATION MONITORING AND REPORTING PROGRAM FOR 88 Broadway & 735 Davis Street Project (Includes Text for Adopted Mitigation Measures and Improvement Measures)</p>				
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<p>(e.g., improved mufflers, equipment re-design, use of intake silencers, ducts, engine enclosures, and acoustically attenuating shields or shrouds), wherever feasible.</p> <ul style="list-style-type: none"> • During the entire active construction period, stationary noise sources will be located as far from sensitive receptors as possible, and they will be muffled and enclosed within temporary sheds, or insulation barriers or other measures will be incorporated to the extent feasible. • During the entire active construction period, "quiet" air compressors and other stationary noise sources will be used where such technology exists. • During the entire active construction period, noisy operations will be combined so that they occur in the same time period as the total noise level produced would not be significantly greater than the level produced if the operations were performed separately (and the noise would be of shorter duration). • Signs will be posted at the job site entrance(s), within the on-site construction zones, and along queueing lanes (if any) to reinforce the prohibition of unnecessary engine idling. All other equipment will be turned off if not in use for more than 5 minutes. • During the entire active construction period and to the extent feasible, the use of noise producing signals, including horns, whistles, alarms, and bells will be for safety warning purposes only. The construction manager will use smart back-up alarms, which automatically adjust the alarm level based on the background noise level, or switch off back-up alarms and replace with human spotters. 				

Wong, Linda (BOS)

From: Chan, Amy (MYR)
Sent: Monday, July 09, 2018 2:30 PM
To: Wong, Linda (BOS)
Subject: RE: Request for documents - File No. 180683 - Port Ground Lease
Attachments: FMND.pdf

Hi Linda,

MMRP – this is the same as FMND document, Section F, pages 201-208.

Port resolution – we will have the resolution to you before Wednesday at 12pm.

Appraisal – the appraised value is \$14.9 million, as stated in the MOU supporting document. We don't include the appraisal as a supporting file.

Let me know if anything else is needed.

Thanks,

Amy

Amy Chan

Director of Policy and Legislative Affairs

Mayor's Office of Housing and Community Development

1 South Van Ness, 5th Floor

San Francisco, CA 94103

tel: [415.701.5508](tel:415.701.5508) fax: [415.701.5501](tel:415.701.5501)
amy.chan@sfgov.org

From: Wong, Linda (BOS)
Sent: Monday, July 09, 2018 11:03 AM
To: Chan, Amy (MYR) <amy.chan@sfgov.org>
Subject: Request for documents - File No. 180683 - Port Ground Lease
Importance: High

Hi Amy,

To ensure the above mentioned resolution can be considered by the B&F Committee this Thursday, please provide the following documents before **noon on Wednesday**:

- MMRP
- Port resolution(s) mentioned on Pages 6, 7, 8, and 9
- Appraisal Report mentioned on page 8
 - What is the appraisal value on page 8, lines 18 and 23?

Thank you in advance.

Linda

Linda Wong

San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place, City Hall, Room 244
San Francisco, CA 94102-4689
Phone: 415.554.7719 | Fax: (415) 554-5163
Linda.Wong@sfgov.org | www.sfbos.org

Please complete a Board of Supervisors Customer Service Satisfaction form by clicking [here](#).

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MEMORANDUM

July 5, 2018

TO: MEMBERS, PORT COMMISSION
Hon. Kimberly Brandon, President
Hon. Willie Adams, Vice President
Hon. Gail Gilman
Hon. Victor Makras
Hon. Doreen Woo Ho

FROM: Elaine Forbes
Executive Director

SUBJECT: Request (1) Adoption of the Final Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program under the California Environmental Quality Act for the 88 Broadway & 735 Davis Street Project (*Planning Department File No. 2016-007850ENV*); (2) Approval of an Option Agreement and attached Form of Ground Lease ("Lease") with 88 Broadway Family LP, a California limited partnership, with a term of 57 years with one 18-year extension option for development and operation of affordable housing on Seawall Lot 322-1 located at Broadway and Front Streets (also known as 88 Broadway) (subject to Board of Supervisors approval); (3) Approval of Schematic Drawings for the proposed project at 88 Broadway; and (4) Approval of a Memorandum of Understanding between the Port and the San Francisco Mayor's Office of Housing and Community Development regarding payment of fair market value and ongoing coordination and cooperation relating to the proposed Lease (the "Development MOU") (subject to Board of Supervisors' approval).

Director's Recommendation: Approve the attached Resolution

EXECUTIVE SUMMARY

This Memorandum provides an overview of three transaction documents negotiated by Port staff, Mayor's Office of Housing and Community Development (the "Housing Office") staff and 88 Broadway Family LP, a California limited partnership (the "Developer") to enable an affordable housing development (the "Development") proposed for Seawall Lot 322-1 (the "Site"), a land parcel bounded by Broadway, Front, and Vallejo Streets and on its eastern boundary by two buildings and an adjacent City-own parcel at 735 Davis Street, as shown in the attached **Exhibit "A," Site Map**. Staff is seeking approval of:

THIS PRINT COVERS CALENDAR ITEM NO. 12A

1. an Option to Lease Agreement (the "Option Agreement") between the Port and the Developer;
2. a Form of Ground Lease ("Lease") between the Port and Developer attached to the Option Agreement, with a term of 57 years with one 18-year extension option for development and operation of affordable housing at 88 Broadway; and
3. the Development MOU between the Port and the San Francisco Mayor's Office of Housing and Community Development regarding payment of fair market value and ongoing coordination and cooperation relating to the proposed Lease (Option Agreement, Lease and Development MOU, collectively, the "Transaction Documents").

Port staff recommends that the Port Commission adopt the resolution attached to this report approving the Transaction Documents and Schematic Drawings for the proposed project at 88 Broadway.

An informational presentation on the proposed development was provided to the Port Commission at its June 12, 2018 public meeting¹. Material updates to the June 8, 2018 memorandum are presented here in underlined text.

The proposed development is anticipated to provide a number of benefits to the Port, the City and the State including : (a) an estimated \$14.9 million net present value ("NPV") of lease revenues for the Port over the initial term of the Lease, excluding the value of the land and improvements returning to the Port; (b) much needed affordable housing for very low, low- and moderate-income households; and (c) economic benefits in construction and permanent jobs. As proposed, the Development will produce 124 units of rental housing affordable to families earning 30-120% of Area Median Income, a manager's unit, a childcare center, restaurant space, a community room and open space. In comparison, the Port currently receives \$465,065 in revenue annually from leasing the Site for parking, which if extended over the same period is estimated to generate approximately \$11.3 million in NPV without the other benefits of the Development.

The planning for the proposed development began with State Assembly Bill 2649 (2012, Ammiano), as amended, which permits the lifting of public trust use restrictions from the Site to allow construction and operation of affordable housing development for up to 75 years, subject to State Lands Commission's concurrence that the Site is no longer necessary for public trust or Burton Act purposes and that lifting the use requirements of the public trust, Burton Act and transfer agreement until January 1, 2105 is in the best interest of the people of the State of California. On March 11, 2014, by Resolution No. 14-16,² the Port Commission approved a Memorandum of Understanding (the

¹ https://sfport.com/sites/default/files/Commission/Item%2012C%20SWL%20322-1%20informational%20memorandum_0.pdf

² <http://sfport.com/ftp/meetingarchive/commission/38.106.4.220/modules/Item%2011C%20SWL%20322-1%20MOU-documentid=7738.pdf>

“Predevelopment MOU”) between the Port and the Housing Office to explore the feasibility of developing the Site with affordable housing.

Most of the key feasibility tasks to be completed under the Predevelopment MOU have been completed. These include the competitive solicitation and selection of a developer team led by Bridge Housing (“Bridge”) and the John Stewart Company (“JSCo”) which formed 88 Broadway Family LP (the “Developer”) to undertake the proposed development; extensive community outreach to gather input and keep community members informed; and the procurement of land use entitlements including completion of the required California Environmental Quality Act (“CEQA”) evaluation for the proposed development. The Site is proposed to be developed with the adjacent land parcel (the “City Parcel”), owned by the City and County of San Francisco (the “City”) through the San Francisco Department of Public Works; the two projects being collectively referred to herein as the “Development”. A map showing these sites is attached as **Exhibit “A,” Site Map**.

The Development is summarized in the table below.

Development Summary

	88 Broadway Family Project	735 Davis Senior Project	Total
Location	SWL 322-1	SFDPW Site	
Housing Units	125	53	178 Units
Affordability	30% to 120% AMI	20% to 70% AMI	
Other Uses	<u>Incidental/Ancillary Uses</u> Restaurant: 4,300 nsf Childcare: 3,900 nsf Community Room: 1,500 nsf		
		Café: 1,100 nsf Community Room: 700 nsf	
Public Parking	None	None	None
Residential/Childcare	\$88,677,000	\$36,863,000	\$125,540,000
Retail	\$ 2,053,000	\$ 697,000	\$ 2,750,000
Total Development Cost	\$90,730,000	\$37,560,000	\$128,290,000
Funding Sources			
Developer	\$53,565,000	\$16,044,000	\$69,609,000
Housing Office	\$37,165,000	\$21,516,000	\$58,681,000
Port	\$0	\$0	\$0
Total Sources	\$90,730,000	\$37,560,000	\$128,290,000

The key goals of this Development for the Port are: (a) the leasing of the Site, which is no longer needed for trust purposes, for development of affordable housing and using the funds generated from its leasing to address a portion of the Port's capital funding needs and (b) contributing to City and State affordable housing objectives. Port, Housing Office, and Developer staff are nearing completion of entitlement and feasibility requirements that has cleared the way for Port staff to seek approval of the agreements intended to achieve these twin goals, including the three key transaction documents to implement the Development.

The proposed Transaction Documents are:

Option to Lease Agreement (the "Option Agreement") between the Port and the Developer. Its purpose is to provide the Developer with evidence of site control to support its application for an allocation of tax credits from the California Low-income Tax Credit Allocation Committee ("TCAC"). This agreement provides, among other things: (i) the preconditions the Developer must meet to exercise the option to lease and (ii) the form of ground lease governing use of the premises. The preconditions are detailed under the discussion section of this staff report. When approved by the Port Commission, and State Lands Commission ("SLC"), this agreement will be effective for approximately two years or until replaced by the ground lease. A form of the Lease will be attached to the Option Agreement and if approved, it will become effective after it has been duly executed, the Developer has received all required financing and closed escrow, and the Lease is recorded.

Ground Lease (the "Lease"), between the Port and the Developer. The Lease's purpose is to convey property rights subject to the negotiated terms and conditions under which the Site is being leased to the Developer. Proposed key terms include: (a) a 57-year initial term with an 18-year extension option; (b) rent to include (i) \$20,000 per year for the residential portion, in recognition of the fact that the Port will receive upfront a prepayment of the Site's fair market value from MOHCD; (ii) 30% of the annual residual receipts collected by the Developer for the proposed restaurant sublease or other retail operation; (iii) 50% of excess rent from other subleases; and (iv) a mechanism for the Port to benefit from an increase in market value over the life of the Lease in a sale or refinancing and (c) Port's standard lease provisions, including insurance, indemnity, sea level rise and flooding provisions, and prior consent for transfers and assignments, among others. The lease is subject to approval by the City's Board of Supervisors ("Board of Supervisors") and SLC regarding rent payments and lifting of the trust restrictions. In addition, because of its role in administering the Lease, the Lease will be subject to the Housing Office's consent.

Development MOU between the Port and the Housing Office. Its purpose is to document Port's and Housing Office's respective roles and responsibilities in moving forward with the Development. Its key terms include how and when the Housing Office will pay Port for the Site's FMV, interest accrual on the outstanding land payment (if any) and rights of the Housing Office to cure a Developer default, and to protect the City affordable housing funds invested in the Project. The Development MOU is subject to approval by the Port Commission and the Board of Supervisors, with endorsement by SLC as to provisions regarding the FMV payment.

The remainder of this staff report provides background information and discusses the Site, state and local legislation providing the impetus for the proposed development, accomplishments to date, and elaboration on the key terms proposed for the Transaction Documents. If the Port Commission approves the attached resolution, the Executive Director and Port staff will seek necessary approvals from the Board of Supervisors and SLC.

BACKGROUND

Site Description and Allowed Use

The Site is bounded by Broadway, Front, and Vallejo Streets and on its eastern boundary by two buildings and an adjacent City-owned parcel at 735 Davis Street, as shown in the attached **Exhibit “B,” Development Schematic Design**. The Site is a paved, flat, rectangular land parcel, approximately 37,810 square feet in area, currently being used as surface parking under lease to SP Plus – Hyde Parking Joint Venture. Current zoning for the Site is C-2 (Community Business), which allows residential as a permitted use. Ground floor retail and commercial are appropriate ancillary uses which were found acceptable during the entitlement process. The Site is in the City’s Northeast Waterfront Historic District (“Historic District”) and a 65-foot height limit applies to the Site. Currently the Site generates approximately \$465,065 annually or \$38,755 per month in rental revenue to the Port.

Legislative Efforts/MOU

The Port faces some challenges in developing its properties because of expensive piles to support buildings on filled tidelands, high historic building rehabilitation costs, potential environmental remediation cost, complex regulatory compliance requirements including development impact fees, and shoreline park/open space (public access) development and cost obligations. Among the strategies for addressing these financial challenges is leasing Port properties no longer needed for trust purposes because they are cut off from the Bay, and using the funds generated by such leasing for Port capital funding needs.

~~To implement this strategy and to address affordable housing needs~~, Senate Bill 815 (Migden, 2007); Assembly Bill 2649 (Ammiano, 2012); and Assembly Bill 2797 (Chiu, 2016) (collectively, the “State Legislation”) were adopted to permit the lifting of Public Trust use restrictions from a number of Port properties on specific conditions. AB 2649 identified Seawall Lot 322-1 was identified in the State Legislation as a site to be considered for affordable housing development under a lease with term of up to 75 years, provided the development proposal is feasible.

In November 2012, the Board of Supervisors adopted Ordinance No. 232-12 which allows the Port and Housing Office to enter into the Pre-Development MOU. This MOU provides, among other things, a mechanism for the Port to receive fair market value if it enters into a below-market lease with Housing Office for affordable housing on the Site. This payment mechanism has evolved from using Jobs-Housing Linkage Program (“JHLP”) credits (which is not the exclusive mechanism for compensating the Port) to using Affordable Housing In Lieu Fee as described under the “Analysis of Proposed Project Terms and Conditions” below. This MOU also provided that the Port would

contribute no funding to the project, unless a public parking garage was deemed feasible and included in the Development. This Predevelopment MOU provided for a term of three years to complete all feasibility tasks required to close escrow, and a delegation to the Port Executive Director to extend the term by up to twelve months.

Accomplishments to Date

Between April 2014 and May 2018, the Port and Housing Office completed most of the feasibility tasks enumerated in the Predevelopment MOU, including (i) Housing Office's competitive solicitation and selection of the Developer; (ii) the Port's consent to the Developer selection; (iii) the Developer's submission of its initial development proposal; (iv) the Port's determination to exclude the public parking garage from the development due to financial infeasibility; (v) Housing Office provision of predevelopment funding for the Development; (vi) Port, Housing Office, and the Developer negotiating and drafting required transaction documents for execution; and (vii) the Developer's completion of a number of entitlement tasks, including completion of CEQA through a Final Mitigated Negative Declaration and other land use authorizations required for the Development.

Major Tasks to be Completed Prior to Construction

Other major tasks which must be completed to begin construction of the Project include: (a) approval of the transaction documents by Port Commission, the Board of Supervisors, and SLC; (b) the Developer securing required site control (achieved through the proposed transaction documents) to complete submission of funding applications to public and private funding sources; and (c) confirming overall project feasibility including financing plan.

Public Outreach

During completion of the tasks noted above staff of the Port, Housing Office and the Developer have also conducted a more extensive community outreach program than had been anticipated under the Predevelopment MOU, to better inform the public and generate community support for the Development. As such, the three-year Predevelopment MOU term was extended for the maximum time extension allowed without further Port Commission authorization. On April 29, 2018, the Predevelopment MOU expired. Port staff proposes to request an extension of the Predevelopment MOU to complete the remaining tasks as part of its request to approve the Transaction Documents.

The Proposed Development

The Developer's initial proposed development had included up to 130 affordable, rental family housing units with ground level spaces for retail, commercial, other ancillary uses, and two mid-block open spaces on the Site (the "Family Project"). In response to the community's desire for seniors to benefit from the development as well, the Housing Office sought and received City's consent to add the adjacent City property located at 735 Davis Street ("City Parcel") to the proposal to provide up to 50 to 55 senior housing units (the "Senior Project").

The two existing surface parking lots at the Site and the City Parcel will be demolished and then improved with two new six-story residential buildings for family and senior housing, respectively. The Family and Senior projects will be connected by open mid-

block passageways as shown on the attached **Exhibit “B,” Development Schematic Design.**

The Family Project

The Family Project will include approximately 124 affordable units and one manager housing unit totaling approximately 137,100 gross square feet (gsf) of residential dwelling space and approximately 8,700 gsf of nonresidential space. Residents would have access to a common, community room on the ground floor, an open podium courtyard on the second floor, two open decks on the fifth and sixth floors, and a rooftop terrace and community garden. Ancillary ground-level uses could include retail/commercial, a childcare center with an outdoor play area, and a childcare arcade.

Unit Type	Studio	1 Bedroom	2 Bedroom	3 Bedroom	Manager Unit	Total
No. of Units	4618	37	4846	23	1	125
Square Footage	430	590	900	1,240	1,240	

The Senior Project

The Senior Project will include approximately 53 affordable units totaling approximately 44,136 gsf of residential dwelling space and approximately 1,260 gsf of non-residential space. Seniors in this project will have access to a community room, an open courtyard on the first floor, and a roof deck on the fifth floor. Ground-level uses would include retail/commercial, and a community room.

Unit Type	Studio	1 Bedroom	Manager Unit	Total
No. of Units	23	29	51	53
Square Footage	430	590	623	

Each building will be approximately 65-feet tall (with an additional 10 feet for the elevator penthouse with variations in height between four and six stories at the streetwall to break up the massing on Front Street and “stepping down” as the Projects get closer to Davis Street to the east. The first floor would provide ground floor units, commercial space, bike parking, common space and social services for residential use, as well as property management space. Floors two through six would consist primarily of residential dwelling units, shared laundry rooms, mechanical spaces, and common spaces for residential use. A variety of open spaces is proposed on the roof and terrace levels. Both projects would include solar panels and green roofs on the roof level. In addition, heating, ventilation, and air conditioning equipment, and an emergency back-up diesel generator would be located on the rooftop of each building. Pedestrian bulb-outs are proposed on Front Street and Broadway. No off-street parking is proposed. Approximately 120 class 1 bicycle parking spaces and 20 class 2 bicycle parking spaces are proposed. Combined, both projects would contain approximately 178 affordable family and senior housing units and approximately 9,260 square feet of

restaurant and child care space resulting in an approximately 190,496-square-foot Development.

The buildings generally extend to the property line. Setbacks away from the streetwall exist at the upper levels of the buildings. Along Front Street, a substantial setback of the upper level is approximately 30 feet, making the upper floors minimally perceptible from the pedestrian's perspective. Project renderings show the proposed two six-story buildings having a contemporary architectural style.

The Project's architecture and urban design have been reviewed by the Architectural Review Committee ("ARC") of the Historic Preservation Commission ("HPC") and the Waterfront Design Advisory Committee ("WDAC") for compatibility with the Historic District and both ARC³ and WDAC⁴ found the overall design acceptable and provided a few comments. On April 4, 2018, HPC adopted Motion No. 0335⁵ recommending the combined projects for a Certificate of Appropriateness.

Environmental Review under California Environmental Quality Act

On November 15, 2017, the Developer filed Building Permit Applications with the City Department of Building Inspection ("DBI"). The Planning Department prepared a Draft Initial Study/Preliminary Mitigated Negative Declaration ("IS/PMND") for the Development and published the Draft IS/PMND for public review on October 25, 2017. The Draft was available for public comment until November 27, 2017. On November 27, 2017, an appeal of the IS/PMND was filed.

At a duly noticed public hearing held on March 8, 2018, the Planning Commission reviewed and considered the Preliminary Mitigated Negative Declaration ("PMND") and the appeal, upheld the PMND, and approved the issuance of the Final Mitigated Negative Declaration (FMND) as prepared by the Planning Department in compliance with CEQA, CEQA Guidelines (Title 14 California Code of Regulations Sections 15000 et seq.), and San Francisco Administrative Code Chapter 31 ("Chapter 31").

The Planning Department, after reviewing and considering the FMND and Initial Study, found that the contents of said report and the procedures through which the FMND and Initial Study were prepared, publicized, and reviewed are in compliance with CEQA, the State CEQA Guidelines, and Chapter 31 and that the FMND and Initial Study are adequate, accurate and objective, reflect the independent analysis and judgment of the Department and the Planning Commission. Planning Department staff prepared a Mitigation Monitoring and Reporting program ("MMRP"), which was made available to the public and the Planning Director for review, consideration, and action. The MMRP will be incorporated into the Lease.

³ http://commissions.sfplanning.org/hpcpackets/88%20Broadway_2016-007850COA_ARC031517.pdf

⁴ https://sfport.com/sites/default/files/Planning/WDAC%20Meeting%20Documents/Staff_Report-1_1-29-18.pdf

⁵ http://commissions.sfplanning.org/hpcpackets/20180404_hpc_min.pdf

On March 9, 2018, under Planning Code Section 315, the Planning Director adopted the FMND and authorized the Affordable Housing Project Authorization requested by the Developer to be in general conformance with plans on file with the Planning Department.

STRATEGIC OBJECTIVE

The proposed Development is expected to contribute in a substantial way to meeting the *livability, sustainability, and economic vitality objectives* of the Port's Strategic Plan.

- *Livability Objectives:* The Development will provide much needed housing in premium location to serve a wide a range of households at various affordability levels and create living wage jobs and provide business opportunities for local businesses.
- *Sustainability Objectives:* The Development is expected to incorporate a variety of sustainable practices including environmentally sensitive construction techniques, recycling of construction waste, installation of high-efficiency building systems, storm water management, and green building standards.
- *Economic Vitality Objectives:* The proposed Development is anticipated to contribute to the Port's capital fund to support other projects.

To achieve these strategic objectives, Port, Housing Office, and the Developer staff are seeking approval of the proposed Transaction Documents discussed earlier in this Memorandum. The following provide more details on each transaction document.

DISCUSSION

THE PROPOSED TRANSACTION DOCUMENTS

The transaction documents' key terms are summarized below.

I. The Development MOU

Parties to Agreement: the Port and the Housing Office

The proposed Development MOU documents the terms and conditions Port and Housing Office staff have negotiated regarding the agencies' respective roles and responsibilities prior to closing of escrow on the Lease and during the term of the Lease. The Development MOU would also extend the Predevelopment MOU to enable Port and MOHCD to complete predevelopment tasks prior to close of escrow for the Lease. Other key terms and conditions include:

A. Economic Terms

1. Term: The term will run from the date the Development MOU is executed and terminate or expire conterminously with the Lease. The Lease term is 57 years with one 18-year extension option for up to a total of 75 years.
2. Payment of FMV to Port: Immediately upon the Developer's close of escrow on the Lease, a Fair Market Value ("FMV") payment will be due from the Housing Office to Port, and if the full payment is not made at close of escrow, then interest will accrue at 1.5% during the first and second years after closing escrow and at 3% from the third year until the FMV is paid in full. The FMV has been determined by an appraisal, jointly ordered by the Housing Office and Port through the City's Department of Real Estate ("DRE"). DRE Director of Property, in consultation with the Port staff and in accordance to appraisal instructions drafted by DRE, reviewed by SLC staff and approved by the Port and Housing Office, conducted an appraisal of the Site dated June 29, 2018 with an indicated value of \$14.9 million.

If escrow closes within nine months of the date of the appraisal indicated above, the FMV will be deemed reflective of economic conditions current at the time of the Ground Lease execution. If not, the FMV will be reset based on updated appraisal subject to approval by SLC.

3. Payment Source: While the MOU does not restrict the Housing Office from using a particular source to pay the FMV to Port, the parties understand that the likely, first available source will be affordable in lieu fees paid to the Housing Office from the development of Pier 70 Parcel K North site or through other inclusionary housing fees or other fees received by Housing Office from Port-controlled properties or the Hoedown Yard in the Pier 70 Special Use District and not specifically allocated to on-site affordable housing at Pier 70.
4. Payment Due: The Housing Office will pay Port the FMV of the site as soon as fees are paid to it from the Pier 70 Parcel K North development and within not more than three years from the close of escrow on Parcel K North this period is projected to be between February 2019 and February 2022). If Parcel K North fees are not paid within three years, interest will continue to accrue.

Interest Accrual: If payment is not made as of the date escrow closes for the Lease, interest will accrue from the date escrow closed on the \$14.9 million FMV at annual simple interest of 1.5% during the first and second years and then at 3% from the third year until the FMV is paid in full.

B. Roles and Responsibilities:

5. The Housing Office will:
 - a. Assist Port in negotiating, reviewing and approving mortgage documents, and other financing related to the affordable housing.

- b. Monitor, administer and help enforce the terms of the Lease relating to the residential component, including affirmative marketing, tenant selection for residential unit leasing.
 - c. Monitor the Tenant's compliance with applicable requirements, including affordability restrictions.
 - d. Help resolve issues relating to affordable housing operation and management, including management performance and compliance with the applicable Good Neighbor Policies.
 - e. Have the right to cure any monetary or non-monetary default by Tenant under the Lease, including the payment of taxes, at Housing Office's option.
 - f. Work with Port regarding Tenant's plan for financing, refinancing, transfer, and sale of any portion of the Project, as applicable.
6. The Port will:
- a. Have all responsibilities as the landlord under the Lease
 - b. Work with the Housing Office to address Tenant's request for consent to a proposed transfer or a lender's loan documents.
 - c. Work with the Housing Office on efforts to cure Tenant's default under the Lease, if applicable.
 - d. Monitor the Tenant's compliance with the Lease.

II. Option to Lease Agreement

Parties to Document: Port and Developer

The Option Agreement provides the Developer an option to lease the Site subject to certain terms and conditions that Port staff recommend, the key among which are the following:

1. The Premises or Site: The site to be leased is SWL 322-1 located at Broadway and Front Street, measuring approximately 37,810 square feet. It will be leased in "As Is" conditions.
2. Development Program: As described earlier in this Memorandum.
3. Total Development Cost and Sources of Funding: The Developer will be responsible for funding the Development currently estimated to cost approximately \$128.29 million (*Family Project: \$90.73 million; Senior Project: \$37.56 million*) It is not responsible for paying Port's transaction costs, except as otherwise provided under indemnity and insurance provisions.
4. Term: Approximately two years or until replaced by the Ground Lease.
5. Preconditions to Exercise the Option to Lease:
 - a. The Housing Office has agreed to the terms and conditions of paying Port for the Site's FMV as evidenced by entering into the Development MOU

- b. Developer has completed all required predevelopment tasks and is ready to close escrow.
 - c. Port and Housing Office staff have reviewed and approved the Developer's financing plan, including lenders' commitment letters, and balanced sources and uses of funds.
 - d. Port and Housing Office staff have reviewed and approved the Developer's updated scope of development and schedule of performance.
 - e. The Port Commission and the SLC have made the findings and approvals required by the State Legislation.
 - f. Developer has received all required approvals required to start construction.
 - g. Developer is not in default under the Option Agreement.
6. City and Other Standard Lease Requirements: The Option Agreement will include all applicable Port and City requirements for option agreements.
7. Key Exhibits to the Option Agreement
- a. *Scope of Development.* The Scope of Development sets forth the improvements that are to be constructed on the Site by the Developer.
 - b. *Schedule of Performance.* The Schedule of Performance sets forth the deadlines by which the Developer or the Port is required to submit or approve documents or complete listed tasks prior to close of escrow. All deadlines are subject to force majeure.
 - c. *Schematic Drawings.* Schematic Design Drawings consisting of site plans and elevations subject to Port Commission approval
 - d. *Development Budget.* The Development Budget for the Project, showing a total development cost of \$128,289,000 million as of June 27, 2018.
 - e. *Form of ground lease.* The form of the Lease includes the terms described in the next section.

III. The Lease

Parties to the Document: Port and Developer

In addition to the Premises, Development Program and Development Cost specifics set forth above in the Option to Lease, the key business terms and conditions described below are being recommended by Port staff.

- 1. Lease Term: 57 years initial term, plus one 18-year extension option. The 18-year extension is subject to the Developer remaining as a "tenant in good standing" and having exercised the extension option within two years prior to the end of the initial term.
- 2. Conditions to Extend the Term. To extend the Term, the following conditions must be satisfied:
 - a. Developer must provide written notice to Port three years before the Initial Term is due to expire, along with the required assessment report on the property conditions.

- b. Port Chief Harbor Engineer will review the assessment report on the Site and the improvements and consider the effects of sea level rise, the condition of the Seawall, and recommend any mitigation measures required to protect public health and safety or against potential claims against Port during the Extended Term.
 - c. There is no Developer's default under the Lease.
- 3. Construction Period Rent: There is no construction period rent since the Port is being paid a lump sum by the Housing Office.
- 4. Operation Period Rent for the Residential Portion of the Development: \$20,000 per year escalating every five-year interval of the lease term at the positive percentage changes to the Area Median Income within the five-year interval, in recognition of the fact that the Port will receive upfront a payment of the FMV from the Housing Office and will not participate in the net proceeds from the refinancing or sale of the residential portion.
- 5. Operation Period Rent for the Non-Residential Portions of the Development:
 - a. *Participation Rent*: Restaurant Space Rent: 30% of the net annual revenue collected by the Developer for the proposed restaurant sublease.
 - b. *Participation Rent*: Other Subleases: 50% of excess rent from other subleases for microcell antenna tower, or similar sublease.
 - c. *Participation in Growth in Market Value*: 15% of net proceeds from refinancing or sales of the non-residential portion of the Development.
- 6. Competent Management Required: The Developer has identified JSCo to be the initial management company or operator of the both the residential and retail/commercial elements of the Development.
- 7. Transfer/Sublease: Except with respect to certain pre-approved related parties, all transfers or subleases are subject to Port's prior consent (with Housing Office consent also required with respect to transfers and subleases of the residential portion). The Parties have also agreed on conditions for pre-approval of certain restaurant subleases.
- 8. Leasehold Financing: The Developer and its subtenants will have the right to obtain financing from bona fide institutional lenders secured by its leasehold or subleasehold interest.
- 9. No Subordination of Port's Fee Interest: No lien may be placed on Port's fee ownership of the Site.
- 10. Public Open Space: There are two midblock passage ways that will be landscaped and made open to the public most of the day.

11. Sea Level Rise: The relevant transactions documents will include the Port's recommended provisions addressing sea level rise.
12. Reversion Interest: Tenant will own the improvements during Lease term and at the end of the term, and at Port's sole discretion, tenant must remove or repurpose the improvements per the State Legislation. The Property will revert back to Port's sole ownership.
13. City and Other Standard Lease Requirements: The Lease includes other standard provisions regarding indemnity and release, insurance, hazardous materials, casualty, mortgages, maintenance and repair, and all of the applicable Port and City requirements and requires compliance with the MMRP.

CLIMATE ACTION

Due to the long-term nature of the proposed Ground Lease, the Lease will provide that it may be terminated due to climate change, sea level rise, or other catastrophic events at the Site that pose a risk to public health and safety. The Developer may be required to implement flood protection measures determined to be necessary by the Chief Harbor Engineer to protect the building and public health and safety. Such measures may include temporary public access closures and sandbagging or similar, temporary measures to minimize the risks associated with flooding or water inundation. If the Chief Harbor Engineer determines that conditions continue to pose a threat to public health and safety, Port may terminate the Ground Lease.

STATE LANDS APPROVAL

The State Legislation authorizes nontrust leasing of certain designated seawall lots that are separated from the water, are no longer needed for public trust purposes, and represent a small part of the Port's public trust land.

Under the State Legislation, both the Port Commission and SLC must make certain findings to approve the Lease. Under SB 815, Section 4, the Port may submit a nontrust lease for a designated seawall lot (including Seawall Lot 322-1) for SLC approval under the following conditions:

(1) The nontrust lease is for fair market value and on terms consistent with prudent land management practices as determined by the port and subject to approval by the commission as provided in paragraph (1).

(2) Prior to executing the nontrust lease, the port shall submit the proposed lease to the commission for its consideration, and the commission shall grant its approval or disapproval in writing within 90 days of receipt of the lease and supporting documentation, including documentation related to value. In approving a nontrust lease, the commission shall find that the lease meets all of the following:

- a. Is for fair market value.
- b. Is consistent with the terms of the public trust and the Burton Act trust, other than their restrictions on uses.
- c. Is otherwise in the best interest of the state.

In addition to these findings, under AB 2649, SLC must make the following findings to authorize a nontrust lease of Seawall Lot 322-1:

(AB 2649) SEC. 3. (a) Seawall lot 322-1 shall remain subject to the use requirements of the public trust, the Burton Act trust, and the Burton Act transfer agreement until the commission finds both of the following:

(1) Seawall Lot 322-1 is no longer necessary for public trust or Burton Act trust purposes.

(2) Lifting the use requirement of the public trust, the Burton Act trust, and the Burton Act transfer agreement until January 1, 2106, is in the best interest of the State.

Fair Market Value and Prudent Land Management Practices

Consistent with the requirements of SB 815 Section 4(c) above, the Port has conducted an appraisal of the Site using appraisal instructions reviewed and approved that State Lands staff reviewed and approved.

The appraisal concluded that the indicated current fair market value of the Site is \$14,900,000.

Analysis of Proposed MOU and Lease Financial Terms

The Port's compensation for the proposed lease consists of (a) under the MOU an upfront payment by the Housing Office to the Port for the Site's appraised Fair Market Value, and (b) under the Lease, additional rental payments by the Tenant, including base and percentage rent, as described above.

The fair market value of the Site was established through an appraisal conducted by the City's Director of Real Estate ("RED") based on appraisal instructions drafted by RED, reviewed by State Land staff and approved by the Port and the Housing Office. The net present value ("NPV") of the upfront payment and base and percentage rent ("SWL 322-1 Consideration") equals \$14.9 million, which is the appraised value. The SWL 322-1 Consideration also exceeds the NPV of the current parking rent, which is \$12.25 million, based on current annual revenues of \$465,000, escalated 3% annually for 75 years, and discounted back to today's dollars using a 6.5% discount rate which represents the Port's blended cost of funds.

Tenant will own the improvements during Lease term. At the end of the term, Tenant must remove or repurpose the improvements per the State Legislation and as directed by Port. Any remaining improvements will become the sole property of the Port.

Based on the foregoing, Port staff has determined that the SWL 322-1 Consideration due under the MOU and the Lease constitute an amount equal to or greater than the fair market value of the leasehold, consistent with the State Legislation.

As described in Memorandum, the Lease includes standard terms and conditions included in all Port leases, including indemnity, insurance and default provisions, including termination for cause. Accordingly, Port staff has determined that the Lease terms are consistent with prudent land management practices.

Seawall Lot 322-1 No Longer Needed for Public Trust or Burton Act Purposes

The Legislature made the following findings in the State Legislation:

SB 815, Section 2

(f) Because of its limited backland area, the northeastern waterfront was not suited for containerized shipping and was no longer a center of maritime and railroad operations. The seawall lots north of Second Street, separated from San Francisco Bay by the Embarcadero roadway, were further cut off from the water by light rail tracks that were recently constructed in the median of the roadway.

(h) As a result of these developments, certain of the seawall lots or portions thereof, including the designated seawall lots addressed in this act, have ceased to be useful for the promotion of the public trust and the Burton Act trust, except for the production of revenue to support the purposes of the Burton Act trust...

(i) Presently, the designated seawall lots are leased on an interim basis for commuter parking or are vacant land...

(j) The designated seawall lots constitute approximately 4 percent of the lands granted to the city under the Burton Act, not including lands currently subject to tidal action;

(k) The designated seawall lots were filled and reclaimed as part of a highly beneficial plan of harbor development, have ceased to be tidelands, and constitute a relatively small portion of the tidelands granted to the city.

(l) Given the foregoing lack of public trust use needs for the designated seawall lots, the designated seawall lots are not necessary for public trust or Burton Act trust purposes, with the exceptions described in subdivision (i) of this section and in Section 6 of this act.

AB 2649 Section 2

(f) Seawall lot 322-1 is presently used for surface parking primarily serving commuters. The lot was not included in Chapter 660, but like the other designated seawall lots, seawall lot 322-1 was filled and reclaimed as part of a highly beneficial plan of harbor development, has ceased to be tidelands, is cut off from the water, constitutes a relatively small portion of the tidelands granted to the city, is not currently being used, and is not anticipated in the foreseeable future to be used, for public trust or Burton Act trust purposes. It is the intent of the Legislature that, conditioned on the approval by the commission, seawall lot 322-1 be freed of the use requirements of the public trust, the Burton Act trust, and the Burton Act transfer agreement in the same manner and subject to the same requirements as the designated seawall lots under Chapter 660, subject to the additional provisions of this act.

Port staff conducted a review of the leasing history of Seawall Lot 322-1. The Site has been used for commuter parking since 1998; before that time, the lot was used for tour bus parking, and a service station, storage, and parking, dating back to 1966.

The Port has not received maritime or other public trust-related proposals for Seawall Lot 322-1 since it was offered for hotel development in the late 1990s, a project that was not ultimately approved. The Port has subsequently entered into an exclusive negotiating agreement with TZK Broadway, LLC for development of a hotel and dinner theater on Seawall Lots 323 and 324 which separate Seawall Lot 322-1 from the water.

Based on the location of the Site in relation to the water and intervening development, the leasing history of the Site, and the lack of expressed interest in public trust development of the Site, Port staff has determined that Seawall Lot 322-1 is not needed for public trust or Burton Act purposes, and that the findings made by the Legislature remain accurate.

Lifting the Trust Use Requirement, and Approval of the Proposed Lease, Are in the Best Interest of the State

Port staff believes that it is in the best interest of the State to lift the use requirement of the public trust, the Burton Act trust, and the Burton Act transfer agreement from Seawall Lot 322-1, and to approve the Lease, because (1) (as discussed above) Seawall Lot 322-1 is not needed for any trust purposes, (2) the proposed Transaction Documents would provide the Port with greater revenues than the Port can expect to receive under its current interim nontrust leasing program at the Site, (3) the increased revenues would help the Port implement its 10 Year Capital Plan, which serves important trust purposes, and (4) the Lease would provide new affordable housing.

In SB 815 and AB 2469, the Legislature affirmed that the generation of additional lease revenues on the designated seawall lots (including Seawall Lot 322-1) to address the implementation of the Port's capital plan, including the preservation of the historic piers and other historic structures and the construction of waterfront plazas and open space,

is a matter of statewide importance and furthers the purposes of the public trust and the Burton Act trust.

The Transaction Documents will generate an estimated \$14.9 million for the Port over the term of the Lease. Under the State Legislation, the Port is required to use the net revenues, estimated at \$14.9 million for purposes consistent with the State Legislation to implement the Port's capital plan.

In addition to providing additional revenue for Capital Plan implementation, the Transaction Documents will contribute to expansion of affordable housing opportunities to accommodate some of the housing needs of very low-, low- and moderate-income California households and provide economic benefits to segments of the community. The proposed project at Seawall 322-1 will produce 124 units of rental housing affordable to families earning 30-120% of Area Median Income, as well as provide planned associated childcare facility, a restaurant space and a community room. The provision of affordable housing furthers important State interests. In Section 2(g) of AB 2649, the Legislature found as follows:

The lack of affordable housing is a critical problem that threatens the economic, environmental, and social quality of life in California, and is a matter of statewide concern. The Legislature has previously found that attainment of the state's housing goals requires the cooperative participation of government and the private sector in an effort to expand housing opportunities and accommodate the housing needs of Californians of all economic levels. The Legislature has also found that the provision of housing affordable to low- and moderate-income households requires the cooperation of all levels of government, and that local and state governments have a responsibility to use the powers vested in them to facilitate the improvement and development of housing to make adequate provisions for the housing needs of all economic segments of the community. The Legislature has also recognized that local jurisdictions should encourage, to the maximum extent practicable, infilling existing urban areas.

The Lease Is Consistent with the Terms of the Public Trust and the Burton Act Trust, Other than Use Restrictions.

The Lease is consistent with all applicable requirements of the public trust and the Burton Act, as modified by the State Legislation. The maximum term of the Lease is 75 years, as provided by the State Legislation. As discussed above, the Transaction Documents will provide fair market value to the Port, and the revenues from the Transaction Documents will be used for public trust and Burton Act purposes.

ANALYSIS OF THE PROPOSED PROJECT TERMS AND CONDITIONS

Port staff have been collaborating and negotiating with the Housing Office and the Developer since last year to bring this complex but beneficial tri-party transaction into its current form. Port staff analysis of the proposed terms and conditions of the transaction is provided below.

1. The \$20,000 (Minimum Base Rent) per year rent for the residential project is reasonable given that the Development MOU will require that the Port be paid the present value of the fair market rent the Site would command in the today's real estate market and conditions of the proposed transaction. In addition, Port is to receive 30% of the net annual cash flow that Developer will receive from the proposed restaurant sublease during the retail space operation.
2. Port staff has renegotiated a number of terms to enhance Port's participation in the growth of the Development's market value while still complying with applicable tax credit regulations, including the following key terms:
 - a. Minimum Base Rent of \$20,000 per year as material consideration for Port forgoing participation in net proceeds from the refinancing or sale proceeds attributable to the residential portion of the Development. (Total of all minimum base rent is \$20,000)
 - b. The Minimum Base Rent per year to escalate every five-year interval of the lease term with the positive percentage change of the AMI within each five-year interval of the lease term;
 - c. Increased Port's participation in the net operation cash flow from the retail-restaurant operation from 20% to 30%;
3. While the State Legislation provided for lifting trust restrictions from the Site for up to 75 years and not beyond 2105, Port staff is concerned with potential effects of Sea Level Rise and Climate Change. As a result, Port staff is recommending a shorter initial term of 57 years to allow for the review of conditions at that point to define what measures would be required in extending the term to the full 75 years allowed by law. In addition, affordable housing projects financed with low income housing tax credits and City's residual receipt loans usually require a long-term lease to allow the tax credit investors enough time to recapture their investment. The tax credit allocation regulations require a minimum affordability period of 50 years or more. Given these considerations, Port staff recommends the initial 57-year term and associated option to extend as reasonable and appropriate to support prudent development and operation of the Project.
4. Port staff recommends that the Transaction Documents require no Port funding for any part of the Development; all costs incurred by the Developer in implementing the Development are to be borne by the Developer, with funding assistance from the Housing Office. Port costs are limited to Port staff costs, Port appraisal costs, and Port's City Attorney costs in support of Port activities.
5. Expected benefits of the proposed Development include, among other things, the much-needed affordable housing to be added to the City housing stock and the addition of two architecturally-fitting buildings to the Northeast Waterfront Historic District, replacing the existing surface parking lots. The Development will add to the welcoming ambiance and will help activate a gateway to North Beach and Chinatown. Other non-Port benefits include property, sales, and gross receipts

taxes and other direct and indirect revenues for the City. The Development is anticipated to generate approximately 288 construction jobs, and over 75 permanent and part-time jobs.

6. The proposed transaction documents include provisions addressing or limiting potential exposure of Port to risks including development, cost, and limited revenue risks, among others (described further below).

Development Risks

The Port owns the Site unencumbered and the Site was generating approximately \$465,000 annually or \$38,916 per month, as of 2017, in net revenue to the Port. The net present value ("NPV") of Port lease revenues from the current parking use if extended over the 75-year term of the proposed Lease is estimated at approximately \$11.3 million without the additional benefits of 125 housing units, construction and permanent jobs, tax revenues to the City, etc. The current parking operation is an interim use not representing the Site's highest and best use. In comparison, the proposed development is anticipated to provide a number of benefits to the Port, the City and the State including (a) an estimated \$14.9 million in NPV of lease revenues for the Port over the Lease initial term, including projected participation rent; (b) contribution to expansion of affordable housing opportunities to accommodate some of the housing needs of very low-, low- and moderate-income California households; and (c) economic benefits in the form construction and permanent jobs, and tax revenues to the City. The proposed Development does pose some risks to the Port, but staff believes most of these are being mitigated through the transaction document requirements and lease provisions. The Development represents collaboration with the State and a concerted effort by Port and Housing Office to achieve multiple objectives. In particular, the Project represents a fairly unique stand-alone opportunity to advance the Port's livability objective in the face of the City's housing crisis. A more detailed review of the risks is set forth below.

Land Payment Risk

Payment to the Port by the Housing Office is likely to occur within three years after close of escrow on the Lease, but could occur within two years later if Housing Office is not able to pay within the first three years. The Port will experience the loss of existing cashflow from the surface parking lot once it is conveyed to the Developer until the FMV is paid; however, Port staff believes that some portion of the displaced parking demand will accrue to the Port through its nearby parking leases. As described above, under Ordinance 232-12 the Housing Office was previously intending to pay the FMV using JHLP credits. Port and Housing Office staff have since decided that the JHLP fees generated at the Port's master planned development projects at Mission Rock and the Pier 70 Waterfront Site were best utilized for those projects' respective affordable housing programs. Instead the Housing Office anticipates utilizing affordable in lieu fees paid to it from a future developer of Pier 70 Parcel K North, a site to be sold by the Port in connection with funding the Pier 70 project. If the sale of the site or the construction of the project is delayed or never materializes, the Housing Office will need to identify another funding source. To mitigate the timing aspect of this land payment risk, Port staff has negotiated provisions to charge interest at reasonable rates to maintain the value of the FMV payment relative to the time between close of

escrow and full payment and the escalation of minimum base rent to maintain its value over time.

Entitlement Risk

The Developer has completed a majority of the entitlement tasks and has received Planning Department's authorization to continue proceeding with the Development. Port's exposure to this risk is considered minimal both under its proprietary status as a landowner and as a regulator.

Financing Risk

Funding for this Development is primarily from the State, TCAC, and the Housing Office with secondary funding sources more readily available once the Development has received State and local funding commitments. The Port's exposure to this risk is minimal since the Port is not providing any capital funding for the Project. The Port's parking operation at the Site will continue and the Site will not be transferred to the Developer until all financing is in place and escrow is closed.

Cost Risk

The Project is subject to expected construction cost increases if building permit review and approval and low income tax credit syndication take longer than the Developer anticipates. Measures to mitigate this risk include cost projections that provide ample construction contingency, using guaranteed maximum pricing for the construction contract, providing for performance and payment bonds, and using competent project managers. Port's exposure to this risk is considered minimal since the Port is not providing any capital funding for the Project.

Market Risk

Competition and business cycle risks for the proposed development are considered minimal given the supply and demand conditions of housing in San Francisco. Port's exposure to this risk is considered nonexistent.

Counterparty Risk

This risk usually arises from poor project oversight brought on by lack of requisite development expertise and financial capacity. The Developer's lead-team members are Bridge Housing and JSCo; based on its participation in the Project negotiations, Port staff believes the team has the requisite qualifications and the wherewithal to perform as co-developers and project managers. These co-developers have developed several projects in San Francisco with similar complex profiles. Port's exposure to this risk is considered minimal and it is mitigated by conditions to escrow closing and the provision of construction security, such as a payment and performance bonds.

Operating Risk

This risk usually arises from inadequate budgeting, planning and project management. This risk is being mitigated by requiring competent project manager with oversight from the Housing Office. The manager will be required to monitor compliance with the City's Good Neighbor Policy to maintain good relations with the all stakeholders at its location.

Port's exposure to this risk is considered minimal and mitigated through performance standards in the Lease.

COMMUNITY OUTREACH

From 2014 to the present time, the Housing Office, Port staff and the Developer have collectively conducted extensive community outreach and solicited comments and feedback from stakeholders to form general consensus on the goals/objectives of the Development, including its architectural design, compatibility with the Historic District and its targeting of a wide spectrum of households with limited incomes. The Housing Office hired a joint venture team of Mark Cavagnero Architects and Cary Bernstein Architects to conduct site design analysis and to hold a community design workshop, where design criteria were discussed with the public for the Site, and an adjacent City Parcel was added to provide housing for seniors. These outreach efforts took over 36 months and resulted in the Development being supported by almost all stakeholders including members of the Northeastern Waterfront Advisory Group (NEWAG). The Development has been presented to NEWAG many times, the last being its April 4, 2018 meeting.

NEXT STEPS

With Port Commission's consideration and approval of the Transaction Documents, the Development's schematic design, and findings that the Project is consistent with applicable State Legislation as requested, Port staff will proceed to seek the necessary approvals for the Transaction Documents from the Board of Supervisors and SLC. The tentative proposed approval schedule is set forth below:

- Introduction to Full Board of Supervisors ("Board") – June 26, 2018
- Hearing at Board Government Audit and Oversight Committee – July 18, 2018
- Board of Supervisors Approval – July 24, 2018
- Mayor Signs Resolution – August 3, 2018
- Hearing at SLC: August 23, 2018
- Port signing of MOU and Option Agreement (assumes all approvals successful): August 27, 2018
- Developer Submission of California Debt Limit Allocation Committee ("CDLAC") application: September 12, 2018
- CDLAC Allocation meeting: November 14, 2018

CONCLUSION

Port staff recommends that the Port Commission adopt the attached Resolution approving the Transaction Documents and the Schematic Drawings for the proposed project at 88 Broadway, and authorize the Executive Director and Port staff to seek approval of the Lease and Development MOU by the Board of Supervisors and SLC.

Prepared by: Ricky Tijani, Manager
Real Estate & Development

Through: Rebecca Benassini, Assistant Deputy Director
Waterfront Development

For: Michael Martin, Deputy Director
Real Estate and Development

Attachments: Exhibit "A" Site Map
Exhibit "B," Development Schematic Design

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 18-42

WHEREAS, California Statutes of 1968, Chapter 1333 ("Burton Act") and Charter, Sections 4.114 and B3.581, empower the City and County of San Francisco, acting through the San Francisco Port Commission ("Port"), with the power and duty to use, conduct, operate, maintain, manage, regulate and control the lands within Port Commission jurisdiction consistent with the public trust for commerce, navigation and fisheries and the Burton Act (collectively, the "Public Trust"); and

WHEREAS, The Port owns Seawall Lot 322-1, also known by its street address as "88 Broadway" (the "Property"), a land parcel with approximately 37,810 square feet area bounded by Broadway, Front, and Vallejo Street and buildings and 735 Davis Street, a vacant City property; and

WHEREAS, The California Legislature has adopted a series of statutes that authorize nontrust leasing of seawall lots that are separated from the water, are no longer needed for public trust purposes, and represent a small part of the Port's public trust land; and

WHEREAS, These statutes include SB 815 (Chapter 660 of the Statutes of 2007) as amended by AB 2649 (Chapter 757 of the Statutes of 2012) and AB 2797 (Chapter 529 of the Statutes of 2016), collectively the "State Legislation"; and

WHEREAS, Under the State Legislation, both the Port Commission and State Lands must make certain findings to temporarily lift the trust use restrictions and approve the Development MOU and Option Agreement (including the form of Ground Lease ("Transaction Documents") discussed in this Resolution; and

WHEREAS, In November 2012, the Board of Supervisors adopted Ordinance No. 232-12 which allows the Port and the Mayor's Office of Housing and Community Development ("MOHCD") to enter into a Memorandum of Understanding (the "Pre-Development MOU") for development of the Property for affordable housing and providing for Port to receive Jobs Housing Linkage Program ("JHLP") credits equal to the difference in the value of a Port below-market lease and the fair market value of the Property; and

WHEREAS, Port and MOHCD staff have since decided that the preferred payment strategy for the Project is to utilize the anticipated affordable in lieu fees paid to MOHCD from a future developer of Pier 70 Parcel K North ("PKN"), a site to be sold by the Port in connection with funding the Pier 70 project, with the condition that if the sale of PKN or the construction of

the PKN project is delayed or never materializes, MOHCD will need to pay the Port the Property's fair market value from another source; and

WHEREAS, Between April 2014 and May 2018, the Port and MOHCD entered into the Pre-Development MOU and completed most of the tasks enumerated, therein including, among others, MOHCD's competitive solicitation and selection of the Developer led by Bridge Housing ("Bridge") and the John Stewart Company ("JSCo") which formed 88 Broadway Family LP (the "Developer") to undertake the proposed development; and

WHEREAS, Staff of the Port, MOHCD and the Developer have collectively conducted extensive community outreach and solicited comments and feedback from stakeholders to form general consensus on the goals/objectives of the Development, as elaborated in the accompanying staff report dated July 3, 2018 ("Staff Memorandum"); and

WHEREAS, The Department of City Planning ("Planning Department") prepared a Draft Initial Study/Preliminary Mitigated Negative Declaration ("PMND") and Mitigation Monitoring and Reporting Program ("MMRP") for the Project and published the Draft PMND and MMRP for public review on October 25, 2017 which were available for public comment until November 27, 2017; and

WHEREAS, The Planning Commission held a public hearing to consider an appeal of the PMND and found that the contents of the PMND and the procedures through which the PMND was prepared, publicized, and reviewed complied with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.) (CEQA), 14 California Code of Regulations Sections 15000 et seq. (the "CEQA Guidelines") and Chapter 31 of the San Francisco Administrative Code ("Chapter 31") and finalized the PMND (the Final MND); and

WHEREAS, On May 3, 2018, the Planning Director found the FMND was adequate, accurate and objective, reflected the independent analysis and judgment of the Planning Director, and adopted the FMND and the MMRP, and authorized the Project in the Affordable Housing Project Authorization; and

WHEREAS, The Historic Preservation Commission approved with conditions the Certificate of Appropriateness Motion No. 0335) for the Project on April 4, 2018, on file with the Planning Department and incorporated herein by this reference; and

WHEREAS, The Planning Department Commission Secretary is the custodian of record for the file for Case No. 2016- 007850PRJ at 1650 Mission Street, Suite 400, San Francisco, California; and

WHEREAS, The FMND and the MMRP have been made available to the public, and the Port Commission for its review and action and incorporated herein by this reference; and

WHEREAS, Port and Developer have negotiated an Option to Lease Agreement (the "Option Agreement") which includes the form of ground lease (the "Form of Ground Lease") to provide the Developer with evidence of site control to support its application for an allocation of low-income housing tax credits from the California Tax Credit Allocation Committee, and Developer is required to exercise its option by June 30, 2020 subject to extension; and

WHEREAS, The Port and MOHCD have negotiated a Memorandum of Understanding for interdepartmental coordination to be effective during the Lease term (the "Development MOU") including, among other things, an extension of the Predevelopment MOU to complete the remaining tasks, the amount and manner in which MOHCD will pay the Port the Property's fair market value and MOHCD's consent to the Lease, and coordination between the departments in administering and enforcing the Lease; and

WHEREAS, Under Charter Section B7.320, the Board of Supervisors may approve a memorandum of understanding between the Port Commission and another department of the City, approved by the Port Commission by resolution; and

WHEREAS, The Developer has been formed by BRIDGE, Bridge Housing Corporation, and JSCo, The John Stewart Company, to lease the Property and develop the Family Project and the Senior Project and BRIDGE and JSCo each has the requisite qualifications and the wherewithal to perform as co-developers and project managers and have developed several projects in San Francisco with similar complexity profiles; and

WHEREAS, MOHCD is providing the Developer with financial assistance to acquire a leasehold interest in the Property and to leverage equity from an allocation of low-income housing tax credits and other funding sources to construct and operate the Development; and

WHEREAS, The Developer is required to execute the Lease substantially in the Form of the Lease attached to the Option Agreement; and

WHEREAS, WHEREAS, The material terms of the Lease include: (i) a term of 57 years with an extension option for 18 additional years; (ii) tenant responsibility for all property taxes and assessments levied against the Property; (iii) uses only for affordable housing with maximum tenant rent and income levels set at between 30% to 120% of the area median income ("AMI") and other ancillary purposes permitted by the State Legislation and AB 1423 if enacted into law; (iv) annual base rent for the residential portion of \$20,000 with escalation every 5 years in line with changes to the AMI; (v) except as provided in (viii), residual rent to the

Port under certain circumstances in the event of a sale or refinancing of the residential portion; (vi) at Lease termination, the Property with or without the building at Port's sole discretion shall revert to the Port; (vii) 30% of net annual revenue from a restaurant or retail operation paid to Port as additional rent; (viii) 15% of net proceeds from any refinancing or sales of the retail/restaurant space paid to Port as additional rent; (ix) 50% of the net revenue from all other nonresidential subleases are paid to Port as additional rent; (x) tenant responsibility for construction, operation and maintenance of the Property; (xi) Port ownership fee title to the land and tenant ownership of fee title to all improvements; (xii) Port notice of defaults to the tenant and MOHCD, and the tenant's limited partners and lenders and allow any such parties the right to cure such default; and (xiii) encumbrance of the leasehold interest to secure loans, subject to approval by the Port and MOHCD; and

WHEREAS, The Director of Property, in consultation with the Port and the California State Lands Commission conducted an appraisal of the Property which appraisal is dated June 29, 2018 with an indicated value of \$14.9 million; and

WHEREAS, Seawall 322-1 was filled and reclaimed as part of construction of the Embarcadero Seawall under Chapter 219 of the Statutes of 1878, a highly beneficial plan of harbor development; and

WHEREAS, Since its transfer from the State of California to the Port of San Francisco, Seawall Lot 322-1 has been used for predominantly nontrust uses, including commuter parking since 1998; and

WHEREAS, The seawall lots north of Second Street, separated from San Francisco Bay by the Embarcadero roadway, were further cut off from the water by light railtracks that were constructed in the median of the roadway in 2000; and

WHEREAS, Seawall Lot 322-1 is further separated from the water by Seawall Lot 324 and 323; and

WHEREAS, Seawall Lot 322-1 represents a small portion (under 1%) of the lands granted to the city under the Burton Act, not including lands currently subject to tidal action; **NOW, THEREFORE, BE IT**

RESOLVED, That the Port Commission has reviewed and considered the FMND and the record as a whole, finds that the FMND is adequate for its use as the decision-making body for the Project, that there is no substantial evidence that the Project will have a significant effect on the environment with the adoption of the measures contained in the MMRP to avoid potentially significant environmental effects associated with the Project, and hereby adopts the FMND; and be it further

RESOLVED, That the Port Commission hereby adopts the FMND and the MMRP attached hereto as Attachment A and incorporated herein as part of this Resolution by this reference thereto and all required mitigation measures identified in the FMND and contained in the MMRP will be included in the Lease between the Port and Developer; and be it further

RESOLVED, As a result of the foregoing, and as described in the Staff Memorandum, the Port Commission finds that Seawall Lot 322-1 has ceased to be useful for the promotion of the public trust and the Burton Act trust, except for the production of revenue to support the purposes of the Burton Act trust; and, be it further

RESOLVED, That the Port Commission finds that the combined payments due under the Development MOU and the Lease constitute fair market value and includes lease terms that are consistent with prudent land management practices as defined in the State Legislation and urges the Board of Supervisors to affirm this finding; and, be it further

RESOLVED, The Port Commission urges the San Francisco Board of Supervisors to affirm the findings of the Port Commission relating to the Public Trust and State Legislation and urges the California State Lands Commission to take the necessary actions to allow the Development to proceed; and, be it further

RESOLVED, That the Port Commission finds that the Lease is otherwise consistent with the terms of the Public trust, other than its restrictions on uses; and be it further

RESOLVED, The Port Commission believes, and urges California State Lands Commission to find, that lifting the public trust and Burton Act trust use restrictions from Seawall Lot 322-1, and the use of Seawall Lot 322-1 for an affordable housing project at fair market value on the terms and conditions set forth in the Transaction Documents, is in the best interests of the State of California; and, be it further

RESOLVED, That the Port Commission approves the Development MOU, and authorizes the Port's Executive Director (or her designee) to seek Board of Supervisors' approval under Charter Section B7.320 and the California State Lands Commission's approval as required by the State Legislation (including a determination that such approval does not require the Port to acquire land, deposit funds into the Kapiloff Land Bank, or otherwise incur liabilities beyond those provided in the Transaction Documents); and be it further

RESOLVED, That the Port Commission approves the Option Agreement and the form and substance of the form Lease attached thereto, subject to approval by the Board of Supervisors of the form of lease under its authority under Charter Section 9.118 and subject to the approval of the California State

Lands Commission (including a determination that such approval does not require the Port to acquire land, deposit funds into the Kapiloff Land Bank, or otherwise incur liabilities beyond those provided in the Transaction Documents); and be it further

RESOLVED, That the Port Commission hereby approves the Schematic Drawings of the proposed the Family Project on file with the Port Commission Secretary and the representative Schematic Drawings of the building within the Project Site, as shown in the attachment to the Memorandum for Agenda Item 12C for the Port Commission meeting on June 12, 2018, and authorizes the Executive Director to approve non-material changes in the Schematic Drawings; and be it further

RESOLVED, That, subject to obtaining the approvals discussed above, the Port Commission authorizes the Port's Executive Director to execute the Development MOU and the Option Agreement and, if the Developer properly exercises the Option, to execute the Lease in such final form as is approved by the Executive Director in consultation with the City Attorney; and be it further

RESOLVED, That the Port Commission authorizes the Port's Executive Director to enter into other additions, amendments, ancillary agreements, consents covenants and property documents necessary to implement the transactions contemplated by the Transaction Documents, and to enter into any additions, amendments or other modifications to the Transaction Documents including preparation and attachment of, or changes to, any or all of the attachments and exhibits that the Executive Director, in consultation with the City Attorney, determines are consistent with approvals made by the California State Lands Commission and, when taken as a whole, are in the best interests of the Port, do not materially decrease the benefits or materially increase the obligations or liabilities of the Port, and are necessary or advisable to complete the transactions that the Transaction Documents contemplate and effectuate the purpose and intent of this resolution, such determination to be conclusively evidenced by the execution and delivery by the Executive Director of such documents

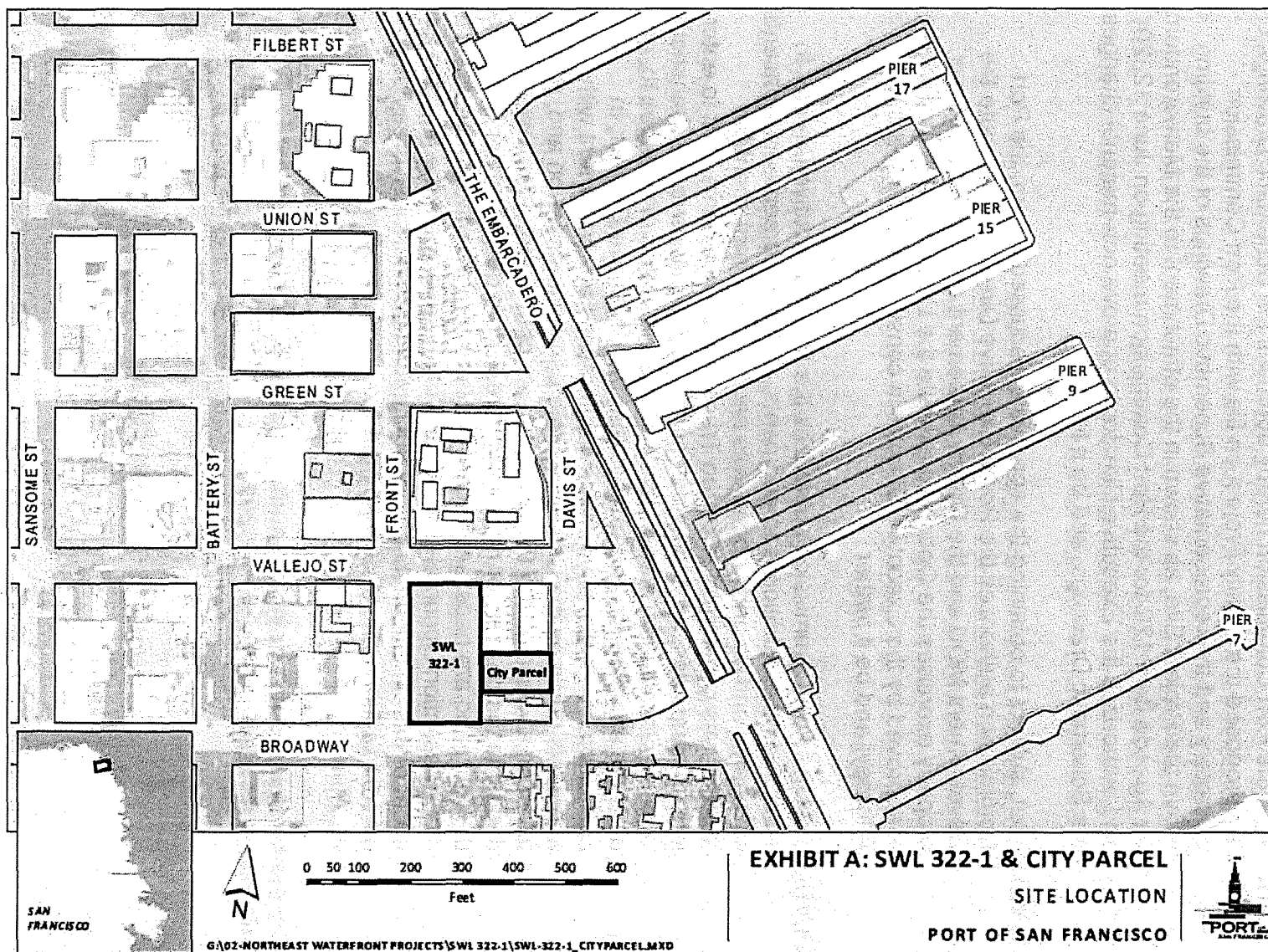
I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of July 10, 2018.

Amy Quesada

Digitally signed by Amy Quesada
DN: cn=Amy Quesada, o=Port of San Francisco, ou=Port
Executive, email=amy.quesada@port.com, c=US
Date: 2018.07.11 14:39:19 -0700

Secretary

Exhibit "A"
Site Map



***Exhibit "B,"
Development Schematic Design***

Wong, Linda (BOS)

From: Board of Supervisors, (BOS)
Sent: Monday, July 16, 2018 6:27 PM
To: BOS-Supervisors; Wong, Linda (BOS)
Subject: FW: Need your support for the 88 Broadway Project Case 2016-0078

From: Dennis Hong [mailto:dennisj.gov88@yahoo.com]
Sent: Monday, July 16, 2018 10:44 AM
To: Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>; londond.breed@sfgov.org
Cc: Kim, Jane (BOS) <jane.kim@sfgov.org>; Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>; Gibson, Lisa (CPC) <lisa.gibson@sfgov.org>; Rahaim, John (CPC) <john.rahaim@sfgov.org>; Delumo, Jenny (CPC) <jenny.delumo@sfgov.org>; Secretary, Commissions (CPC) <commissions.secretary@sfgov.org>; Mdebor@bridgehousing.com; mmiller@jsco.net
Subject: Need your support for the 88 Broadway Project Case 2016-0078

Good morning honorable members of the San Francisco Board of Supervisors and all. I'm back, Dennis Hong here. I'm a retired Construction Project Manager and a Native San Franciscan for seventy plus years. Grew up in Chinatown and North Beach District 3 for 35 plus of those years. **So in my not too humble opinion** and again simply put, we need all of your support/approval with this win win Project. Besides that I believe this project dove-tails with our late Mayor Edwin Lee's vision for the City.

This week ends 7/15/2018, page 5 of the SF Examiner, by Joshua Sabatini-SF Examiner-Staff Writer - 'Mother of all mixed-incomes' indicated that this project will soon be up for your approval.

On March 7, 2018 I sent in my comments in full support of this project and objecting to the "Appeal". At that time most of you (BoS) were 'CC' on my comments. My email was included as part of the Projects file. Since we have a new Administration - if needed (please get back to me) I can forward this email to you.

In closing, since this appeal I was not sure if there was any additional overlap of this appeal, however, I would still like your support and look forward to this item to soon be on your agenda. Could anyone please get back to me as to when this may be on the agenda?

As I promised our late Mayor Edwin Lee I will continue to do my civic duty with reviewing and commenting on these DEIR/s. Incidentally, I just sent you all another email in full support of the Central SOMA Project.

This is a real unique Project and deserves your support. I'm not sure how to support these projects. At times I will focus on the design, use of materials and colors used, all too often it gets a nick to my comments / where the CEQA does not allow for this kind of comment, however, this project does a great job with this existing historical area and is well designed. Either way, we are in need of projects like this. I did not see this on any of the Boards agenda and may had missed it.

Too much time has been lost with this process. Everyone has worked real hard in a wonderful collaboration with this project. Please we can't let this Project fail.

Finally, as I see it, lets not delay these projects any longer. The construction costs keep rising. The developers/sponsors are leaving the city for other more feasible options. In my opinion, we have already lost too many wonderful projects. Understood, you can't make everyone happy, but this one is a win win for all. But, after all these years of reviewing and commenting on these DEIR's I feel more than ever in justifying your approval for this unique Project and it's a wonderful PROJECT!

With all that said, can I have it too- (your support)? If anyone has any question/s please feel free to get back to me and let's discuss it.

Thanks for listening to my rambling comments and input / and thanks for your continued support of these ongoing projects. Once again, I look forward to your approval.

All the Best,

FORM SFEC-126:
NOTIFICATION OF CONTRACT APPROVAL
(S.F. Campaign and Governmental Conduct Code § 1.126)

City Elective Officer Information <i>(Please print clearly.)</i>	
Name of City elective officer(s):	City elective office(s) held:
Member, Board of Supervisors	Member, Board of Supervisors

Contractor Information <i>(Please print clearly.)</i>	
Name of contractor: 88 Broadway Family LP	
<p><i>Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary.</i></p> <p>1) 88 Broadway Family BRIDGE LLC, its Managing General Partner whose sole member is MCB Family Housing Inc.</p> <p>Board Members, MCB Family Housing Inc.:</p> <p style="margin-left: 40px;">Cynthia Parker, Susan Johnson, D. Valentine, Kim McKay, Rebecca Hlebasko, Ann Silverberg, Smitha Seshadri</p> <p>2) Cynthia Parker, CEO D Valentine, CFO</p> <p>1) JSCo 88 Broadway Family LLC, its Administrative General Partner whose sold member is John Stewart Company.</p> <p>Board Members, John Stewart Company:</p> <p style="margin-left: 40px;">John K. Stewart, Chairman Jack D. Gardner, President and CEO Daniel Levine, Secretary Noah Schwartz, CFO Mari Tustin Margaret Miller</p> <p>2) Jack D. Gardner, President and CEO; Noah Swartz, COO 3) N/A 4) N/A 5) N/A</p>	
Contractor address:	88 Broadway Family LP c/o BRIDGE Housing Corporation 600 California #900 San Francisco, CA 94108 Attn: President
Date that contract was approved:	Amount of contract: \$15,000 per year, plus residual receipts if available

Describe the nature of the contract that was approved:

Ground lease for an affordable housing development located at 88 Broadway with 125 units for low-income to moderate-income families and ground floor common spaces and commercial space.

Comments:

This contract was approved by (check applicable):

☐ the City elective officer(s) identified on this form (Mayor Mark E Farrell)

☒ a board on which the City elective officer(s) serves **San Francisco Board of Supervisors**
Print Name of Board

☐ the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

Print Name of Board

Filer Information (Please print clearly.)

Name of filer:

Angela Calvillo, Clerk of the Board

Contact telephone number:

(415) 554-5184

Address:

City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102

E-mail:

Board.of.Supervisors@sfgov.org

Signature of City Elective Officer (if submitted by City elective officer)

Date Signed

Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

Date Signed