File No. 201386 **Committee Item No.** 2
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

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Committee: Land Use and Transportation Committee **Date** March 8, 2021

Board of Supervisors Meeting **Date** _____

Cmte	Board	
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☐	☐	**Resolution**
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☒	☐	**Legislative Digest**
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OTHER **(Use back side if additional space is needed)**

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Completed by: Erica Major **Date** March 4, 2021
Completed by: Erica Major **Date** _____

[Development Agreement - Parcel F Owner, LLC - 542-550 Howard Street Transbay Redevelopment Project Area]

Ordinance approving a Development Agreement between the City and County of San Francisco and Parcel F Owner, LLC, for certain real property, known as 542-550 Howard Street (Assessor's Parcel Block No. 3721, Lot Nos. 016, 135, 136, and 138, also known as Transbay Parcel F), located in the Transbay Redevelopment Project Area, consisting of four parcels located on the north side of Howard Street, between 1st and 2nd Streets; waiving certain provisions of Administrative Code, Chapter 56; adopting findings under the California Environmental Quality Act; and making findings of conformity with the General Plan, and the eight priority policies of Planning Code, Section 101.1(b), and findings of public necessity, convenience, and general welfare under Planning Code, Section 302.

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
Additions to Codes are in *single-underline italics Times New Roman font*.
Deletions to Codes are in ~~*strikethrough italics Times New Roman font*~~.
Board amendment additions are in double-underlined Arial font.
Board amendment deletions are in ~~strikethrough Arial font~~.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

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

Section 1. Project Findings.

The Board of Supervisors makes the following findings:

(a) California Government Code Sections 65864 et seq. authorizes any city, county, or city and county to enter into an agreement for the development of real property within its respective jurisdiction.

(b) Administrative Code Chapter 56 ("Chapter 56") sets forth certain procedures for the processing and approval of development agreements in the City and County of San

Francisco (the "City").

(c) Parcel F Owner, LLC, a Delaware limited liability company (the "Developer"), is the owner of that certain real property located at 542-550 Howard Street (Assessor's Parcel Block No. 3721, Lots 016, 135, 136, and 138, also known as Transbay Parcel F), which is an irregularly shaped property formed by four parcels measuring a total of approximately 32,229 square feet, located on the north side of Howard Street, between 1st and 2nd Streets in the Transbay Redevelopment Project Area (the "Project Site").

(d) On January 9, 2020, the Planning Commission approved Resolutions 20613 and 20614, and Motions 20615, 20616, 20617, 20618; and on June 5, 2020, the Zoning Administrator issued a variance decision (collectively, the "Approvals"). The Approvals approved a project on the Project Site that would construct a new 61-story mixed use building reaching a height of approximately 750 feet (approximately 800 feet including rooftop screen/mechanical equipment), and including 165 dwelling units, 189 hotel rooms, 275,674 gross square feet of office use floor area, approximately 9,000 square feet of retail space, approximately 20,000 square feet of open space, 178 Class 1 and 34 Class 2 bicycle parking spaces, and four below-grade levels to accommodate up to 183 vehicle parking spaces for the residential, hotel, and office uses (the "Project"). The Project also includes a bridge to the future elevated City Park situated on top of the Transbay Transit Center. The Approvals are on file with the Planning Department, located at 49 South Van Ness, Suite 1400, San Francisco, CA 94103.

(e) On December 17, 2020, the Developer filed a request with the Office of Community Investment and Infrastructure ("OCII") for a Plan Variation pursuant to Section 3.5.5 of the Transbay Project Area Redevelopment Plan (the "Plan") for a variation from the on-site affordable housing requirements of Section 4.9.3 of the Plan (the "Plan's Inclusionary Housing Obligation") as well as a request to the City's Planning Department for a waiver of

Sections 249.28(b)(6)(B), 249.28(b)(6)(C), 402, 409, and 415 et seq. of the Planning Code (the "Requested Variations from On-Site Affordable Housing").

(f) The Developer has submitted the Requested Variations from On-Site Affordable Housing in exchange for a payment to OCII to be used to fund development of affordable housing within the Project Area, all as further described in the proposed development agreement (the “Development Agreement”), a copy of which is on file with the Clerk of the Board of Supervisors in File No. 201386 and incorporated herein by reference.

(g) Because the City is entering into a Development Agreement with the Developer addressing, among other issues, the amount of the Developer's affordable housing contribution, the Project is consistent with Charter Section 16.110(h)(1)(B)(i) (adopted as part of the Housing Trust Fund, Proposition C, November 6, 2012).

(h) The City has determined that as a result of the development of the Project Site in accordance with the Development Agreement, clear benefits to the public will accrue that could not be obtained through application of existing City ordinances, regulations, and policies, as more particularly described in the Development Agreement. Specifically, the Development Agreement will provide a housing contribution that will significantly exceed the amount required for similar projects in the City, and that will provide OCII with the ability to subsidize permanently affordable housing units within the Transbay Redevelopment Project Area.

(i) On January 19, 2021, at a duly noticed public hearing, the Commission on Community Investment and Infrastructure ("CCII"), as the Commission to the OCII, in Resolution No. 02-2021, conditionally approved the Developer's requested Plan Variation and the change to the Plan's Inclusionary Housing Obligation because of the infeasibility of maintaining affordable units in the Project and the payment to OCII for affordable housing. Said Resolution is on file with the Clerk of the Board of Supervisors in File No. 201386 and is

incorporated herein by reference. Under Section 6(a) of Ordinance No. 215-12, the Board of Supervisors delegated certain authority under the Redevelopment Dissolution Law, California Health and Safety Code, Sections 34170 et seq., to the CCII, but required that it not materially change its affordable housing obligations without obtaining the approval of the Board of Supervisors. Given that the CCII's conditional approval of the Plan Variation potentially removes the on-site affordable housing requirements of Section 4.9.3 of the Plan from the Project, the Board of Supervisors, acting as the legislative body for OCII, must approve the change to the Plan's Inclusionary Housing Obligation. A copy of Ordinance No. 215-12 is on file with the Clerk of the Board of Supervisors in File No. 120898.

(j) The Board of Supervisors, acting in its capacity as the legislative body for the CCII, has reviewed the basis for CCII's conditional approval of the Plan Variation and has determined that the changes to the Plan's Inclusionary Housing Obligation will comply with, and facilitate the fulfillment of, OCII's affordable housing obligations by significantly increasing the amount of affordable housing that would otherwise be available at the Project under the Plan's Inclusionary Housing Obligation. Accordingly, on _____ ___, 20__, at a duly noticed public hearing, the Board of Supervisors, acting as the legislative body for the CCII, approved, by Resolution No. _____, the change to the Plan's Inclusionary Housing Obligation. Said Resolution is on file with the Clerk of the Board in File No. 201387 and is incorporated herein by reference.

(k) On January 28, 2021, at a duly noticed public hearing, the Planning Commission approved Resolution No. 20842 recommending to the Board of Supervisors that it approve certain changes to the Zoning Map, Height Map, and Planning Code (the “Companion Rezoning Legislation) that would accommodate the project design and allow the Developer to make an in-lieu payment for affordable housing instead of constructing affordable housing on-site. In addition, the Planning Commission, as part of Resolution No. 20842, adopted findings

that the Companion Rezoning Legislation is, on balance, consistent with the General Plan and the eight priority policies of Planning Code Section 101.1 and adopted findings under Planning Code Section 302 that the Companion Rezoning Legislation will serve the public necessity, convenience, and general welfare. The Companion Rezoning Legislation is on file with the Clerk of the Board in File No. 201385 and incorporated herein by reference.

Section 2. California Environmental Quality Act Findings.

The Planning Commission in Resolution No. 20842 also adopted environmental findings under the California Environmental Quality Act ("CEQA"), that the Project satisfied all the requirements of CEQA. In the Companion Rezoning Legislation, a copy of which is on file with the Clerk of the Board of Supervisors in File No. 201385 and incorporated herein by reference, the Board of Supervisors adopted the Planning Commission environmental findings as its own. For purposes of thisordinance, the Board of Supervisors adopts those environmental findings from the Companion Rezoning Legislation as if fully set forth herein.

Section 3. Public Necessity, General Plan, and Planning Code Section 101.1(b) Findings.

(a) The Board of Supervisors finds that the Development Agreement, will serve the public necessity, convenience, and general welfare in accordance with Planning Code Section 302 for the reasons set forth in Planning Commission Resolution No. 20842. In Resolution No. 20842, the Planning Commission also recommended that the Board of Supervisors adopt the Development Agreement. Said Resolution is on file with the Clerk of the Board of Supervisors in File No. 201385 and is incorporated herein by reference.

(b) The Board of Supervisors finds that the Development Agreement is, on balance, in conformity with the General Plan and the eight priority policies of Planning Code, Section

101.1 for the reasons set forth in Planning Commission Resolution No. 201385. The Board hereby adopts the findings set forth in Planning Commission Resolution No. 201385 as its own.

Section 4. Approval of Development Agreement.

(a) The Board of Supervisors approves all of the terms and conditions of the Development Agreement, in substantially the form on file with the Clerk of the Board of Supervisors in File No. 201386.

(b) The Board of Supervisors approves and authorizes the execution, delivery, and performance by the City of the Development Agreement, subject to the Developer's payment of all City costs with respect to the Development Agreement. Upon receipt of the payment of City's costs billed to the Developer, the Director of Planning is authorized to execute and deliver the Development Agreement, and the Director of Planning and other applicable City officials are authorized to take all actions reasonably necessary or prudent to perform the City's obligations under the Development Agreement in accordance with the terms of the Development Agreement and Chapter 56, as applicable. The Director of Planning, at the Director's discretion and in consultation with the City Attorney, is authorized to enter into any additions, amendments, or other modifications to the Development Agreement that the Director of Planning determines are in the best interests of the City and that do not materially increase the obligations or liabilities of the City or materially decrease the benefits to the City under the Development Agreement, subject to the approval of any affected City agency as more particularly described in the Development Agreement.

Section 5. Administrative Code Chapter 56 Waivers.

In connection with the Development Agreement, the Board of Supervisors finds that the requirements of Administrative Code, Chapter 56 have been substantially complied with, and

hereby waives any procedural or other requirements of Chapter 56 if and to the extent that they have not been complied with.

Section 6. Ratification of City Officials' Acts.

All actions taken by City officials in preparing and submitting the Development Agreement to the Board of Supervisors for review and consideration are hereby ratified and confirmed, and the Board of Supervisors hereby authorizes all subsequent action to be taken by City officials consistent with this ordinance.

Section 7. Effective and Operative Dates.

This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisor's overrides the Mayor's veto of the ordinance; provided, that this ordinance shall not become operative if the Companion Rezoning Legislation is not approved.

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: /s/ HEIDI J. GEWERTZ
HEIDI J. GEWERTZ
Deputy City Attorney

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FILE NO. 201386

LEGISLATIVE DIGEST

[Development Agreement - Parcel F Owner, LLC - 542-550 Howard Street Transbay Redevelopment Project Area]

Ordinance approving a Development Agreement between the City and County of San Francisco and Parcel F Owner, LLC, for certain real property, known as 542-550 Howard Street (Assessor's Parcel Block No. 3721, Lot Nos. 016, 135, 136, and 138, also known as Transbay Parcel F), located in the Transbay Redevelopment Project Area, consisting of four parcels located on the north side of Howard Street, between 1st and 2nd Streets; waiving certain provisions of Administrative Code, Chapter 56; adopting findings under the California Environmental Quality Act; and making findings of conformity with the General Plan, and the eight priority policies of Planning Code, Section 101.1(b), and findings of public necessity, convenience, and general welfare under Planning Code, Section 302.

Existing Law

California Government Code section 65864 *et seq.* (the "Development Agreement Statute") and Chapter 56 of the San Francisco Administrative Code ("Chapter 56") authorize the City to enter into a development agreement regarding the development of real property.

Amendments to Current Law

The proposed ordinance, if adopted, would result in the approval of the proposed development agreement (the "Development Agreement") with Parcel F Owner, LLC ("Developer") in accordance with the Development Agreement Statute and Chapter 56. The Development Agreement would provide to Developer the vested right to develop the Project Site as described in the Development Agreement consistent with Existing Requirements and a variation from the Transbay Redevelopment Project Area (the "Project Area") Plan's and City Planning Code's On-Site Affordable Housing Requirement (the "On-Site Requirement"). There are no proposed amendments to current law.

Background Information

Under the Development Agreement, the Developer shall have the vested right to develop the Project Site in accordance with the Existing Requirements, provided that the Developer contributes to the Office of Community Investment and Infrastructure ("OCII") an amount that is equal to one hundred fifty percent (150%) of the inclusionary housing fee that Section 415.5 of the Planning Code would otherwise require if the Project were not subject to the On-Site Requirement (based on the published fee schedule applicable to calendar year 2021) toward the development of affordable housing in the Project Area, which amount is significantly higher than the amount of the affordable housing fee that would be permitted under the City's

Inclusionary Affordable Housing Program if the Project were located outside of the Project Area.

By separate legislation, the Board, acting in its capacity as the legislative body to OCII (also known as the Successor Agency to the former Redevelopment Agency of the City and County of San Francisco), is considering, in furtherance of the proposed project, approving provisions of a variation decision by the Commission on Community Investment and Infrastructure modifying the On-Site Affordable Housing Requirement for the Project Site.

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Received via email
2/19/2021
DA Final 2/18/2021

RECORDING REQUESTED BY
CLERK OF THE BOARD OF SUPERVISORS
OF THE CITY AND COUNTY OF SAN FRANCISCO

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

AND WHEN RECORDED MAIL TO:

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

DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY AND COUNTY OF SAN FRANCISCO
AND PARCEL F OWNER, LLC,
RELATIVE TO THE DEVELOPMENT KNOWN AS
542-550 HOWARD STREET (TRANSBAY PARCEL F) DEVELOPMENT PROJECT

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DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY AND COUNTY OF SAN FRANCISCO
AND PARCEL F OWNER, LLC, A DELAWARE LIMITED LIABILITY COMPANY,
RELATIVE TO THE DEVELOPMENT KNOWN AS
THE 181 FREMONT DEVELOPMENT PROJECT

THIS DEVELOPMENT AGREEMENT (this "**Agreement**") dated for reference purposes only as of this _____ day of _____, 2021, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a political subdivision and municipal corporation of the State of California (the "**City**"), acting by and through its Planning Department, and Parcel F Owner, LLC, a Delaware limited liability company, its permitted successors and assigns (the "**Developer**"), pursuant to the authority of Section 65864 *et seq.* of the California Government Code.

RECITALS

This Agreement is made with reference to the following facts:

A. Developer is the owner of that certain property known as 542-550 Howard Street (Transbay Parcel F) (the "**Project Site**") which is an irregularly shaped property formed by four parcels measuring a total of approximately 32,229 square feet, located on the north side of Howard Street, between 1st Street and 2nd Street. The Project Site is within the C-3-0 (SD) District, the 750-S-2 and 450-S Height and Bulk Districts, the Transit Center C-3-0 (SD) Commercial Special Use District, the Transbay C-3 Special Use District, the Transit Center District Plan area (the "**TCDP**") and in Zone 2 of the Transbay Redevelopment Project Area (the "**Project Area**").

B. Developer submitted development applications for a proposal to construct on the Project Site a new 61-story mixed use building reaching a height of approximately 750 feet (approximately 800 feet including rooftop screen/mechanical equipment), and including 165 dwelling units, 189 hotel rooms, 275,674 gross square feet of office use floor area, approximately 9,000 square feet of retail space, approximately 20,000 square feet of open space, 178 Class 1 and 34 Class 2 bicycle parking spaces, and four below-grade levels to accommodate up to 183 vehicle parking spaces for the residential, hotel, and office uses (the "**Project**").

C. The Redevelopment Plan for the Project Area ("**Plan**") establishes land use controls and imposes other requirements on development within the Project Area. Notably, the Plan incorporates, in section 4.9.2, state law requirements that 25 percent of the residential units developed in the Project Area "shall be available to" low-income households, and an additional 10 percent "shall be available to" moderate income households. Cal. Public Resources Code § 5027.1 (the "**Transbay Affordable Housing Obligation**"). To fulfill the Transbay Affordable Housing Obligation, the Plan requires that all housing developments within the Project Area contain a minimum of 15 percent on-site affordable housing. Redevelopment Plan, § 4.9.3. A similar requirement in § 249.28(b)(6) of the San Francisco Planning Code (the "**Planning Code**") provides that housing developments must provide the higher of (i) the 15 percent on-site affordable housing set forth in the Plan, or (ii) the amount required by Planning Code Section 415.6 (the "**On-Site Requirement**"). As of the date of this Agreement, Planning Code Section 415.6 would require 20 percent on-site affordable housing in connection with the Project, or 33 units. Neither the Redevelopment Plan nor the Planning Code authorize off-site affordable housing construction or an "in-lieu" fee payment as an alternative to the On-Site Requirement in the Project Area.

D. The Plan provides that the land use controls for Zone 2 of the Project Area shall be the Planning Code, as amended from time to time, so long as any amendments to the Planning Code are consistent with the Plan. Through a Delegation Agreement, the former Redevelopment Agency of the City and County of San Francisco (the "**Former Agency**") delegated jurisdiction for permitting of projects in Zone 2 (including the Project Site) to the Planning Department, with the Planning Code governing development, except for certain projects that require Redevelopment Agency action. The Plan also provides that exactions imposed by the Planning Code on development within the Project Area shall be administered by the Successor Agency to the Former Agency or provide direct benefits to the Project Area.

E. However, pursuant to Section 3.5.5 of the Plan, the Commission on Community Investment and Infrastructure (**"CCII"**) (as the Commission to the Successor Agency to the Former Agency, a public body organized and existing under the laws of the State of California, also known as the Office of Community Investment and Infrastructure (**"Successor Agency"** or **"OCII"**)) has the authority to grant a variation from the Plan and the associated Transbay Development Controls and Design Guidelines, or the Planning Code where the enforcement of these controls would otherwise result in practical difficulties for development creating undue hardship for the property owner and constitute an unreasonable limitation beyond the intent of the Plan, the Transbay Design for Development or the Transbay Development Controls and Design Guidelines.

F. Where a variation or other action of the Successor Agency materially changes the Successor Agency's obligations to provide affordable housing, the Board of Supervisors ("**Board**") must approve that action. San Francisco Ordinance No. 215-12, § 6(a) (Oct. 4, 2012).

G. On December 17, 2020, OCII received a request from the Developer for a variation from the On-Site Requirement. Letter, C. Higley, Farella Braun + Martel on behalf of Parcel F Owner, LLC, to S. Oerth (December 17, 2020) ("**Variation Request**"), attached to this Agreement as Exhibit A.

H. The Variation Request concludes that the application of the On-Site Requirement to the Project would create practical difficulties for maintaining the affordability of the units because homeowners association ("HOA") fees, which are already high in such developments, will likely increase over time such that the original residents would not be able to afford the payments. Non-payment of HOA fees by affordable residents would lead to legal actions by the HOA to recover unpaid amounts, including action to place liens on the units themselves, and ultimately to the loss of the units by the residents. Thus, undue hardship would be created for both the Project Sponsor and the owners of the inclusionary housing units and undermine the intent of the Plan to provide affordable units to low- and moderate-income households.

I. In order to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Section 65864 et seq. (the "**Development Agreement Statute**"), which authorizes the City to enter into a development agreement with any person having a legal or equitable interest in real property related to the development of such property. Pursuant to the Development Agreement Statute, the City adopted Chapter 56 **("Chapter 56")** of the San Francisco Administrative Code establishing procedures and requirements for entering into a development agreement. The Parties are entering into this Agreement in accordance with the Development Agreement Statute and Chapter 56.

J. It is the intent of the Parties that all acts referred to in this Agreement shall be accomplished in a way as to fully comply with CEQA, the CEQA Guidelines, Chapters 31 and 56 of the San Francisco Administrative Code, the Development Agreement Statute, the Enacting Ordinance and all

other applicable laws as of the Effective Date. This Agreement does not limit the City's obligation to comply with applicable environmental laws, including CEQA, before taking any discretionary action regarding the Project, or Developer's obligation to comply with all applicable laws in connection with the development of the Project

K. The San Francisco Planning Department, in compliance with the California Environmental Quality Act (CEQA), issued a Community Plan Exemption (CPE) certificate for the Project on August 27, 2019. F

L. On January 9, 2020, the San Francisco Planning Commission held a public hearing on the Project, and approved Motions 20613 (recommending approval of certain General Plan amendments), 20614 (recommending approval of certain Zoning Map, Height Map, and Planning Code amendments), 20615 (adopting Shadow Findings), 20616 (approving Downtown Project Authorization), 20617 (approving an Office Development Allocation), and 20618 (approving a Condition Use Authorization for hotel development). The Project approvals required compliance with the On-Site Requirement.

M. On June 5, 2020 the Zoning Administrator issued a variance decision to allow bike parking to be located on the 4th story of the Project.

N. On January 19, 2021 the CCII held a public hearing on the Variation Request and approved, pursuant to Resolution No. 02-2021, a variation pursuant to Section 3.5.5 of the Plan, attached as Exhibit B (the "**OCII Variation**") on the condition that the Developer contribute to OCII an amount equal to one hundred fifty percent (150%) of the inclusionary housing fee that Section 415.5 of the Planning Code would otherwise require if the Project were not subject to the On-Site Requirement, pursuant to the terms in Section 2.1 of this Agreement (the "**Affordable Housing Fee**").

O. On January 28, 2021, the Planning Commission held a public hearing on the Project, duly noticed and conducted under the Development Agreement Statute and Chapter 56, to consider revisions to the previously recommended zoning legislation, as well as this Agreement. Following the public hearing, the Planning Commission made General Plan Consistency Findings with respect to the zoning changes and this Agreement, and approved Motion _____ (recommending approval of revisions to the previously endorsed Planning Code amendments), and Motion _____ (recommending adoption of an ordinance approving this Agreement).

P. On _____, the Board, in its capacity as the governing body of OCII, reviewed the OCII Variation under the authority that it reserved to itself in Ordinance No. 215-12 to approve material changes to the Successor Agency's affordable housing program and approved, by Board of Supervisors Resolution No. ____, the actions of OCII in granting the OCII Variation.

Q. The City has determined that as a result of the development of the Project in accordance with this Agreement additional, clear benefits to the public will accrue that could not be obtained through application of existing City ordinances, regulations, and policies because the payment of the Affordable Housing Fee at an amount equal to 150% of the inclusionary housing fee that Section 415.5 of the Planning Code would otherwise require and its use thereof in accordance with this Agreement rather than compliance with the On-Site Requirements will result in more affordable housing units within the Project Area while maintaining land values necessary for the financing assumptions of the Transbay Joint Powers Authority (the "**TJPA**"). The basis for this determination is the following:

- To achieve the overall goal of at least 35% affordability of all new housing development units within the Project Area, there must be both inclusionary units and stand-alone affordable housing developments in the Project Area.

- The Plan's 2005 report set a goal of 388 inclusionary units and approximately 795 stand-alone affordable housing units but at the time of the Plan's adoption, mixed-use, high-rise developments were not contemplated within the Project Area.

- The Project Area covers 40 acres and includes blocks programmed for: (i) stand-alone affordable housing developments; (ii) all or a majority of office space; and (iii) a combination of market and affordable housing.

- The TJPA established specific land value goals for each block in its funding plan for the Transbay Transit Center (the "**TTC**") and there are a limited number of publicly-owned blocks (including Transbay Block 4) remaining upon which affordable housing may be built to meet the Plan's 35% affordability requirement.

- Adding affordable housing to blocks that must be sold to finance the TTC is not feasible without significantly reducing the land value and thereby creating shortfalls in the TTC funding.

- The Affordable Housing Fee is intended to assist OCII in meeting its Transbay Affordable Housing Obligation, which may include the use of the funds for the development of affordable housing units at Transbay Block 4.

R. On _____, the Board, having received the Planning Commission recommendations, adopted Ordinance No. _____, amending the Zoning Map, Height Map, and Planning Code, and Ordinance No. _____, approving this Agreement (File No. _____), and authorizing the Planning Director to execute this Agreement on behalf of the City (the "**Enacting Ordinance**"). The Enacting Ordinance took effect on _____. The above described actions are referred to in this Agreement as the "**Approvals**" for the Project.

Now therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. GENERAL PROVISIONS

1.1. **Incorporation of Preamble, Recitals and Exhibits**. The preamble paragraph, Recitals, and Exhibits, and all defined terms contained therein, are hereby incorporated into this Agreement as if set f**orth in full.**

1.2. **Definitions**. In addition to the definitions set forth in the above preamble paragraph, Recitals and elsewhere in this Agreement, the following definitions shall apply to this Agreement:

1.2.1. "**Administrative Code**" shall mean the San Francisco Administrative Code.

1.2.2. "**Affiliate**" shall mean any entity controlling, controlled by, or under common control with Developer (and 'control' and its correlative terms 'controlling', 'controlled by' or 'under common control with' mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of Developer, whether through the ownership of voting securities, by contract or otherwise).

1.2.3. "**Affordable Housing Fee**" shall mean the payment, pursuant to Section 2.1 of this Agreement, from the Developer to OCII of an amount that is equal to one hundred fifty percent (150%) of the inclusionary housing fee that Section 415.5 of the Planning Code would otherwise require

if the Project were not subject to the On-Site Requirement (based on the published fee schedule applicable to calendar year 2021).

1.2.4. "**Board of Supervisors**" or "**Board**" shall mean the Board of Supervisors of the City and County of San Francisco.

1.2.5. "**CCII**" shall mean the Commission on Community Investment and Infrastructure.

1.2.6. "**City**" shall have the meaning set forth in the preamble paragraph. Unless the context or text specifically provides otherwise, references to the City shall mean the City acting by and through the Planning Director or, as necessary, the Planning Commission or the Board of Supervisors. The City's approval of this Agreement will be evidenced by the signatures of the Planning Director and the Clerk of the Board of Supervisors [need to confirm if the Clerk needs to sign].

1.2.7. "**City Agency**" or "**City Agencies**" shall mean, where appropriate, all City departments, agencies, boards, commissions, and bureaus that execute or consent to this Agreement and that have subdivision or other permit, entitlement or approval authority or jurisdiction over the Project or the Project Site, together with any successor City agency, department, board, or commission.

1.2.8. "**City Attorney's Office**" shall mean the Office of the City Attorney of the City and County of San Francisco.

1.2.9. "**Director**" or "**Planning Director**" shall mean the Director of Planning of the City and County of San Francisco.

1.2.10. "**Impact Fees and Exactions**" shall mean any fees, contributions, special taxes, exactions, impositions, and dedications charged by the City, whether as of the date of this Agreement or at any time thereafter during the Term, in connection with the development of the Project, including but not limited to transportation and transit fees, child care requirements or in-lieu fees, housing (including affordable housing) requirements or fees, dedication or reservation requirements, and obligations for on- or off-site improvements. For development within the Project Area, Section 5.9 of the Plan requires that the Jobs-Housing Program Linkage Fee and the Downtown Park Fee shall be administered by the Successor Agency and that all Impact Fees and Exactions must provide direct benefits to the Project Area.. Impact Fees and Exactions shall not include the Mitigation Measures, Processing Fees, taxes or special assessments or school district fees, SFPUC Capacity Charges, Transit Center District Plan Transit Delay Mitigation Fee (Planning Code Section 424.7.2(c)) and any fees, taxes, assessments impositions imposed by any non-City agency, all of which shall be due and payable by Developer as and when due in accordance with applicable Laws.

1.2.11. "**Indemnify**" shall mean to indemnify, defend, reimburse, and hold harmless.

1.2.12. "**Letter of Credit"** is defined in Section 2.1.2.

1.2.13. "**OCII**" shall mean Office of Community Investment and Infrastructure.

1.2.14. "**Official Records**" shall mean the official real estate records of the City and County of San Francisco, as maintained by the City's Recorder's Office.

1.2.15. "**On-Site Requirement**" is defined in Recital B.

1.2.16. "**Party**" means, individually or collectively as the context requires, the City and Developer (and, as Developer, any Transferee that is made a Party to this Agreement under the terms of an Assignment and Assumption Agreement). "**Parties**" shall have a correlative meaning.

1.2.17. "**Plan**" shall mean the Transbay Project Area Redevelopment Plan, Approved by Ordinance No. 124-05, Adopted by the Board of Supervisors on June 21, 2005 and Ordinance No. 99-06 adopted by the Board of Supervisors May 9, 2006, as amended from time to time.

1.2.18. "**Planning Code**" shall mean the San Francisco Planning Code.

1.2.19. "**Planning Commission**" or "**Commission**" shall mean the Planning Commission of the City and County of San Francisco.

1.2.20. "**Planning Department**" shall mean the Planning Department of the City and County of San Francisco.

1.3. Effective Date. This Agreement shall take effect upon the later of (i) the full execution of this Agreement by the Parties and (ii) the effective date of the Enacting Ordinance ("**Effective Date**"). The Effective Date is _____.

1.4. Term. The term of this Agreement shall commence upon the Effective Date and shall continue in full force and effect for the earlier of (i) Project completion (as evidenced by issuance of the Temporary Certificate of Occupancy) or (ii) ten (10) years after the effective date., unless extended or earlier terminated as provided herein ("**Term**"). Following expiration of the Term, this Agreement shall be deemed terminated and of no further force and effect except for any provisions which, by their express terms, survive the expiration or termination of this Agreement.

2. PROJECT CONTROLS AND VESTING

2.1. Affordable Housing Fee; Impact Fees.

2.1.1. During the term of this Agreement, Developer shall have the vested right to develop the Project Site in accordance with the Approvals, provided Developer shall pay the Affordable Housing Fee to OCII to fund OCII's obligation to fulfill the Transbay Affordable Housing Obligation on the earlier to occur: (a) of issuance of the temporary certificate of occupancy associated with the residential portions of the Project; (b) on the date that is two years after the effective date of this Agreement (if DBI has already issued the" first construction document," as defined in Section 401 of the Planning Code and Section 107A.13.1 of the Building Code, for the Project; (c) upon issuance of the first construction document for the Project (if at least two years have then passed from the effective date of this Agreement); or (d) by the release of funds under a Letter of Credit (as defined in Section 2.1.2 of this Agreement) at least forty-five days prior to the close of construction financing on the affordable housing project at Transbay Block 4. The fee collection procedure set forth in Section 402 of the Planning Code shall not apply to the Project, nor shall any other provision of the San Francisco Municipal Code that conflicts with the fee collection and timing described in this Section 2.1.1.

2.1.2. Within thirty (30) days after the effective date of the Disposition and Development Agreement between OCII and Developer or an entity affiliated with Developer for Transbay Block 4, Developer shall submit to OCII an enforceable letter of credit, which shall allow OCII to draw down the full amount of the Affordable Housing Fee, as described in this Section 2.1., on commercially reasonable terms and in substantially the form attached to this Agreement as Exhibit E (the "**Letter of Credit**"). OCII shall have advance approval, in its reasonable discretion, of the Letter of Credit provider, which must demonstrate good standing in the form of: (a) no placement on a watchlist for negative downgrade; and either (b) long-term credit ratings from at least two nationally recognized credit rating agencies, at least one of which shall be Moody's or Standard & Poor's, of at least A2/A/A or equivalent, or (c) short-term credit ratings from at least two rating agencies, at least one of which shall be Moody's or Standard & Poor's, of at least P-1/A-1/F1 or equivalent. The Letter of Credit shall remain valid until such time as the Affordable Housing Fee is paid in full to OCII and shall provide for full disbursement of the funds upon OCII's request for release of funds, provided such request is consistent with the terms of this Development Agreement.

2.1.3. Developer shall pay the Impact Fees and Exactions set forth in Exhibit F, calculated on the basis of the schedule of fees published by the City for calendar year 2021. Planning Code Section 409(b), regarding annual escalation of Impact Fees and Exactions, shall not apply to the Project.

2.2. Vested Rights. The City, by entering into this Agreement, is limiting its future discretion with respect to Project approvals that are consistent with this Agreement during the Term. Consequently, the City shall not use its discretionary authority in considering any application to change the policy decisions reflected by the Agreement or otherwise to prevent or to delay development of the Project as set forth in the Agreement. Instead, implementing approvals that substantially conform to or implement the Agreement shall be issued by the City so long as they substantially comply with and conform to this Agreement. The City shall not use its discretionary authority to change the policy decisions reflected by this Agreement or otherwise to prevent or to delay development of the Project as contemplated in this Agreement. The City shall take no action under this Agreement nor impose any condition on the Project that would conflict with this Agreement.

2.3. Changes in Federal or State Laws. If Federal or State Laws issued, enacted, promulgated, adopted, passed, approved, made, implemented, amended, or interpreted after the Effective Date have gone into effect and (i) preclude or prevent compliance with one or more provisions of this Agreement, or (ii) materially and adversely affect Developer's or the City's rights, benefits or obligations, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such Federal or State Law. In such event, this Agreement shall be modified only to the extent necessary or required to comply with such Law. If any such changes in Federal or State Laws would materially and adversely affect the construction, development, use, operation or occupancy of the Project such that the Development becomes economically infeasible, then Developer shall notify the City and propose amendments or solutions that would maintain the benefit of the bargain (that is this Agreement) for both Parties.

2.4. Changes to Development Agreement Statute. This Agreement has been entered into in reliance upon the provisions of the Development Agreement Statute. No amendment of or addition to the Development Agreement Statute which would affect the interpretation or enforceability of this Agreement or increase the obligations or diminish the development rights of Developer hereunder, or increase the obligations or diminish the benefits to the City hereunder shall be applicable to this Agreement unless such amendment or addition is specifically required by Law or is mandated by a court of competent jurisdiction. If such amendment or change is permissive rather than mandatory, this Agreement shall not be affected.

2.5. Taxes. Nothing in this Agreement limits the City's ability to impose new or increased taxes or special assessments, or any equivalent or substitute tax or assessment.

3. DEVELOPER REPRESENTATIONS, WARRANTIES AND COVENANTS

3.1. Interest of Developer; Due Organization and Standing. Developer represents that it is the legal owner of the Project Site, and that all other persons with an ownership or security interest in the Project Site have consented to this Agreement. Developer is a Delaware limited liability company. Developer has all requisite power to own its property and authority to conduct its business as presently conducted. Developer has made all required state filings required to conduct business in the State of California and is in good standing in the State of California.

3.2. No Conflict with Other Agreements; No Further Approvals; No Suits. Developer warrants and represents that it is not a party to any other agreement that would conflict with Developer's obligations under this Agreement. Neither Developer's articles of organization, bylaws, or operating agreement, as applicable, nor any other agreement or law in any way prohibits, limits or otherwise affects the right or power of Developer to enter into and perform all of the terms and covenants of this Agreement. 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 Developer of this Agreement or any of the terms and covenants contained in this Agreement. To Developer's knowledge, there are no pending or threatened suits or proceedings or undischarged judgments affecting Developer or any of its members before any court, governmental

agency, or arbitrator which might materially adversely affect Developer's business, operations, or assets or Developer's ability to perform under this Agreement.

3.3. No Inability to Perform; Valid Execution. Developer warrants and represents that it has no knowledge of any inability to perform its obligations under this Agreement. The execution and delivery of this Agreement and the agreements contemplated hereby by Developer have been duly and validly authorized by all necessary action. This Agreement will be a legal, valid and binding obligation of Developer, enforceable against Developer in accordance with its terms.

3.4. Conflict of Interest. Through its execution of this Agreement, Developer acknowledges that it is familiar with the provisions of Section 15.103 of the City's Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code, and Section 87100 *et seq*. and Section 1090 *et seq*. of the California Government Code, and certifies that it does not know of any facts which constitute a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the Term.

3.5. Notification of Limitations on Contributions. Through execution of this Agreement, Developer acknowledges that it is familiar with Section 1.126 of City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with 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 the officer at any time from the commencement of negotiations for a contract as defined under Section 1.126 of the Campaign and Governmental Conduct Code until six (6) months after the date the contract is approved by the City elective officer or the board on which that City elective officer serves. San Francisco Ethics Commission Regulation 1.126 1 provides that negotiations are commenced when a prospective contractor first communicates with a City officer or employee about the possibility of obtaining a specific contract. This communication may occur in person, by telephone or in writing, and may be initiated by the prospective contractor or a City officer or employee. Negotiations are completed when a contract is finalized and signed by the City and the contractor. Negotiations are terminated when the City and/or the prospective contractor end the negotiation process before a final decision is made to award the contract.

3.6. Other Documents. No document furnished or to be furnished by Developer to the City in connection with this Agreement contains or will contain to Developer's knowledge any untrue statement of material fact or omits or will omit a material fact necessary to make the statements contained therein not misleading under the circumstances under which any such statement shall have been made.

3.7. No Suspension or Debarment. Neither Developer, nor any of its officers, have been suspended, disciplined or debarred by, or prohibited from contracting with, the U.S. General Services Administration or any federal, state or local governmental agency.

3.8. No Bankruptcy. Developer represents and warrants to City that Developer has neither filed nor is the subject of any filing of a petition under the federal bankruptcy law or any federal or state insolvency laws or laws for composition of indebtedness or for the reorganization of debtors, and, to the best of Developer's knowledge, no such filing is threatened.

3.9. Taxes. Without waiving any of its rights to seek administrative or judicial relief from such charges and levies, Developer shall pay and discharge all taxes, assessments and governmental charges or levies imposed on it or on its income or profits or on any of its property before the date on which penalties attach thereto, and all lawful claims which, if unpaid, would become a lien upon the Project Site.

3.10. Notification. Developer shall promptly notify City in writing of the occurrence of any event which might materially and adversely affect Developer or Developer's business, or that would make any of the representations and warranties herein untrue, or that would, with the giving of notice or passage of time over the Term, constitute a default under this Agreement.

3.11. Nexus/Reasonable Relationship Waiver. Developer consents to, and waives any rights it may have now or in the future, to challenge with respect to the Project, the legal validity of, the

conditions, requirements, policies, or programs required by this Agreement, including, without limitation, any claim that they constitute an abuse of police power, violate substantive due process, deny equal protection of the laws, effect a taking of property without payment of just compensation, or impose an unlawful tax.

3.12. Indemnification of City. Developer shall Indemnify the City and OCII (each an "Indemnified Party") and the Indemnified Party's officers, agents and employees from and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims ("Losses") arising or resulting directly or indirectly from this Agreement and Developer's performance (or nonperformance) of this Agreement, regardless of the negligence of and regardless of whether liability without fault is imposed or sought to be imposed an Indemnified Party, except to the extent that such Indemnity is void or otherwise unenforceable under applicable law, and except to the extent such Loss is the result of the active negligence or willful misconduct of an Indemnified Party. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs, and the Indemnified Party's cost of investigating any claims against the Indemnified Party. All Indemnifications set forth in this Agreement shall survive the expiration or termination of this Agreement.

3.13. Payment of Fees and Costs.

3.13.1. Developer shall pay to the City all City Costs (defined below) during the Term within thirty (30) days following receipt of a written invoice from the City. Each City Agency shall submit to the Planning Department or another City agency as designated by the Planning Department monthly or quarterly invoices for all City Costs incurred by the City Agency for reimbursement under this Agreement, and the Planning Department or its designee shall gather all such invoices so as to submit one City bill to Developer each month or quarter. To the extent that a City Agency fails to submit such invoices, then the Planning Department or its designee shall request and gather such billing information, and any City Cost that is not invoiced to Developer within eighteen (18) months from the date the City Cost was incurred shall not be recoverable. For purposes of this Agreement, "**City Costs**" means the actual and reasonable costs incurred by a City Agency or OCII in preparing, adopting or amending this Agreement, in performing its obligations or defending its actions under this Agreement or otherwise contemplated by this Agreement, as determined on a time and materials basis, including reasonable attorneys' fees and costs but excluding work, hearings, costs or other activities contemplated or covered by the standard fee(s) (i.e., processing fees) imposed by the City upon the submission of an application for a permit or approval, other than impact fees or exactions, in accordance with City practice on a City-wide basis.

3.13.2. The City shall not be required to process any requests for approval or take other actions under this Agreement during any period in which payments from Developer are past due. If such failure to make payment continues for a period of more than sixty (60) days following notice, it shall be a Default for which the City shall have all rights and remedies as set forth in Section 7.4.

3.14. Mello-Roos Community Facilities District. The Project shall be subject to the provisions of the proposed City and County of San Francisco Transbay Center District Plan [Mello-Roos] Community Facilities District No. 2014-1 (Transbay Transit Center) ("**CFD**"), once established, to help pay the costs of constructing the new Transbay Transit Center, the Downtown Rail Extension ("DTX"), and other improvements in the Transit Center District Plan area. The special tax rate has been established, as included in the CFD Rate and Method of Apportionment ("RMA") attached hereto as Exhibit C.

3.14.1. If the Project is not subject to a CFD that will help pay the costs of constructing the new Transbay Transit Center, the DTX, and other improvements in the Transit Center District Plan area on the date that a Final C of O is issued to the Developer, then the Developer will be required to pay to the City for transmittal to the TJPA, and retention by the City as applicable, of the estimated CFD taxes amount that would otherwise be due to the San Francisco Office of the Assessor-Recorder ("**Assessor-Recorder**") if the CFD had been established in accordance with the rates established in the RMA.

3.14.2. The "amount that would otherwise be due" under 3.14(i) above shall be based on the RMA attached hereto as Exhibit C, calculated as if the Project were subject to the RMA from the date of issuance of the Final C of O until the Project is subject to the CFD.

3.14.3. If the City proposes a CFD covering the Site, Developer agrees to cast its vote in favor of the CFD, provided that the tax rates are not greater than the Base Special Tax rates in the RMA attached as Exhibit C to this Agreement.

4. MUTUAL OBLIGATIONS

4.1. Notice of Completion or Revocation. Upon the Parties' completion of performance or revocation of this Agreement, a written statement acknowledging such completion or revocation, signed by the appropriate agents of City and Developer, shall be recorded in the Official Records.

4.2. Estoppel Certificate. Developer may, at any time, and from time to time, deliver written notice to the Planning Director requesting that the Planning Director certify in writing that to the best of his or her knowledge: (i) this Agreement is in full force and effect and a binding obligation of the Parties; (ii) this Agreement has not been amended or modified either orally or in writing, and if so amended or modified, identifying the amendments or modifications and stating their date and nature; (iii) Developer is not in default in the performance of its obligations under this Agreement, or if in default, describing therein the nature and amount of any such defaults; and (iv) the findings of the City with respect to the most recent annual review performed pursuant to Section 9.2 below. The Planning Director shall execute and return such certificate within forty-five (45) days following receipt of the request. Each Party acknowledges that any mortgagee with a mortgage on all or part of the Project Site, acting in good faith, may rely upon such a certificate. A certificate provided by the City establishing the status of this Agreement with respect to any lot or parcel shall be in recordable form and may be recorded with respect to the affected lot or parcel at the expense of the recording party.Cooperation in the Event of Third-Party Challenge.

4.3.1. In the event any legal action or proceeding is instituted challenging the validity of any provision of this Agreement, the Parties shall cooperate in defending against such challenge. The City shall promptly notify Developer of any Third-Party Challenge instituted against the City.

4.3.2. Developer shall assist and cooperate with the City at its own expense in connection with any Third-Party Challenge. The City Attorney's Office may use its own legal staff or outside counsel in connection with defense of the Third-Party Challenge, at the City Attorney's sole discretion. Developer shall reimburse the City for its actual costs in defense of the action or proceeding, including but not limited to the time and expenses of the City Attorney's Office and any consultants; *provided*, *however*, Developer shall have the right to receive monthly invoices for all such costs. Developer shall Indemnify the City from any other liability incurred by the City, its officers, and its employees as the result of any Third-Party Challenge, including any award to opposing counsel of attorneys' fees or costs, except where such award is the result of the willful misconduct of the City or its officers or employees. This section shall survive any judgment invalidating all or any part of this Agreement.

4.3.3. Affordable Housing Fee Challenge. The Parties agree that if a Third-Party Challenge is initiated regarding the validity or enforceability of this Agreement or, specifically of the Affordable Housing Fee, Developer shall not sell or lease the residential units designated for and required to complete the On-Site Requirements until the validity and enforceability of this Agreement, including payment of the Affordable Housing Fee, has been finally determined and upheld. If this Agreement or the Affordable Housing Fee is not upheld (on any final appeal), then Developer will satisfy the On-Site Requirements with the designated residential units.

4.4. Good Faith and Fair Dealing. The Parties shall cooperate with each other and act in good faith in complying with the provisions of this Agreement. In their course of performance under this Agreement, the Parties shall cooperate and shall undertake such actions as may be reasonably necessary to implement the Project as contemplated by this Agreement.

4.5. Agreement to Cooperate; Other Necessary Acts. The Parties agree to cooperate with one another to expeditiously implement the Project in accordance with this Agreement, and to undertake and complete all actions or proceedings reasonably necessary or appropriate to ensure that the objectives of the Agreement are fulfilled during the Term. Each Party shall use good faith efforts to take such further actions as may be reasonably necessary to carry out this Agreement, in accordance with the terms of this Agreement (and subject to all applicable laws) in order to provide and secure to each Party the full and complete enjoyment of its rights and privileges hereunder.

5. PERIODIC REVIEW OF DEVELOPER'S COMPLIANCE

5.1. Annual Review. Pursuant to Section 65865.1 of the Development Agreement Statute, at the beginning of the second week of each January following final adoption of this Agreement and for so long as the Agreement is in effect (the "**Annual Review Date**"), the Planning Director shall commence a review to ascertain whether Developer has, in good faith, complied with the Agreement. The failure to commence such review in January shall not waive the Planning Director's right to do so later in the calendar year. The Planning Director may elect to forego an annual review if no significant construction work occurred on the Project Site during that year, or if such review is otherwise not deemed necessary.

5.2. Review Procedure. In conducting the required initial and annual reviews of Developer's compliance with this Agreement, the Planning Director shall follow the process set forth in this Section.Required Information from Developer. Upon request by the Planning Director but not more than sixty (60) days and not less than forty-five (45) days before the Annual Review Date, Developer shall provide a letter to the Planning Director confirming, with appropriate backup documentation, Developer's compliance with this Agreement for the preceding calendar year. The Planning Director shall post a copy of Developer's submittals on the Planning Department's website.

5.2.2. City Compliance Review. The Planning Director shall notify Developer in writing whether Developer has complied with the terms of this Agreement (the "City Report"), and post the City Report on the Planning Department's website. If the Planning Director finds Developer not in compliance with this Agreement, then the City may pursue available rights and remedies in accordance with this Agreement and Chapter 56. The City's failure to initiate or to timely complete the annual review shall not be a Default and shall not be deemed to be a waiver of the right to do so at a later date. All costs incurred by the City under this section shall be included in the City Costs.

6. AMENDMENT; TERMINATION; EXTENSION OF TERM

6.1. Amendment or Termination. Except as provided in Section XX (Changes in State and Federal Rules and Regulations) and Section XXX (Remedies), this Agreement may only be amended or terminated with the mutual written consent of the Parties. Except as provided in this Agreement to the contrary, the amendment or termination, and any required notice thereof, shall be accomplished in the manner provided in the Development Agreement Statute and Chapter 56.Extension Due to Legal Action, Referendum, or Excusable Delay.If any litigation is filed challenging this Agreement or the validity of this Agreement or any of its provisions and it directly or indirectly delays this Agreement, then the Term shall be extended for the number of days equal to the period starting from the commencement of the litigation or the suspension to the end of such litigation or suspension (a "Litigation Extension"). The Parties shall document the start and end of a Litigation Extension in writing within thirty (30) days from the applicable dates.

6.2.2. In the event of changes in State or Federal Laws or regulations, inclement weather, delays due to strikes, inability to obtain materials, civil commotion, war, acts of terrorism, fire, acts of God, litigation, lack of availability of commercially-reasonable project financing (as a general matter and not specifically tied to Developer), or other circumstances beyond the control of Developer and not proximately caused by the acts or omissions of Developer that substantially interfere with carrying out the obligations under this Agreement ("Excusable Delay"), the Parties agree to extend the time periods for performance, as such time periods have been agreed to by Developer, of Developer's obligations impacted by the Excusable Delay. In the event that an Excusable Delay occurs, Developer shall notify the City in writing of such occurrence and the manner in which such occurrence substantially

interferes with the ability of Developer to perform under this Agreement. In the event of the occurrence of any such Excusable Delay, the time or times for performance of the obligations of Developer, will be extended for the period of the Excusable Delay if Developer cannot, through commercially reasonable and diligent efforts, make up for the Excusable Delay within the time period remaining before the applicable completion date; *provided, however*, within thirty (30) days after the beginning of any such Excusable Delay, Developer shall have first notified City of the cause or causes of such Excusable Delay and claimed an extension for the reasonably estimated period of the Excusable Delay. In the event that Developer stops any work as a result of an Excusable Delay, Developer must take commercially reasonable measures to ensure that the affected real property is returned to a safe condition and remains in a safe condition for the duration of the Excusable Delay.

6.2.3. The foregoing Section 6.2.2 notwithstanding, Developer may not seek to delay the payment of the Affordable Housing Fee as a result of an Excusable Delay related to the lack of availability of commercially reasonable project financing.

7. ENFORCEMENT OF AGREEMENT; REMEDIES FOR DEFAULT; DISPUTE RESOLUTION

7.1. Enforcement. The only Parties to this Agreement are the City and Developer. This Agreement is not intended, and shall not be construed, to benefit or be enforceable by any other person or entity whatsoever.

7.2. Default. For purposes of this Agreement, the following shall constitute an event of default (an "**Event of Default**") under this Agreement: (i) except as otherwise specified in this Agreement, the failure to make any payment within ninety (90) calendar days of when due; and (ii) the failure to perform or fulfill any other material term, provision, obligation, or covenant hereunder, including complying with all terms of the Conditions of Approval, attached hereto as Exhibit D, and the continuation of such failure for a period of thirty (30) calendar days following a written notice of default and demand for compliance (a "**Notice of Default**"); *provided, however*, if a cure cannot reasonably be completed within thirty (30) days, then it shall not be considered a default if a cure is commenced within said 30-day period and diligently prosecuted to completion thereafter.

7.3. Notice of Default. Prior to the initiation of any action for relief specified in Section XX below, the Party claiming default shall deliver to the other Party a Notice of Default. The Notice of Default shall specify the reasons for the allegation of default with reasonable specificity. If the alleged defaulting Party disputes the allegations in the Notice of Default, then that Party, within twenty-one (21) calendar days of receipt of the Notice of Default, shall deliver to the other Party a notice of non-default which sets forth with specificity the reasons that a default has not occurred. The Parties shall meet to discuss resolution of the alleged default within thirty (30) calendar days of the delivery of the notice of non-default. If, after good faith negotiation, the Parties fail to resolve the alleged default within thirty (30) calendar days, then the Party alleging a default may (i) institute legal proceedings pursuant to Section XX to enforce the terms of this Agreement or (ii) send a written notice to terminate this Agreement pursuant to Section XX. The Parties may mutually agree in writing to extend the time periods set forth in this Section.Remedies.

7.4.1. Specific Performance; Termination. In the event of an Event of Default under this Agreement, the remedies available to a Party shall include specific performance of the Agreement in addition to any other remedy available at law or in equity (subject to the limitation on damages set forth in Section XX below). In the event of an Event of Default under this Agreement, and following a public hearing at the Board of Supervisors regarding such Event of Default and proposed termination, the non-defaulting Party may terminate this Agreement by sending a notice of termination to the other Party setting forth the basis for the termination. The Party alleging a material breach shall provide a notice of termination to the breaching Party, which notice of termination shall state the material breach. The Agreement will be considered terminated effective upon the date set forth in the notice of termination, which shall in no event be earlier than ninety (90) days following delivery of the notice. The Party receiving the notice of termination may take legal action available at law or in equity if it believes the other Party's decision to terminate was not legally supportable.

7.4.2. Actual Damages. Developer agrees that the City shall not be liable to Developer for damages under this Agreement, and the City agrees that Developer shall not be liable to the City for damages under this Agreement, and each covenants not to sue the other for or claim any damages under this Agreement and expressly waives its right to recover damages under this Agreement, except as follows: (1) the City shall have the right to recover actual damages only (and not consequential, punitive or special damages, each of which is hereby expressly waived) for (a) Developer's failure to pay sums to the City as and when due under this Agreement, but subject to any express conditions for such payment set forth in this Agreement, and (b) Developer's failure to make payment due under any Indemnity in this Agreement, and (2) either Party shall have the right to recover attorneys' fees and costs as set forth in Section XX, when awarded by an arbitrator or a court with jurisdiction. For purposes of the foregoing, "actual damages" shall mean the actual amount of the sum due and owing under this Agreement, with interest as provided by law, together with such judgment collection activities as may be ordered by the judgment, and no additional sums.

7.5. Dispute Resolution. The Parties recognize that disputes may arise from time to time regarding application to the Project. Accordingly, in addition and not by way of limitation to all other remedies available to the Parties under the terms of this Agreement, including legal action, the Parties agree to follow the dispute resolution procedure in Section XX that is designed to expedite the resolution of such disputes. If, from time to time, a dispute arises between the Parties relating to application to the Project the dispute shall initially be presented by Planning Department staff to the Planning Director, for resolution. If the Planning Director decides the dispute to Developer's satisfaction, such decision shall be deemed to have resolved the matter. Nothing in this section shall limit the rights of the Parties to seek judicial relief in the event that they cannot resolve disputes through the above process.

7.6. Dispute Resolution Related to Changes in State and Federal Rules and Regulations. The Parties agree to the follow the dispute resolution procedure in this Section XX for disputes regarding the effect of changes to State and federal rules and regulations to the Project pursuant to Section XX. Good Faith Meet and Confer Requirement. The Parties shall make a good faith effort to resolve the dispute before non-binding arbitration. Within five (5) business days after a request to confer regarding an identified matter, representatives of the Parties who are vested with decision-making authority shall meet to resolve the dispute. If the Parties are unable to resolve the dispute at the meeting, the matter shall immediately be submitted to the arbitration process set forth in Section XX.

7.6.2. Non-Binding Arbitration. The Parties shall mutually agree on the selection of an arbiter at JAMS in San Francisco or other mutually agreed to Arbiter to serve for the purposes of this dispute. The arbiter appointed must meet the Arbiters' Qualifications. The "Arbiters' Qualifications" shall be defined as at least ten (10) years of experience in a real property professional capacity, such as a real estate appraiser, broker, real estate economist, or attorney, in the Bay Area. The disputing Party(ies) shall, within ten (10) business days after submittal of the dispute to non-binding arbitration, submit a brief with all supporting evidence to the arbiter with copies to all Parties. Evidence may include, but is not limited to, expert or consultant opinions, any form of graphic evidence, including photos, maps or graphs and any other evidence the Parties may choose to submit in their discretion to assist the arbiter in resolving the dispute. In either case, any interested Party may submit an additional brief within ten (10) business days after distribution of the initial brief. The arbiter thereafter shall hold a telephonic hearing and issue a decision in the matter promptly, but in any event within five (5) business days after the submittal of the last brief, unless the arbiter determines that further briefing is necessary, in which case the additional brief(s) addressing only those items or issues identified by the arbiter shall be submitted to the arbiter (with copies to all Parties) within five (5) business days after the arbiter's request, and thereafter the arbiter shall hold a telephonic hearing and issue a decision promptly but in any event not sooner than two (2) business days after submission of such additional briefs, and no later than thirty-two (32) business days after initiation of the non-binding arbitration. Each Party will give due consideration to the arbiter's decision before pursuing further legal action, which decision to pursue further legal action shall be made in each Party's sole and absolute discretion.

7.7. Attorneys' Fees. Should legal action be brought by either Party against the other for an Event of Default under this Agreement or to enforce any provision herein, the prevailing party in such

action shall be entitled to recover its reasonable attorneys' fees and costs. For purposes of this Agreement, "reasonable attorneys' fees and costs" shall mean the fees and expenses of counsel to the Party, which may include printing, duplicating and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals, librarians and others not admitted to the bar but performing services under the supervision of an attorney. The term "reasonable attorneys' fees and costs" shall also include, without limitation, all such fees and expenses incurred with respect to appeals, mediation, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees and costs were incurred. For the purposes of this Agreement, the reasonable fees of attorneys of City Attorney's Office 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 Office'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.

7.8. No Waiver. Failure or delay in giving a Notice of Default shall not constitute a waiver of such Event of Default, nor shall it change the time of such Event of Default. Except as otherwise expressly provided in this Agreement, any failure or delay by a Party in asserting any of its rights or remedies as to any Event of Default shall not operate as a waiver of any Event of Default or of any such rights or remedies, nor shall it deprive any such Party of its right to institute and maintain any actions or proceedings that it may deem necessary to protect, assert, or enforce any such rights or remedies.

7.9. Future Changes to Existing Standards. Pursuant to Section 65865.4 of the Development Agreement Statute, unless this Agreement is terminated by mutual agreement of the Parties or terminated for default as set forth in Section XX, either Party may enforce this Agreement notwithstanding any change in any applicable general or specific plan, zoning, subdivision, or building regulation adopted by the City or the voters by initiative or referendum (excluding any initiative or referendum that successfully defeats the enforceability or effectiveness of this Agreement itself).

7.10. Joint and Several Liability. If Developer consists of more than one person or entity with respect to any real property within the Project Site or any obligation under this Agreement, then the obligations of each such person and/or entity shall be joint and several.

8. MISCELLANEOUS PROVISIONS

8.1. Entire Agreement. This Agreement, including the preamble paragraph, Recitals and Exhibits, constitute the entire understanding and agreement between the Parties with respect to the subject matter contained herein.

8.2. Binding Covenants; Run With the Land. Pursuant to Section 65868 of the Development Agreement Statute, from and after recordation of this Agreement, all of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the Parties and, subject to Article XX above, their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, and all persons or entities acquiring the Project Site, or any portion thereof, or any interest therein, whether by sale, operation of law, or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. All provisions of this Agreement shall be enforceable during the Term as equitable servitudes and constitute covenants and benefits running with the land pursuant to applicable law, including but not limited to California Civil Code section 1468.

8.3. Applicable Law and Venue. This Agreement has been executed and delivered in and shall be interpreted, construed, and enforced in accordance with the laws of the State of California. All rights and obligations of the Parties under this Agreement are to be performed in the City and County of San Francisco, and such City and County shall be the venue for any legal action or proceeding that may be brought, or arise out of, in connection with or by reason of this Agreement.Construction of Agreement. The Parties have mutually negotiated the terms and conditions of this Agreement and its terms and provisions have been reviewed and revised by legal counsel for both the City and Developer. Accordingly, no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement. Language in this Agreement shall be

construed as a whole and in accordance with its true meaning. The captions of the paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of construction. Each reference in this Agreement or to this Agreement shall be deemed to refer to the Agreement as amended from time to time pursuant to the provisions of the Agreement, whether or not the particular reference refers to such possible amendment.Project Is a Private Undertaking; No Joint Venture or Partnership.

8.5.1. The Project is a private development and no portion shall be deemed a public work. The City has no interest in, responsibility for, or duty to third persons concerning the Project. Developer shall exercise full dominion and control over the Project Site, subject only to the limitations and obligations of Developer contained in this Agreement.

8.5.2. Nothing contained in this Agreement, or in any document executed in connection with this Agreement, shall be construed as creating a joint venture or partnership between the City and Developer. Neither Party is acting as the agent of the other Party in any respect hereunder. Developer is not a state or governmental actor with respect to any activity conducted by Developer hereunder.

8.6. Recordation. Pursuant to Section 65868.5 of the Development Agreement Statute, the clerk of the Board shall cause a copy of this Agreement or any amendment thereto to be recorded in the Official Records within ten (10) business days after the Effective Date of this Agreement or any amendment thereto, as applicable, with costs to be borne by Developer.

8.7. Obligations Not Dischargeable in Bankruptcy. Developer's obligations under this Agreement are not dischargeable in bankruptcy.Signature in Counterparts. This Agreement may be executed in duplicate counterpart originals, each of which is deemed to be an original, and all of which when taken together shall constitute one and the same instrument.

8.9. Time of the Essence. Time is of the essence in the performance of each and every covenant and obligation to be performed by the Parties under this Agreement.

8.10. Notices. Any notice or communication required or authorized by this Agreement shall be in writing and may be delivered personally or by registered mail, return receipt requested. Notice, whether given by personal delivery or registered mail, shall be deemed to have been given and received upon the actual receipt by any of the addressees designated below as the person to whom notices are to be sent. Either Party to this Agreement may at any time, upon written notice to the other Party, designate any other person or address in substitution of the person and address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

To City:

Rich Hillis
Director of Planning
San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco, California 94102

with a copy to:

Dennis J. Herrera, Esq.
City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102

To Developer:

Parcel F Owner, LLC
c/o Hines
101 California Street, Suite 1000
San Francisco, CA 94111
Attn: Cameron Falconer
Telephone: (415) 982-6200

with a copy to:

Charles J. Higley, Esq.
Farella Braun + Martel LLP
235 Montgomery Street, 17th Floor
San Francisco, California, 94104

8.11. Limitations on Actions. Pursuant to Section 56.19 of the Administrative Code, any decision of the Board of Supervisors made pursuant to Chapter 56 shall be final. Any court action or proceeding to attack, review, set aside, void, or annul any final decision or determination by the Board shall be commenced within ninety (90) days after such decision or determination is final and effective. Any court action or proceeding to attack, review, set aside, void or annul any final decision by (i) the Planning Director made pursuant to Administrative Code Section 56.15(d)(3) or (ii) the Planning Commission pursuant to Administrative Code Section 56.17(e) shall be commenced within ninety (90) days after said decision is final.Severability. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, or if any such term, provision, covenant, or condition does not become effective until the approval of any Non-City Responsible Agency, the remaining provisions of this Agreement shall continue in full force and effect unless enforcement of the remaining portions of the Agreement would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement. Notwithstanding the foregoing, the Developer and the City agree that the Agreement will terminate and be on no force or effect if Section 2.1 herein is found invalid, void or unenforceable.

8.13. Sunshine. Developer understands and agrees that under the City's Sunshine Ordinance (Administrative Code, Chapter 67) and the California Public Records Act (California Government Code section 6250 *et seq.*), this Agreement and any and all records, information, and materials submitted to the City hereunder are public records subject to public disclosure. To the extent that Developer in good faith believes that any financial materials reasonably requested by the City constitutes a trade secret or confidential proprietary information protected from disclosure under the Sunshine Ordinance and other applicable laws, Developer shall mark any such materials as such, . When a City official or employee receives a request for information that has been so marked or designated, the City may request further evidence or explanation from Developer. If the City determines that the information does not constitute a trade secret or proprietary information protected from disclosure, the City shall notify Developer of that conclusion and that the information will be released by a specified date in order to provide Developer an opportunity to obtain a court order prohibiting disclosure.

8.14. OCII an Intended Third Party Beneficiary. OCII is an express third party beneficiary of this Agreement and shall be entitled to enforce the provisions of this Agreement as if it were a party hereto.

[Remainder of Page Intentionally Blank;

Signature Page Follows]

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

CITY

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

By:_____

Director of Planning

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

By:_____

Heidi J. Gewertz
Deputy City Attorney

Approved on _____
Board of Supervisors Ordinance No. _____

DEVELOPER

Parcel F Owner, LLC, a Delaware limited liability company

By: _____

Name: _____

Title: _____

Exhibit E

FORM OF LETTER OF CREDIT

DATE: ____, 202__

IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER [Number]

ISSUING BANK
[Name of Bank]
[Address of Bank]

BENEFICIARY
Successor Agency to the Redevelopment Agency
of the City and County of San Francisco
One South Van Ness Avenue, Fifth Floor
San Francisco, California 94103
Attention: Executive Director
Telephone: (415) 701-2311

APPLICANT
Parcel F Owner LLC
101 California St., Suite 1000
San Francisco, CA 94lIl
Attn: Mr. Daniel Esdorn
Senior Managing Director
daniel.esdorn@hines.com,
Telephone: (415) 982-6200

AMOUNT: USD $_____ UNITED STATES DOLLARS

EXPIRATION DATE: AT OUR COUNTERS.

[Name of Bank] ("BANK") HEREBY ESTABLISHES IN FAVOR OF THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO ("BENEFICIARY") OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO _____ (THE "LETTER OF CREDIT") IN THE AMOUNT OF _____ DOLLARS (USD $_____) FOR THE ACCOUNT AND ON BEHALF OF PARCEL F OWNER LLC ("APPLICANT''). PURSUANT TO THE TERMS AND PROVISIONS OF THE DEVELOPMENT AGREEMENT (THE "DEVELOPMENT AGREEMENT") BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO AND PARCEL F OWNER LLC (THE "APPLICANT"), FUNDS, UP TO THE MAXIMUM AGGREGATE AMOUNT AVAILABLE UNDER THIS LETTER OF CREDIT, ARE PAYABLE TO BENEFICIARY BY BANK WITHIN THREE (3) BUSINESS DAYS AFTER BANK'S RECEIPT, PRIOR TO BANK'S CLOSE OF BUSINESS ON THE EXPIRATION DATE, OF:

A DRAW STATEMENT SIGNED BY BENEFICIARY'S AUTHORIZED OFFICER OR REPRESENTATIVE OR, IF THIS LETTER OF CREDIT IS TRANSFERRED, BY AN AUTHORIZED OFFICER OR REPRESENTATIVE OF ANY TRANSFEREE BENEFICIARY (IN EITHER INSTANCE, SIGNING AS SUCH) ATTESTING TO THE SATISFACTION OF CONDITIONS FOR RELEASE OF FUNDS UNDER THE DEVELOPMENT AGREEMENT AND READING AS FOLLOWS:

“WE HEREBY DEMAND USD UNDER [Name of Bank] LETTER OF CREDIT NO. ---------. THE AMOUNT OF THIS DRAW IS CURRENTLY DUE TO THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO (THE “BENEFICIARY”) BY APPLICANT UNDER THE TERMS OF THE DEVELOPMENT AGREEMENT.REQUIRING RELEASE OF FUNDS NO LATER THAN FORTY-FIVE DAYS PRIOR TO THE CLOSE OF CONSTRUCTION OF AN AFFORDABLE HOUSING PROJECT AT TRANSBAY BLOCK 4. PROCEEDS OF THIS DRAW ARE TO BE WIRE TRANSFERRED TO OUR ACCOUNT---------- [INSERT WIRING INSTRUCTIONS]”;

NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, DRAWINGS PRESENTED BY FACSIMILE ("FAX") TO FAX NUMBER [NUMBER], OR ALTERNATELY TO FAX NUMBER [NUMBER] ARE ACCEPTABLE, UNDER TELEPHONE PRE-ADVICE TO [NUMBER], OR ALTERNATELY TO [NUMBER], PROVIDED THAT SUCH FAX PRESENTATION IS RECEIVED ON OR BEFORE THE EXPIRY DATE ON THIS INSTRUMENT IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT, IT BEING UNDERSTOOD THAT ANY SUCH FAX PRESENTATION SHALL BE CONSIDERED THE SOLE OPERATIVE INSTRUMENT OF DRAWING. IN THE EVENT OF PRESENTATION BY FAX, THE ORIGINAL DOCUMENTS SHOULD NOT ALSO BE PRESENTED.

AS USED HEREIN, THE TERM “BUSINESS DAY” MEANS ANY DAY OTHER THAN A SATURDAY, SUNDAY, OR A DAY ON WHICH BANKS IN THE STATE OF FLORIDA ARE AUTHORIZED OR REQUIRED TO BE CLOSED, AND A DAY ON WHICH PAYMENTS CAN BE EFFECTED ON THE FEDWIRE SYSTEM.

THE DRAW STATEMENT SHOULD BE ADDRESSED TO BANK, REFERENCE THIS LETTER OF CREDIT BY NUMBER, SPECIFY THE AMOUNT OF THE DRAW REQUEST, AND SET FORTH WIRE TRANSFER INSTRUCTIONS, WITH THE AMOUNT OF THE DRAW REQUEST AND WIRE TRANSFER INSTRUCTIONS COMPLETED.

THIS LETTER OF CREDIT IS NOT SUBJECT TO ANY CONDITION OR QUALIFICATION AND IS OUR INDIVIDUAL OBLIGATION WHICH IS IN NO WAY CONTINGENT UPON REIMBURSEMENT FROM APPLICANT OR ANY OTHER PERSON.

THIS LETTER OF CREDIT SHALL EXPIRE ON ----------, BUT, SUBJECT TO THE PROVISION BELOW, SUCH EXPIRATION DATE SHALL BE AUTOMATICALLY EXTENDED WITHOUT NOTICE OR AMENDMENT FOR PERIODS OF ONE (1) YEAR ON EACH SUCCESSIVE EXPIRATION DATE, UNLESS AT LEAST SIXTY (60) DAYS BEFORE ANY EXPIRATION DATE, WE SEND NOTICE TO BENEFICIARY BY CERTIFIED MAIL OR COURIER SERVICE AT THE ABOVE ADDRESS, THAT THIS LETTER OF CREDIT IS NOT EXTENDED BEYOND THE THEN-CURRENT EXPIRATION DATE.

PRESENTATION OF THE ORIGINAL LETTER OF CREDIT AND DRAW REQUESTS MAY BE IN PERSON, BY COURIER, OR BY UNITED STATES MAIL TO BANK’S ADDRESS STATED ABOVE NOT LATER THAN THE THEN CURRENT EXPIRATION DATE.

THIS LETTER OF CREDIT IS TRANSFERABLE, BUT ONLY IN ITS ENTIRETY AND MAY BE SUCCESSIVELY TRANSFERRED. TRANSFER OF THIS LETTER OF CREDIT SHALL BE EFFECTED BY US UPON YOUR SUBMISSION OF THIS ORIGINAL LETTER OF CREDIT, INCLUDING ALL ORIGINALS OF AMENDMENTS, IF ANY, ACCOMPANIED BY OUR TRANSFER REQUEST FORM DULY COMPLETED AND EXECUTED. IF BENEFICIARY WISHES TO TRANSFER THE LETTER OF CREDIT, BENEFICIARY SHOULD CONTACT US FOR THE TRANSFER FORM WHICH WE SHALL PROVIDE UPON YOUR REQUEST. IN ANY EVENT, THIS LETTER OF CREDIT MAY NOT BE TRANSFERRED TO ANY PERSON OR ENTITY LISTED IN OR

OTHERWISE SUBJECT TO, ANY SANCTION OR EMBARGO UNDER ANY APPLICABLE RESTRICTIONS.

THIS LETTER OF CREDIT IS SUBJECT TO THE INTERNATIONAL STANDBY PRACTICES 1998 (ICC PUBLICATION NO. 590).

VERY TRULY YOURS,

[Name of Bank]

Exhibit F

SCHEDULE OF IMPACT FEES

Applicable Impact Fee	**Planning Code Section**
Transportation Sustainability Fee	Sec. 411A
Downtown Park Fee – C-3 District	Section 412
Jobs Housing Linkage Fee	Section 413
Child Care Fee (Office and Hotel)	Section 414
Child Care Fee (Residential)	Section 414A
Transit Center District Open Space Fee	Section 424.6
Transit Center District Transportation and Street Improvement Fee	Section 424.7
Transit Center District Mello Roos Community Facility District Program	Section 424.8
Public Art Fee	Section 429

Not Applicable Impact Fee	**Planning Code Section**
Residential Affordable Housing Fee	Sec. 415.1-415.11

Received via email
2/19/2021
Compare of Final 2/18/2021

RECORDING REQUESTED BY
CLERK OF THE BOARD OF SUPERVISORS
OF THE CITY AND COUNTY OF SAN FRANCISCO

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

AND WHEN RECORDED MAIL TO:

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

DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY AND COUNTY OF SAN FRANCISCO
AND PARCEL F OWNER, LLC,
RELATIVE TO THE DEVELOPMENT KNOWN AS
542-550 HOWARD STREET (TRANSBAY PARCEL F) DEVELOPMENT PROJECT

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DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY AND COUNTY OF SAN FRANCISCO
AND PARCEL F OWNER, LLC, A DELAWARE LIMITED LIABILITY COMPANY,
RELATIVE TO THE DEVELOPMENT KNOWN AS
THE 181 FREMONT DEVELOPMENT PROJECT

THIS DEVELOPMENT AGREEMENT (this "**Agreement**") dated for reference purposes only as of this _____ day of _____, 2021, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a political subdivision and municipal corporation of the State of California (the "**City**"), acting by and through its Planning Department, and Parcel F Owner, LLC, a Delaware limited liability company, its permitted successors and assigns (the "**Developer**"), pursuant to the authority of Section 65864 *et seq.* of the California Government Code.

RECITALS

This Agreement is made with reference to the following facts:

A. Developer is the owner of that certain property known as 542-550 Howard Street (Transbay Parcel F) (the "**Project Site**") which is an irregularly shaped property formed by four parcels measuring a total of approximately 32,229 square feet, located on the north side of Howard Street, between 1st Street and 2nd Street. The Project Site is within the C-3-0 (SD) District, the 750-S-2 and 450-S Height and Bulk Districts, the Transit Center C-3-0 (SD) Commercial Special Use District, the Transbay C-3 Special Use District, the Transit Center District Plan area (the "**TCDP**") and in Zone 2 of the Transbay Redevelopment Project Area (the "**Project Area**").

B. Developer submitted development applications for a proposal to construct on the Project Site a new 61-story mixed use building reaching a height of approximately 750 feet (approximately 800 feet including rooftop screen/mechanical equipment), and including 165 dwelling units, 189 hotel rooms, 275,674 gross square feet of office use floor area, approximately 9,000 square feet of retail space, approximately 20,000 square feet of open space, 178 Class 1 and 34 Class 2 bicycle parking spaces, and four below-grade levels to accommodate up to 183 vehicle parking spaces for the residential, hotel, and office uses (the "**Project**").

C. The Redevelopment Plan for the Project Area ("**Plan**") establishes land use controls and imposes other requirements on development within the Project Area. Notably, the Plan incorporates, in section 4.9.2, state law requirements that 25 percent of the residential units developed in the Project Area "shall be available to" low-income households, and an additional 10 percent "shall be available to" moderate income households. Cal. Public Resources Code § 5027.1 (the "**Transbay Affordable Housing Obligation**"). To fulfill the Transbay Affordable Housing Obligation, the Plan requires that all housing developments within the Project Area contain a minimum of 15 percent on-site affordable housing. Redevelopment Plan, § 4.9.3. A similar requirement in § 249.28(b)(6) of the San Francisco Planning Code (the "**Planning Code**") provides that housing developments must provide the higher of (i) the 15 percent on-site affordable housing set forth in the Plan, or (ii) the amount required by Planning Code Section 415.6 (the "**On-Site Requirement**"). As of the date of this Agreement, Planning Code Section 415.6 would require 20 percent on-site affordable housing in connection with the Project, or 33 units. Neither the Redevelopment Plan nor the Planning Code authorize off-site affordable housing construction or an "in-lieu" fee payment as an alternative to the On-Site Requirement in the Project Area.

D. The Plan provides that the land use controls for Zone 2 of the Project Area shall be the Planning Code, as amended from time to time, so long as any amendments to the Planning Code are consistent with the Plan. Through a Delegation Agreement, the former Redevelopment Agency of the City and County of San Francisco (the "**Former Agency**") delegated jurisdiction for permitting of projects in Zone 2 (including the Project Site) to the Planning Department, with the Planning Code governing development, except for certain projects that require Redevelopment Agency action. The Plan also provides that exactions imposed by the Planning Code on development within the Project Area shall be administered by the Successor Agency to the Former Agency or provide direct benefits to the Project Area.

E. However, pursuant to Section 3.5.5 of the Plan, the Commission on Community Investment and Infrastructure (**"CCII"**) (as the Commission to the Successor Agency to the Former Agency, a public body organized and existing under the laws of the State of California, also known as the Office of Community Investment and Infrastructure (**"Successor Agency"** or **"OCII"**)) has the authority to grant a variation from the Plan and the associated Transbay Development Controls and Design Guidelines, or the Planning Code where the enforcement of these controls would otherwise result in practical difficulties for development creating undue hardship for the property owner and constitute an unreasonable limitation beyond the intent of the Plan, the Transbay Design for Development or the Transbay Development Controls and Design Guidelines.

F. Where a variation or other action of the Successor Agency materially changes the Successor Agency's obligations to provide affordable housing, the Board of Supervisors ("**Board**") must approve that action. San Francisco Ordinance No. 215-12, § 6(a) (Oct. 4, 2012).

G. On ~~[redacted],~~December 17, 2020, OCII received a request from the Developer for a variation from the On-Site Requirement. Letter, C. Higley, Farella Braun + Martel on behalf of Parcel F Owner, LLC, to ~~N. Sesay, OCII (~~[redacted]~~,~~S. Oerth (December 17, 2020) ("**Variation Request**"), attached to this Agreement as Exhibit A.

H. The Variation Request concludes that the application of the On-Site Requirement to the Project would create practical difficulties for maintaining the affordability of the units because homeowners association ("HOA") fees, which are already high in such developments, will likely increase over time such that the original residents would not be able to afford the payments. Non-payment of HOA fees by affordable residents would lead to legal actions by the HOA to recover unpaid amounts, including action to place liens on the units themselves, and ultimately to the loss of the units by the residents. Thus, undue hardship would be created for both the Project Sponsor and the owners of the inclusionary housing units and undermine the intent of the Plan to provide affordable units to low- and moderate-income households.

I. In order to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Section 65864 et seq. (the "**Development Agreement Statute**"), which authorizes the City to enter into a development agreement with any person having a legal or equitable interest in real property related to the development of such property. Pursuant to the Development Agreement Statute, the City adopted Chapter 56 **("Chapter 56")** of the San Francisco Administrative Code establishing procedures and requirements for entering into a development agreement. The Parties are entering into this Agreement in accordance with the Development Agreement Statute and Chapter 56.

J. It is the intent of the Parties that all acts referred to in this Agreement shall be accomplished in a way as to fully comply with CEQA, the CEQA Guidelines, Chapters 31 and 56 of the

San Francisco Administrative Code, the Development Agreement Statute, the Enacting Ordinance and all other applicable laws as of the Effective Date. This Agreement does not limit the City's obligation to comply with applicable environmental laws, including CEQA, before taking any discretionary action regarding the Project, or Developer's obligation to comply with all applicable laws in connection with the development of the Project

K. The San Francisco Planning Department, in compliance with the California Environmental Quality Act (CEQA), issued a Community Plan Exemption (CPE) certificate for the Project on August 27, 2019. F

L. On January 9, 2020, the San Francisco Planning Commission held a public hearing on the Project, and approved Motions 20613 (recommending approval of certain General Plan amendments), 20614 (recommending approval of certain Zoning Map, Height Map, and Planning Code amendments), 20615 (adopting Shadow Findings), 20616 (approving Downtown Project Authorization), 20617 (approving an Office Development Allocation), and 20618 (approving a Condition Use Authorization for hotel development). The Project approvals required compliance with the On-Site Requirement.

M. On June 5, 2020 the Zoning Administrator issued a variance decision to allow bike parking to be located on the 4th story of the Project.

N. On ~~_____,~~January 19, 2021 the CCII held a public hearing on the Variation Request and approved, pursuant to Resolution No. ~~_____,~~02-2021, a variation pursuant to Section 3.5.5 of the Plan, attached as Exhibit B (the "**OCII Variation**") on the condition that the Developer contribute to OCII an amount equal to one hundred fifty percent (150%) of the inclusionary housing fee that Section 415.5 of the Planning Code would otherwise require if the Project were not subject to the On-Site Requirement, pursuant to the terms in Section 2.1 of this Agreement (the "**Affordable Housing Fee**").

O. On ~~_____,~~January 28, 2021, the Planning Commission held a public hearing on the Project, duly noticed and conducted under the Development Agreement Statute and Chapter 56, to consider revisions to the previously recommended zoning legislation, as well as this Agreement. Following the public hearing, the Planning Commission made General Plan Consistency Findings with respect to the zoning changes and this Agreement, and approved Motion _____ (recommending approval of revisions to the previously endorsed Planning Code amendments), and Motion _____ (recommending adoption of an ordinance approving this Agreement).

P. On _____, the Board, in its capacity as the governing body of OCII, reviewed the OCII Variation under the authority that it reserved to itself in Ordinance No. 215-12 to approve material changes to the Successor Agency's affordable housing program and approved, by Board of Supervisors Resolution No. ____, the actions of OCII in granting the OCII Variation.

Q. The City has determined that as a result of the development of the Project in accordance with this Agreement additional, clear benefits to the public will accrue that could not be obtained through application of existing City ordinances, regulations, and policies because the payment of the Affordable Housing Fee at an amount equal to 150% of the inclusionary housing fee that Section 415.5 of the Planning Code would otherwise require and its use thereof in accordance with this Agreement rather than compliance with the On-Site Requirements will result in more affordable housing units within the Project Area while maintaining land values necessary for the financing assumptions of the Transbay Joint Powers Authority (the "**TJPA**"). The basis for this determination is the following:

- To achieve the overall goal of at least 35% affordability of all new housing development units within the Project Area, there must be both inclusionary units and stand-alone affordable housing developments in the Project Area.

- The Plan's 2005 report set a goal of 388 inclusionary units and approximately 795 stand-alone affordable housing units but at the time of the Plan's adoption, mixed-use, high-rise developments were not contemplated within the Project Area.

- The Project Area covers 40 acres and includes blocks programmed for: (i) stand-alone affordable housing developments; (ii) all or a majority of office space; and (iii) a combination of market and affordable housing.

- The TJPA established specific land value goals for each block in its funding plan for the Transbay Transit Center (the "**TTC**") and there are a limited number of publicly-owned blocks (including Transbay Block 4) remaining upon which affordable housing may be built to meet the Plan's 35% affordability requirement.

- Adding affordable housing to blocks that must be sold to finance the TTC is not feasible without significantly reducing the land value and thereby creating shortfalls in the TTC funding.

- The Affordable Housing Fee is intended to assist OCII in meeting its Transbay Affordable Housing Obligation, which may include the use of the funds for the development of affordable housing units at Transbay Block 4.

R. On _____, the Board, having received the Planning Commission recommendations, adopted Ordinance No. _____, amending the Zoning Map, Height Map, and Planning Code, and Ordinance No. _____, approving this Agreement (File No. _____), and authorizing the Planning Director to execute this Agreement on behalf of the City (the "**Enacting Ordinance**"). The Enacting Ordinance took effect on _____. The above described actions are referred to in this Agreement as the "**Approvals**" for the Project.

Now therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. GENERAL PROVISIONS

1.1. **Incorporation of Preamble, Recitals and Exhibits**. The preamble paragraph, Recitals, and Exhibits, and all defined terms contained therein, are hereby incorporated into this Agreement as if set f**orth in full.**

1.2. **Definitions**. In addition to the definitions set forth in the above preamble paragraph, Recitals and elsewhere in this Agreement, the following definitions shall apply to this Agreement:

1.2.1. "**Administrative Code**" shall mean the San Francisco Administrative Code.

1.2.2. "**Affiliate**" shall mean any entity controlling, controlled by, or under common control with Developer (and 'control' and its correlative terms 'controlling', 'controlled by' or 'under common control with' mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of Developer, whether through the ownership of voting securities, by contract or otherwise).

1.2.3. "**Affordable Housing Fee**" shall mean the payment, pursuant to Section 2.1 of this Agreement, from the Developer to OCII of an amount that is equal to one hundred fifty percent (150%) of the inclusionary housing fee that Section 415.5 of the Planning Code would otherwise require if the Project were not subject to the On-Site Requirement (based on the published fee schedule applicable to calendar year 2021).

1.2.4. "**Board of Supervisors**" or "**Board**" shall mean the Board of Supervisors of the City and County of San Francisco.

1.2.5. "**CCII**" shall mean the Commission on Community Investment and Infrastructure.

1.2.6. "**City**" shall have the meaning set forth in the preamble paragraph. Unless the context or text specifically provides otherwise, references to the City shall mean the City acting by and through the Planning Director or, as necessary, the Planning Commission or the Board of Supervisors. The City's approval of this Agreement will be evidenced by the signatures of the Planning Director and the Clerk of the Board of Supervisors [need to confirm if the Clerk needs to sign].

1.2.7. "**City Agency**" or "**City Agencies**" shall mean, where appropriate, all City departments, agencies, boards, commissions, and bureaus that execute or consent to this Agreement and that have subdivision or other permit, entitlement or approval authority or jurisdiction over the Project or the Project Site, together with any successor City agency, department, board, or commission.

1.2.8. "**City Attorney's Office**" shall mean the Office of the City Attorney of the City and County of San Francisco.

1.2.9. "**Director**" or "**Planning Director**" shall mean the Director of Planning of the City and County of San Francisco.

1.2.10. "**Impact Fees and Exactions**" shall mean any fees, contributions, special taxes, exactions, impositions, and dedications charged by the City, whether as of the date of this Agreement or at any time thereafter during the Term, in connection with the development of the Project, including but not limited to transportation and transit fees, child care requirements or in-lieu fees, housing (including affordable housing) requirements or fees, dedication or reservation requirements, and obligations for on- or off-site improvements. For development within the Project Area, Section 5.9 of the Plan requires that the Jobs-Housing Program Linkage Fee and the Downtown Park Fee shall be administered by the Successor Agency and that all Impact Fees and Exactions must provide direct benefits to the Project Area.. Impact Fees and Exactions shall not include the Mitigation Measures, Processing Fees, taxes or special assessments or school district fees, SFPUC Capacity Charges, Transit Center District Plan Transit Delay Mitigation Fee (Planning Code Section 424.7.2(c)) and any fees, taxes, assessments impositions imposed by any non-City agency, all of which shall be due and payable by Developer as and when due in accordance with applicable Laws.

1.2.11. "**Indemnify**" shall mean to indemnify, defend, reimburse, and hold harmless.

1.2.12. "**Letter of Credit"** is defined in Section 2.1.2.

~~1.2.12.~~1.2.13. "**OCII**" shall mean Office of Community Investment and Infrastructure.

~~1.2.13.~~1.2.14. "**Official Records**" shall mean the official real estate records of the City and County of San Francisco, as maintained by the City's Recorder's Office.

~~1.2.14.~~1.2.15. "**On-Site Requirement**" is defined in Recital B.

~~1.2.15.~~1.2.16. "**Party**" means, individually or collectively as the context requires, the City and Developer (and, as Developer, any Transferee that is made a Party to this Agreement under the terms of an Assignment and Assumption Agreement). "**Parties**" shall have a correlative meaning.

~~1.2.16.~~1.2.17. "**Plan**" shall mean the Transbay Project Area Redevelopment Plan, Approved by Ordinance No. 124-05, Adopted by the Board of Supervisors on June 21, 2005 and Ordinance No. 99-06 adopted by the Board of Supervisors May 9, 2006, as amended from time to time.

~~1.2.17.~~1.2.18. "**Planning Code**" shall mean the San Francisco Planning Code.

~~1.2.18.~~1.2.19. "**Planning Commission**" or "**Commission**" shall mean the Planning Commission of the City and County of San Francisco.

~~1.2.19.~~1.2.20. "**Planning Department**" shall mean the Planning Department of the City and County of San Francisco.

1.3. Effective Date. This Agreement shall take effect upon the later of (i) the full execution of this Agreement by the Parties and (ii) the effective date of the Enacting Ordinance ("**Effective Date**"). The Effective Date is _____.

1.4. Term. The term of this Agreement shall commence upon the Effective Date and shall continue in full force and effect for the earlier of (i) Project completion (as evidenced by issuance of the Temporary Certificate of Occupancy) or (ii) ten (10) years after the effective date., unless extended or earlier terminated as provided herein ("**Term**"). Following expiration of the Term, this Agreement shall be deemed terminated and of no further force and effect except for any provisions which, by their express terms, survive the expiration or termination of this Agreement.

2. PROJECT CONTROLS AND VESTING

2.1. Affordable Housing Fee; Impact Fees.

2.1.1. During the term of this Agreement, Developer shall have the vested right to develop the Project Site in accordance with the Approvals, provided Developer shall pay the Affordable Housing Fee to OCII to fund OCII's obligation to fulfill the Transbay Affordable Housing Obligation on the earlier to occur ~~of~~: (a) of issuance of the temporary certificate of occupancy associated with the residential portions of the Project; ~~or~~ (b) on the date that is two years after the effective date of this Agreement (~~but only~~ if DBI has already issued the ~~"~~"first construction document," as defined in Section 401 of the Planning Code and Section 107A.13.1 of the Building Code, ~~has been issued for the Project).~~for the Project; (c) upon issuance of the first construction document for the Project (if at least two years have then passed from the effective date of this Agreement); or (d) by the release of funds under a Letter of Credit (as defined in Section 2.1.2 of this Agreement) at least forty-five days prior to the close of construction financing on the affordable housing project at Transbay Block 4. The fee collection procedure set forth in Section 402 of the Planning Code shall not apply to the Project, nor shall any other provision of the San Francisco Municipal Code that conflicts with the fee collection and timing described in this Section 2.1.1. ~~In addition, within~~

~~2.1.1.~~2.1.2. Within thirty (30) days after the effective date of the Disposition and Development Agreement between OCII and Developer or an entity affiliated with Developer for Transbay Block 4, Developer shall submit to OCII an enforceable letter of credit ~~on commercially reasonable terms for the full amount of the Affordable Housing Fee, substantially in the form attached to this Agreement as Exhibit ___.~~, which shall allow OCII to draw down the full amount of the Affordable Housing Fee, as described in this Section 2.1., on commercially reasonable terms and in substantially the form attached to this Agreement as Exhibit E (the "**Letter of Credit**"). OCII shall have advance approval, in its reasonable discretion, of the Letter of Credit provider, which must demonstrate good standing in the form of: (a) no placement on a watchlist for negative downgrade; and either (b) long-term credit ratings from at least two nationally recognized credit rating agencies, at least one of which shall be Moody's or Standard & Poor's, of at least A2/A/A or equivalent, or (c) short-term credit ratings from at least two rating agencies, at least one of which shall be Moody's or Standard & Poor's, of at least P-1/A-1/F1 or equivalent. The Letter of Credit shall remain valid until such time as the Affordable Housing Fee

is paid in full to OCII and shall provide for full disbursement of the funds upon OCII's request for release of funds, provided such request is consistent with the terms of this Development Agreement.

~~2.1.2.~~2.1.3. Developer shall pay ~~applicable~~the Impact Fees and Exactions set forth in Exhibit F, calculated on the basis of the schedule of fees published by the City for calendar year 2021. Planning Code Section 409(b), regarding annual escalation of Impact Fees and Exactions, shall not apply to the Project.

2.2. Vested Rights. The City, by entering into this Agreement, is limiting its future discretion with respect to Project approvals that are consistent with this Agreement during the Term. Consequently, the City shall not use its discretionary authority in considering any application to change the policy decisions reflected by the Agreement or otherwise to prevent or to delay development of the Project as set forth in the Agreement. Instead, implementing approvals that substantially conform to or implement the Agreement shall be issued by the City so long as they substantially comply with and conform to this Agreement. The City shall not use its discretionary authority to change the policy decisions reflected by this Agreement or otherwise to prevent or to delay development of the Project as contemplated in this Agreement. The City shall take no action under this Agreement nor impose any condition on the Project that would conflict with this Agreement.

2.3. Changes in Federal or State Laws. If Federal or State Laws issued, enacted, promulgated, adopted, passed, approved, made, implemented, amended, or interpreted after the Effective Date have gone into effect and (i) preclude or prevent compliance with one or more provisions of this Agreement, or (ii) materially and adversely affect Developer's or the City's rights, benefits or obligations, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such Federal or State Law. In such event, this Agreement shall be modified only to the extent necessary or required to comply with such Law. If any such changes in Federal or State Laws would materially and adversely affect the construction, development, use, operation or occupancy of the Project such that the Development becomes economically infeasible, then Developer shall notify the City and propose amendments or solutions that would maintain the benefit of the bargain (that is this Agreement) for both Parties.

2.4. Changes to Development Agreement Statute. This Agreement has been entered into in reliance upon the provisions of the Development Agreement Statute. No amendment of or addition to the Development Agreement Statute which would affect the interpretation or enforceability of this Agreement or increase the obligations or diminish the development rights of Developer hereunder, or increase the obligations or diminish the benefits to the City hereunder shall be applicable to this Agreement unless such amendment or addition is specifically required by Law or is mandated by a court of competent jurisdiction. If such amendment or change is permissive rather than mandatory, this Agreement shall not be affected.

2.5. Taxes. Nothing in this Agreement limits the City's ability to impose new or increased taxes or special assessments, or any equivalent or substitute tax or assessment.

3. DEVELOPER REPRESENTATIONS, WARRANTIES AND COVENANTS

3.1. Interest of Developer; Due Organization and Standing. Developer represents that it is the legal owner of the Project Site, and that all other persons with an ownership or security interest in the Project Site have consented to this Agreement. Developer is a Delaware limited liability company. Developer has all requisite power to own its property and authority to conduct its business as presently conducted. Developer has made all required state filings required to conduct business in the State of California and is in good standing in the State of California.

3.2. No Conflict with Other Agreements; No Further Approvals; No Suits. Developer warrants and represents that it is not a party to any other agreement that would conflict with Developer's obligations under this Agreement. Neither Developer's articles of organization, bylaws, or operating agreement, as applicable, nor any other agreement or law in any way prohibits, limits or otherwise affects

the right or power of Developer to enter into and perform all of the terms and covenants of this Agreement. 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 Developer of this Agreement or any of the terms and covenants contained in this Agreement. To Developer's knowledge, there are no pending or threatened suits or proceedings or undischarged judgments affecting Developer or any of its members before any court, governmental agency, or arbitrator which might materially adversely affect Developer's business, operations, or assets or Developer's ability to perform under this Agreement.

3.3. No Inability to Perform; Valid Execution. Developer warrants and represents that it has no knowledge of any inability to perform its obligations under this Agreement. The execution and delivery of this Agreement and the agreements contemplated hereby by Developer have been duly and validly authorized by all necessary action. This Agreement will be a legal, valid and binding obligation of Developer, enforceable against Developer in accordance with its terms.

3.4. Conflict of Interest. Through its execution of this Agreement, Developer acknowledges that it is familiar with the provisions of Section 15.103 of the City's Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code, and Section 87100 *et seq.* and Section 1090 *et seq.* of the California Government Code, and certifies that it does not know of any facts which constitute a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the Term.

3.5. Notification of Limitations on Contributions. Through execution of this Agreement, Developer acknowledges that it is familiar with Section 1.126 of City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with 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 the officer at any time from the commencement of negotiations for a contract as defined under Section 1.126 of the Campaign and Governmental Conduct Code until six (6) months after the date the contract is approved by the City elective officer or the board on which that City elective officer serves. San Francisco Ethics Commission Regulation 1.126 1 provides that negotiations are commenced when a prospective contractor first communicates with a City officer or employee about the possibility of obtaining a specific contract. This communication may occur in person, by telephone or in writing, and may be initiated by the prospective contractor or a City officer or employee. Negotiations are completed when a contract is finalized and signed by the City and the contractor. Negotiations are terminated when the City and/or the prospective contractor end the negotiation process before a final decision is made to award the contract.

3.6. Other Documents. No document furnished or to be furnished by Developer to the City in connection with this Agreement contains or will contain to Developer's knowledge any untrue statement of material fact or omits or will omit a material fact necessary to make the statements contained therein not misleading under the circumstances under which any such statement shall have been made.

3.7. No Suspension or Debarment. Neither Developer, nor any of its officers, have been suspended, disciplined or debarred by, or prohibited from contracting with, the U.S. General Services Administration or any federal, state or local governmental agency.

3.8. No Bankruptcy. Developer represents and warrants to City that Developer has neither filed nor is the subject of any filing of a petition under the federal bankruptcy law or any federal or state insolvency laws or laws for composition of indebtedness or for the reorganization of debtors, and, to the best of Developer's knowledge, no such filing is threatened.

3.9. Taxes. Without waiving any of its rights to seek administrative or judicial relief from such charges and levies, Developer shall pay and discharge all taxes, assessments and governmental charges or levies imposed on it or on its income or profits or on any of its property before the date on which penalties attach thereto, and all lawful claims which, if unpaid, would become a lien upon the Project Site.

3.10. Notification. Developer shall promptly notify City in writing of the occurrence of any event which might materially and adversely affect Developer or Developer's business, or that would make any of the representations and warranties herein untrue, or that would, with the giving of notice or passage of time over the Term, constitute a default under this Agreement.

3.11. Nexus/Reasonable Relationship Waiver. Developer consents to, and waives any rights it may have now or in the future, to challenge with respect to the Project, the legal validity of, the conditions, requirements, policies, or programs required by this Agreement, including, without limitation, any claim that they constitute an abuse of police power, violate substantive due process, deny equal protection of the laws, effect a taking of property without payment of just compensation, or impose an unlawful tax.

3.12. Indemnification of City. Developer shall Indemnify the City and OCII (each an "Indemnified Party") and the Indemnified Party's officers, agents and employees from and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims ("Losses") arising or resulting directly or indirectly from this Agreement and Developer's performance (or nonperformance) of this Agreement, regardless of the negligence of and regardless of whether liability without fault is imposed or sought to be imposed an Indemnified Party, except to the extent that such Indemnity is void or otherwise unenforceable under applicable law, and except to the extent such Loss is the result of the active negligence or willful misconduct of an Indemnified Party. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs, and the Indemnified Party's cost of investigating any claims against the Indemnified Party. All Indemnifications set forth in this Agreement shall survive the expiration or termination of this Agreement.

3.13. Payment of Fees and Costs.

3.13.1. Developer shall pay to the City all City Costs (defined below) during the Term within thirty (30) days following receipt of a written invoice from the City. Each City Agency shall submit to the Planning Department or another City agency as designated by the Planning Department monthly or quarterly invoices for all City Costs incurred by the City Agency for reimbursement under this Agreement, and the Planning Department or its designee shall gather all such invoices so as to submit one City bill to Developer each month or quarter. To the extent that a City Agency fails to submit such invoices, then the Planning Department or its designee shall request and gather such billing information, and any City Cost that is not invoiced to Developer within eighteen (18) months from the date the City Cost was incurred shall not be recoverable. For purposes of this Agreement, "**City Costs**" means the actual and reasonable costs incurred by a City Agency or OCII in preparing, adopting or amending this Agreement, in performing its obligations or defending its actions under this Agreement or otherwise contemplated by this Agreement, as determined on a time and materials basis, including reasonable attorneys' fees and costs but excluding work, hearings, costs or other activities contemplated or covered by the standard fee(s) (i.e., processing fees) imposed by the City upon the submission of an application for a permit or approval, other than impact fees or exactions, in accordance with City practice on a City-wide basis.

3.13.2. The City shall not be required to process any requests for approval or take other actions under this Agreement during any period in which payments from Developer are past due. If such failure to make payment continues for a period of more than sixty (60) days following notice, it shall be a Default for which the City shall have all rights and remedies as set forth in Section 7.4.

3.14. Mello-Roos Community Facilities District. The Project shall be subject to the provisions of the proposed City and County of San Francisco Transbay Center District Plan [Mello-Roos] Community Facilities District No. 2014-1 (Transbay Transit Center) ("**CFD**"), once established, to help pay the costs of constructing the new Transbay Transit Center, the Downtown Rail Extension ("DTX"), and other improvements in the Transit Center District Plan area. The special tax rate has been established, as included in the CFD Rate and Method of Apportionment ("RMA") attached hereto as Exhibit C.

3.14.1. If the Project is not subject to a CFD that will help pay the costs of constructing the new Transbay Transit Center, the DTX, and other improvements in the Transit Center District Plan

area on the date that a Final C of O is issued to the Developer, then the Developer will be required to pay to the City for transmittal to the TJPA, and retention by the City as applicable, of the estimated CFD taxes amount that would otherwise be due to the San Francisco Office of the Assessor-Recorder ("**Assessor-Recorder**") if the CFD had been established in accordance with the rates established in the RMA.

3.14.2. The "amount that would otherwise be due" under 3.14(i) above shall be based on the RMA attached hereto as Exhibit C, calculated as if the Project were subject to the RMA from the date of issuance of the Final C of O until the Project is subject to the CFD.

3.14.3. If the City proposes a CFD covering the Site, Developer agrees to cast its vote in favor of the CFD, provided that the tax rates are not greater than the Base Special Tax rates in the RMA attached as Exhibit C to this Agreement.

4. MUTUAL OBLIGATIONS

4.1. Notice of Completion or Revocation. Upon the Parties' completion of performance or revocation of this Agreement, a written statement acknowledging such completion or revocation, signed by the appropriate agents of City and Developer, shall be recorded in the Official Records.

4.2. Estoppel Certificate. Developer may, at any time, and from time to time, deliver written notice to the Planning Director requesting that the Planning Director certify in writing that to the best of his or her knowledge: (i) this Agreement is in full force and effect and a binding obligation of the Parties; (ii) this Agreement has not been amended or modified either orally or in writing, and if so amended or modified, identifying the amendments or modifications and stating their date and nature; (iii) Developer is not in default in the performance of its obligations under this Agreement, or if in default, describing therein the nature and amount of any such defaults; and (iv) the findings of the City with respect to the most recent annual review performed pursuant to Section 9.2 below. The Planning Director shall execute and return such certificate within forty-five (45) days following receipt of the request. Each Party acknowledges that any mortgagee with a mortgage on all or part of the Project Site, acting in good faith, may rely upon such a certificate. A certificate provided by the City establishing the status of this Agreement with respect to any lot or parcel shall be in recordable form and may be recorded with respect to the affected lot or parcel at the expense of the recording party.Cooperation in the Event of Third-Party Challenge.

4.3.1. In the event any legal action or proceeding is instituted challenging the validity of any provision of this Agreement, the Parties shall cooperate in defending against such challenge. The City shall promptly notify Developer of any Third-Party Challenge instituted against the City.

4.3.2. Developer shall assist and cooperate with the City at its own expense in connection with any Third-Party Challenge. The City Attorney's Office may use its own legal staff or outside counsel in connection with defense of the Third-Party Challenge, at the City Attorney's sole discretion. Developer shall reimburse the City for its actual costs in defense of the action or proceeding, including but not limited to the time and expenses of the City Attorney's Office and any consultants; *provided, however,* Developer shall have the right to receive monthly invoices for all such costs. Developer shall Indemnify the City from any other liability incurred by the City, its officers, and its employees as the result of any Third-Party Challenge, including any award to opposing counsel of attorneys' fees or costs, except where such award is the result of the willful misconduct of the City or its officers or employees. This section shall survive any judgment invalidating all or any part of this Agreement.

4.3.3. Affordable Housing Fee Challenge. The Parties agree that if a Third-Party Challenge is initiated regarding the validity or enforceability of this Agreement or, specifically of the Affordable Housing Fee, Developer shall not sell or lease the residential units designated for and required to complete the On-Site Requirements until the validity and enforceability of this Agreement, including payment of the Affordable Housing Fee, has been finally determined and upheld. If this Agreement or the Affordable Housing Fee is not upheld (on any final appeal), then Developer will satisfy the On-Site Requirements with the designated residential units.

4.4. Good Faith and Fair Dealing. The Parties shall cooperate with each other and act in good faith in complying with the provisions of this Agreement. In their course of performance under this Agreement, the Parties shall cooperate and shall undertake such actions as may be reasonably necessary to implement the Project as contemplated by this Agreement.

4.5. Agreement to Cooperate; Other Necessary Acts. The Parties agree to cooperate with one another to expeditiously implement the Project in accordance with this Agreement, and to undertake and complete all actions or proceedings reasonably necessary or appropriate to ensure that the objectives of the Agreement are fulfilled during the Term. Each Party shall use good faith efforts to take such further actions as may be reasonably necessary to carry out this Agreement, in accordance with the terms of this Agreement (and subject to all applicable laws) in order to provide and secure to each Party the full and complete enjoyment of its rights and privileges hereunder.

5. PERIODIC REVIEW OF DEVELOPER'S COMPLIANCE

5.1. Annual Review. Pursuant to Section 65865.1 of the Development Agreement Statute, at the beginning of the second week of each January following final adoption of this Agreement and for so long as the Agreement is in effect (the "**Annual Review Date**"), the Planning Director shall commence a review to ascertain whether Developer has, in good faith, complied with the Agreement. The failure to commence such review in January shall not waive the Planning Director's right to do so later in the calendar year. The Planning Director may elect to forego an annual review if no significant construction work occurred on the Project Site during that year, or if such review is otherwise not deemed necessary.

5.2. Review Procedure. In conducting the required initial and annual reviews of Developer's compliance with this Agreement, the Planning Director shall follow the process set forth in this Section.Required Information from Developer. Upon request by the Planning Director but not more than sixty (60) days and not less than forty-five (45) days before the Annual Review Date, Developer shall provide a letter to the Planning Director confirming, with appropriate backup documentation, Developer's compliance with this Agreement for the preceding calendar year. The Planning Director shall post a copy of Developer's submittals on the Planning Department's website.

5.2.2. City Compliance Review. The Planning Director shall notify Developer in writing whether Developer has complied with the terms of this Agreement (the "City Report"), and post the City Report on the Planning Department's website. If the Planning Director finds Developer not in compliance with this Agreement, then the City may pursue available rights and remedies in accordance with this Agreement and Chapter 56. The City's failure to initiate or to timely complete the annual review shall not be a Default and shall not be deemed to be a waiver of the right to do so at a later date. All costs incurred by the City under this section shall be included in the City Costs.

6. AMENDMENT; TERMINATION; EXTENSION OF TERM

6.1. Amendment or Termination. Except as provided in Section XX (Changes in State and Federal Rules and Regulations) and Section XXX (Remedies), this Agreement may only be amended or terminated with the mutual written consent of the Parties. Except as provided in this Agreement to the contrary, the amendment or termination, and any required notice thereof, shall be accomplished in the manner provided in the Development Agreement Statute and Chapter 56.Extension Due to Legal Action, Referendum, or Excusable Delay.If any litigation is filed challenging this Agreement or the validity of this Agreement or any of its provisions and it directly or indirectly delays this Agreement, then the Term shall be extended for the number of days equal to the period starting from the commencement of the litigation or the suspension to the end of such litigation or suspension (a "Litigation Extension"). The Parties shall document the start and end of a Litigation Extension in writing within thirty (30) days from the applicable dates.

6.2.2. In the event of changes in State or Federal Laws or regulations, inclement weather, delays due to strikes, inability to obtain materials, civil commotion, war, acts of terrorism, fire, acts of God, litigation, lack of availability of commercially-reasonable project financing (as a general matter and not specifically tied to Developer), or other circumstances beyond the control of Developer and not proximately caused by the acts or omissions of Developer that substantially interfere with

carrying out the obligations under this Agreement ("Excusable Delay"), the Parties agree to extend the time periods for performance, as such time periods have been agreed to by Developer, of Developer's obligations impacted by the Excusable Delay. In the event that an Excusable Delay occurs, Developer shall notify the City in writing of such occurrence and the manner in which such occurrence substantially interferes with the ability of Developer to perform under this Agreement. In the event of the occurrence of any such Excusable Delay, the time or times for performance of the obligations of Developer, will be extended for the period of the Excusable Delay if Developer cannot, through commercially reasonable and diligent efforts, make up for the Excusable Delay within the time period remaining before the applicable completion date; *provided, however*, within thirty (30) days after the beginning of any such Excusable Delay, Developer shall have first notified City of the cause or causes of such Excusable Delay and claimed an extension for the reasonably estimated period of the Excusable Delay. In the event that Developer stops any work as a result of an Excusable Delay, Developer must take commercially reasonable measures to ensure that the affected real property is returned to a safe condition and remains in a safe condition for the duration of the Excusable Delay.

6.2.3. The foregoing Section 6.2.2 notwithstanding, Developer may not seek to delay the payment of the Affordable Housing Fee as a result of an Excusable Delay related to the lack of availability of commercially reasonable project financing.

7. ENFORCEMENT OF AGREEMENT; REMEDIES FOR DEFAULT; DISPUTE RESOLUTION

7.1. Enforcement. The only Parties to this Agreement are the City and Developer. This Agreement is not intended, and shall not be construed, to benefit or be enforceable by any other person or entity whatsoever.

7.2. Default. For purposes of this Agreement, the following shall constitute an event of default (an "**Event of Default**") under this Agreement: (i) except as otherwise specified in this Agreement, the failure to make any payment within ninety (90) calendar days of when due; and (ii) the failure to perform or fulfill any other material term, provision, obligation, or covenant hereunder, including complying with all terms of the Conditions of Approval, attached hereto as Exhibit D, and the continuation of such failure for a period of thirty (30) calendar days following a written notice of default and demand for compliance (a "**Notice of Default**"); *provided, however*, if a cure cannot reasonably be completed within thirty (30) days, then it shall not be considered a default if a cure is commenced within said 30-day period and diligently prosecuted to completion thereafter.

7.3. Notice of Default. Prior to the initiation of any action for relief specified in Section XX below, the Party claiming default shall deliver to the other Party a Notice of Default. The Notice of Default shall specify the reasons for the allegation of default with reasonable specificity. If the alleged defaulting Party disputes the allegations in the Notice of Default, then that Party, within twenty-one (21) calendar days of receipt of the Notice of Default, shall deliver to the other Party a notice of non-default which sets forth with specificity the reasons that a default has not occurred. The Parties shall meet to discuss resolution of the alleged default within thirty (30) calendar days of the delivery of the notice of non-default. If, after good faith negotiation, the Parties fail to resolve the alleged default within thirty (30) calendar days, then the Party alleging a default may (i) institute legal proceedings pursuant to Section XX to enforce the terms of this Agreement or (ii) send a written notice to terminate this Agreement pursuant to Section XX. The Parties may mutually agree in writing to extend the time periods set forth in this Section.Remedies.

7.4.1. Specific Performance; Termination. In the event of an Event of Default under this Agreement, the remedies available to a Party shall include specific performance of the Agreement in addition to any other remedy available at law or in equity (subject to the limitation on damages set forth in Section XX below). In the event of an Event of Default under this Agreement, and following a public hearing at the Board of Supervisors regarding such Event of Default and proposed termination, the non-defaulting Party may terminate this Agreement by sending a notice of termination to the other Party setting forth the basis for the termination. The Party alleging a material breach shall provide a notice of termination to the breaching Party, which notice of termination shall state the material breach. The

Agreement will be considered terminated effective upon the date set forth in the notice of termination, which shall in no event be earlier than ninety (90) days following delivery of the notice. The Party receiving the notice of termination may take legal action available at law or in equity if it believes the other Party's decision to terminate was not legally supportable.

7.4.2. Actual Damages. Developer agrees that the City shall not be liable to Developer for damages under this Agreement, and the City agrees that Developer shall not be liable to the City for damages under this Agreement, and each covenants not to sue the other for or claim any damages under this Agreement and expressly waives its right to recover damages under this Agreement, except as follows: (1) the City shall have the right to recover actual damages only (and not consequential, punitive or special damages, each of which is hereby expressly waived) for (a) Developer's failure to pay sums to the City as and when due under this Agreement, but subject to any express conditions for such payment set forth in this Agreement, and (b) Developer's failure to make payment due under any Indemnity in this Agreement, and (2) either Party shall have the right to recover attorneys' fees and costs as set forth in Section XX, when awarded by an arbitrator or a court with jurisdiction. For purposes of the foregoing, "actual damages" shall mean the actual amount of the sum due and owing under this Agreement, with interest as provided by law, together with such judgment collection activities as may be ordered by the judgment, and no additional sums.

7.5. Dispute Resolution. The Parties recognize that disputes may arise from time to time regarding application to the Project. Accordingly, in addition and not by way of limitation to all other remedies available to the Parties under the terms of this Agreement, including legal action, the Parties agree to follow the dispute resolution procedure in Section XX that is designed to expedite the resolution of such disputes. If, from time to time, a dispute arises between the Parties relating to application to the Project the dispute shall initially be presented by Planning Department staff to the Planning Director, for resolution. If the Planning Director decides the dispute to Developer's satisfaction, such decision shall be deemed to have resolved the matter. Nothing in this section shall limit the rights of the Parties to seek judicial relief in the event that they cannot resolve disputes through the above process.

7.6. Dispute Resolution Related to Changes in State and Federal Rules and Regulations. The Parties agree to the follow the dispute resolution procedure in this Section XX for disputes regarding the effect of changes to State and federal rules and regulations to the Project pursuant to Section XX. Good Faith Meet and Confer Requirement. The Parties shall make a good faith effort to resolve the dispute before non-binding arbitration. Within five (5) business days after a request to confer regarding an identified matter, representatives of the Parties who are vested with decision-making authority shall meet to resolve the dispute. If the Parties are unable to resolve the dispute at the meeting, the matter shall immediately be submitted to the arbitration process set forth in Section XX.

7.6.2. Non-Binding Arbitration. The Parties shall mutually agree on the selection of an arbiter at JAMS in San Francisco or other mutually agreed to Arbiter to serve for the purposes of this dispute. The arbiter appointed must meet the Arbiters' Qualifications. The "Arbiters' Qualifications" shall be defined as at least ten (10) years of experience in a real property professional capacity, such as a real estate appraiser, broker, real estate economist, or attorney, in the Bay Area. The disputing Party(ies) shall, within ten (10) business days after submittal of the dispute to non-binding arbitration, submit a brief with all supporting evidence to the arbiter with copies to all Parties. Evidence may include, but is not limited to, expert or consultant opinions, any form of graphic evidence, including photos, maps or graphs and any other evidence the Parties may choose to submit in their discretion to assist the arbiter in resolving the dispute. In either case, any interested Party may submit an additional brief within ten (10) business days after distribution of the initial brief. The arbiter thereafter shall hold a telephonic hearing and issue a decision in the matter promptly, but in any event within five (5) business days after the submittal of the last brief, unless the arbiter determines that further briefing is necessary, in which case the additional brief(s) addressing only those items or issues identified by the arbiter shall be submitted to the arbiter (with copies to all Parties) within five (5) business days after the arbiter's request, and thereafter the arbiter shall hold a telephonic hearing and issue a decision promptly but in any event not sooner than two (2) business days after submission of such additional briefs, and no later than thirty-two (32) business days after initiation of the non-binding arbitration. Each Party will give due consideration

to the arbiter's decision before pursuing further legal action, which decision to pursue further legal action shall be made in each Party's sole and absolute discretion.

7.7. Attorneys' Fees. Should legal action be brought by either Party against the other for an Event of Default under this Agreement or to enforce any provision herein, the prevailing party in such action shall be entitled to recover its reasonable attorneys' fees and costs. For purposes of this Agreement, "reasonable attorneys' fees and costs" shall mean the fees and expenses of counsel to the Party, which may include printing, duplicating and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals, librarians and others not admitted to the bar but performing services under the supervision of an attorney. The term "reasonable attorneys' fees and costs" shall also include, without limitation, all such fees and expenses incurred with respect to appeals, mediation, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees and costs were incurred. For the purposes of this Agreement, the reasonable fees of attorneys of City Attorney's Office 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 Office'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.

7.8. No Waiver. Failure or delay in giving a Notice of Default shall not constitute a waiver of such Event of Default, nor shall it change the time of such Event of Default. Except as otherwise expressly provided in this Agreement, any failure or delay by a Party in asserting any of its rights or remedies as to any Event of Default shall not operate as a waiver of any Event of Default or of any such rights or remedies, nor shall it deprive any such Party of its right to institute and maintain any actions or proceedings that it may deem necessary to protect, assert, or enforce any such rights or remedies.

7.9. Future Changes to Existing Standards. Pursuant to Section 65865.4 of the Development Agreement Statute, unless this Agreement is terminated by mutual agreement of the Parties or terminated for default as set forth in Section XX, either Party may enforce this Agreement notwithstanding any change in any applicable general or specific plan, zoning, subdivision, or building regulation adopted by the City or the voters by initiative or referendum (excluding any initiative or referendum that successfully defeats the enforceability or effectiveness of this Agreement itself).

7.10. Joint and Several Liability. If Developer consists of more than one person or entity with respect to any real property within the Project Site or any obligation under this Agreement, then the obligations of each such person and/or entity shall be joint and several.

8. MISCELLANEOUS PROVISIONS

8.1. Entire Agreement. This Agreement, including the preamble paragraph, Recitals and Exhibits, constitute the entire understanding and agreement between the Parties with respect to the subject matter contained herein.

8.2. Binding Covenants; Run With the Land. Pursuant to Section 65868 of the Development Agreement Statute, from and after recordation of this Agreement, all of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the Parties and, subject to Article XX above, their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, and all persons or entities acquiring the Project Site, or any portion thereof, or any interest therein, whether by sale, operation of law, or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. All provisions of this Agreement shall be enforceable during the Term as equitable servitudes and constitute covenants and benefits running with the land pursuant to applicable law, including but not limited to California Civil Code section 1468.

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

be brought, or arise out of, in connection with or by reason of this Agreement.Construction of Agreement. The Parties have mutually negotiated the terms and conditions of this Agreement and its terms and provisions have been reviewed and revised by legal counsel for both the City and Developer. Accordingly, no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement. Language in this Agreement shall be construed as a whole and in accordance with its true meaning. The captions of the paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of construction. Each reference in this Agreement or to this Agreement shall be deemed to refer to the Agreement as amended from time to time pursuant to the provisions of the Agreement, whether or not the particular reference refers to such possible amendment.Project Is a Private Undertaking; No Joint Venture or Partnership.

8.5.1. The Project is a private development and no portion shall be deemed a public work. The City has no interest in, responsibility for, or duty to third persons concerning the Project. Developer shall exercise full dominion and control over the Project Site, subject only to the limitations and obligations of Developer contained in this Agreement.

8.5.2. Nothing contained in this Agreement, or in any document executed in connection with this Agreement, shall be construed as creating a joint venture or partnership between the City and Developer. Neither Party is acting as the agent of the other Party in any respect hereunder. Developer is not a state or governmental actor with respect to any activity conducted by Developer hereunder.

8.6. Recordation. Pursuant to Section 65868.5 of the Development Agreement Statute, the clerk of the Board shall cause a copy of this Agreement or any amendment thereto to be recorded in the Official Records within ten (10) business days after the Effective Date of this Agreement or any amendment thereto, as applicable, with costs to be borne by Developer.

8.7. Obligations Not Dischargeable in Bankruptcy. Developer's obligations under this Agreement are not dischargeable in bankruptcy.Signature in Counterparts. This Agreement may be executed in duplicate counterpart originals, each of which is deemed to be an original, and all of which when taken together shall constitute one and the same instrument.

8.9. Time of the Essence. Time is of the essence in the performance of each and every covenant and obligation to be performed by the Parties under this Agreement.

8.10. Notices. Any notice or communication required or authorized by this Agreement shall be in writing and may be delivered personally or by registered mail, return receipt requested. Notice, whether given by personal delivery or registered mail, shall be deemed to have been given and received upon the actual receipt by any of the addressees designated below as the person to whom notices are to be sent. Either Party to this Agreement may at any time, upon written notice to the other Party, designate any other person or address in substitution of the person and address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

To City:

Rich Hillis
Director of Planning
San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco, California 94102

with a copy to:

Dennis J. Herrera, Esq.
City Attorney

City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102

To Developer:

Parcel F Owner, LLC
c/o Hines
101 California Street, Suite 1000
San Francisco, CA 94111
Attn: Cameron Falconer
Telephone: (415) 982-6200

with a copy to:

Charles J. Higley, Esq.
Farella Braun + Martel LLP
235 Montgomery Street, 17th Floor
San Francisco, California, 94104

8.11. Limitations on Actions. Pursuant to Section 56.19 of the Administrative Code, any decision of the Board of Supervisors made pursuant to Chapter 56 shall be final. Any court action or proceeding to attack, review, set aside, void, or annul any final decision or determination by the Board shall be commenced within ninety (90) days after such decision or determination is final and effective. Any court action or proceeding to attack, review, set aside, void or annul any final decision by (i) the Planning Director made pursuant to Administrative Code Section 56.15(d)(3) or (ii) the Planning Commission pursuant to Administrative Code Section 56.17(e) shall be commenced within ninety (90) days after said decision is final.Severability. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, or if any such term, provision, covenant, or condition does not become effective until the approval of any Non-City Responsible Agency, the remaining provisions of this Agreement shall continue in full force and effect unless enforcement of the remaining portions of the Agreement would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement. Notwithstanding the foregoing, the Developer and the City agree that the Agreement will terminate and be on no force or effect if Section 2.1 herein is found invalid, void or unenforceable.

8.13. Sunshine. Developer understands and agrees that under the City's Sunshine Ordinance (Administrative Code, Chapter 67) and the California Public Records Act (California Government Code section 6250 *et seq.*), this Agreement and any and all records, information, and materials submitted to the City hereunder are public records subject to public disclosure. To the extent that Developer in good faith believes that any financial materials reasonably requested by the City constitutes a trade secret or confidential proprietary information protected from disclosure under the Sunshine Ordinance and other applicable laws, Developer shall mark any such materials as such, . When a City official or employee receives a request for information that has been so marked or designated, the City may request further evidence or explanation from Developer. If the City determines that the information does not constitute a trade secret or proprietary information protected from disclosure, the City shall notify Developer of that conclusion and that the information will be released by a specified date in order to provide Developer an opportunity to obtain a court order prohibiting disclosure.

8.14. OCII an Intended Third Party Beneficiary. OCII is an express third party beneficiary of this Agreement and shall be entitled to enforce the provisions of this Agreement as if it were a party hereto.

[Remainder of Page Intentionally Blank;

Signature Page Follows]

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

CITY

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

By:_____

Director of Planning

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

By:_____
Heidi J. Gewertz
Deputy City Attorney

Approved on _____
Board of Supervisors Ordinance No. _____

DEVELOPER

Parcel F Owner, LLC, a Delaware limited liability company

By: _____

Name: _____

Title: _____

DRAFT FOR NEGOTIATION PURPOSES ONLY – SUBJECT TO CHANGE

EXHIBIT

Exhibit Test START HERE

COMMISSION ON COMMUNITY INVESTMENT AND INFRASTRUCTURE

RESOLUTION NO. 02-2021
Adopted January 19, 2021

CONDITIONALLY APPROVING A VARIATION TO THE TRANSBAY REDEVELOPMENT PLAN'S ON-SITE AFFORDABLE HOUSING REQUIREMENT AS IT APPLIES TO THE MIXED-USE PROJECT AT 542-550 HOWARD STREET, SUBJECT TO APPROVAL BY THE BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO IN ITS CAPACITY AS LEGISLATIVE BODY FOR THE SUCCESSOR AGENCY TO THE SAN FRANCISCO REDEVELOPMENT AGENCY, AND AUTHORIZING THE PAYMENT OF AN AFFORDABLE HOUSING FEE TO FULFILL THE PROJECT'S AFFORDABLE HOUSING OBLIGATION; PROVIDING NOTICE THAT THIS APPROVAL IS WITHIN THE SCOPE OF THE TRANSIT CENTER DISTRICT PLAN PROJECT APPROVED UNDER THE TRANSIT CENTER DISTRICT PLAN FINAL ENVIRONMENTAL IMPACT REPORT ("FEIR"), A PROGRAM EIR, AND IS ADEQUATELY DESCRIBED IN THE FEIR FOR THE PURPOSES OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; AND ADOPTING ENVIRONMENTAL REVIEW FINDINGS; TRANSBAY REDEVELOPMENT PROJECT AREA

WHEREAS, The California Legislature in 2003 enacted Assembly Bill 812 ("AB 812") authorizing the demolition of the historic Transbay Terminal building and the construction of the new Transbay Transit Center (the "TTC") (Stat. 2003, Chapter 99, codified at § 5027.1 of the Cal. Public Resources Code). AB 812 also mandated that 25 percent of the residential units developed in the area around the TTC "shall be available at affordable housing cost to, and occupied by, persons and families whose incomes do not exceed 60 percent of the area median income, and that at least an additional 10 percent of all dwelling units developed within the project area shall be available at affordable housing cost to, and occupied by, persons and families whose incomes do not exceed 120 percent of the area median income" if the City and County of San Francisco ("City") adopted a redevelopment plan providing for the financing of the TTC (the "Transbay Affordable Housing Obligation"); and,

WHEREAS, The Board of Supervisors of the City and County of San Francisco ("Board of Supervisors") approved a Redevelopment Plan for the approximately 40 acre Transbay Redevelopment Project Area ("Project Area") by Ordinance No. 124-05, adopted on June 21, 2005 and by Ordinance No. 99-06, adopted on May 9, 2006 ("Redevelopment Plan"). The Redevelopment Plan established a program for the Redevelopment Agency of the City and County of San Francisco ("Former Agency") to redevelop and revitalize the blighted Project Area; it also provided for the financing of the TTC and thus triggered the Transbay Affordable Housing Obligation; and,

WHEREAS, The 2005 Report to the Board of Supervisors on the Redevelopment Plan ("Report") estimated that the Transbay Affordable Housing Obligation would require the development of 1200 affordable units. Report at p. VI-14 (Jan. 2005). The Report also stated: "The affordable housing in the Project Area will include approximately

388 inclusionary units, or units built within market-rate housing projects... The affordable housing will also include approximately 795 units in stand-alone, 100 percent affordable projects." Report at page VIII-7; and,

WHEREAS, The Redevelopment Plan established, under Cal. Health and Safety Code § 33333, the land use controls for the Project Area, required development to conform to those land use controls, and divided the Project Area into two land use zones: Zone One and Zone Two. The Redevelopment Plan required the Former Agency to exercise land use authority in Zone One and authorized it to delegate to the San Francisco Planning Department ("Planning Department") the land use controls of the San Francisco Planning Code ("Planning Code"), as amended from time to time, in Zone Two; and,

WHEREAS, On May 3, 2005, the Former Agency and the Planning Department entered into a Delegation Agreement whereby the Planning Department assumed land use authority in Zone Two of the Project Area subject to certain conditions and procedures, including the requirement that the Planning Department's approval of projects shall be consistent with the Redevelopment Plan ("Delegation Agreement"); and,

WHEREAS, In 2012, the City adopted the Transit Center District Plan, which covers the entirety of the Project Area north of Folsom Street, including Zone 2 of the Redevelopment Plan wherein the Planning Department has land use authority; and,

WHEREAS, To fulfill the Transbay Affordable Housing Obligation, both the Redevelopment Plan and the Planning Code require that all housing developments within the Project Area contain on-site affordable housing. Redevelopment Plan, § 4.9.3 (a minimum of 15 percent); Planning Code, § 249.28 (b) (6) (incorporating the higher inclusionary requirements of Planning Code § 415.6, namely a minimum of 20 percent) (together the "On-Site Requirement"). Neither the Redevelopment Plan nor the Planning Code authorizes off-site affordable housing construction or an "in-lieu" fee payment as an alternative to the On-Site Requirement in the Project Area; and,

WHEREAS, The Redevelopment Plan provides a procedure and standards by which certain of its requirements and the provisions of the Planning Code may be waived or modified. Section 3.5.5 of the Redevelopment Plan states: "The Agency Commission, in its sole discretion, may grant a variation from the Plan, the Development Controls and Design Guidelines, or the Planning Code where enforcement would otherwise result in practical difficulties for development creating undue hardship for the property owner and constitute an unreasonable limitation beyond the intent of the Plan, the Design for Development or the Development Controls and Design Guidelines... Variations to the Plan or the Development Controls and Design Guidelines shall only be granted because of unique physical constraints or other extraordinary circumstances applicable to the property. The granting [of] a variation must be in harmony with the Plan, the Design for Development and the Development Controls and Design Guidelines and shall not be materially detrimental to the public welfare or materially injurious to neighboring property or improvements in the vicinity... In granting any variation,

the Agency Commission shall specify the character and extent thereof, and shall also prescribe any such conditions as are necessary to secure the goals of the Plan, the Design for Development and the Development Controls and Design Guidelines;" and,

WHEREAS, On February 1, 2012, state law dissolved the Former Agency. Cal. Health & Safety Code §§ 34170 et seq. (the "Redevelopment Dissolution Law."); and,

WHEREAS, Under the Redevelopment Dissolution Law, all of the Former Agency's assets (other than certain housing assets) and obligations were transferred to the Successor Agency to the Former Agency, also known as the Office of Community Investment and Infrastructure ("Successor Agency" or "OCII"). Some of the Former Agency's housing assets were transferred to the Mayor's Office of Housing and Community Development ("MOHCD"), acting as the housing successor; and,

WHEREAS, To implement the Redevelopment Dissolution Law, the Board of Supervisors adopted Resolution No. 11-12 (Jan. 26, 2012) and Ordinance No. 215-12 (Oct. 4, 2012), which granted land use authority over the Former Agency's Major Approved Development Projects, including the Transbay Redevelopment Project, to the Successor Agency and its Commission. The Delegation Agreement, however, remains in effect and the Planning Department continues to exercise land use authority under the Planning Code over development in Zone Two; and,

WHEREAS, On April 15, 2013, the California Department of Finance ("DOF") determined finally and conclusively that the Successor Agency has enforceable obligations under Redevelopment Dissolution Law to complete certain development in the Project Area, including the Transbay Affordable Housing Obligation; Letter, S. Szalay, DOF Local Government Consultant, to T. Bohee, Successor Agency Executive Director (April 15, 2012 [sic]); and,

WHEREAS, In furtherance of its land use authority under the Delegation Agreement, Redevelopment Plan, and Transit Center District Plan, the Planning Commission approved, by Resolutions 20613 and 20614, and Motions 20615, 20616, 20617, 20618 (Jan. 9, 2020) a project at 542-550 Howard Street (Assessor's Parcel Block No. 3721, Lots 016, 135, 136, and 138, also known as Transbay Parcel F, located in Zone 2 of the Redevelopment Plan on the north side of Howard Street, between 1st and 2nd Streets in the Project Area. (the "Project Site"). Subsequently, on June 5, 2020, the Zoning Administrator issued a variance decision. (Together the Planning Commission approvals and the Zoning Administrator decision are referred to as the "Approvals"). The Approvals approved a project that would include a new 61-story mixed use building reaching a height of approximately 750 feet (approximately 800 feet including rooftop screen/mechanical equipment), and including 165 dwelling units, 189 hotel rooms, 275,674 gross square feet of office use floor area, approximately 9,000 square feet of retail space, approximately 20,000 square feet of open space, 178 Class 1 and 34 Class 2 bicycle parking spaces, and four below-grade levels to accommodate up to 183 vehicle parking spaces for the residential, hotel, and office uses (the "Project"). The Project also includes a bridge to the future elevated park situated on top of the TTC; and,

WHEREAS, To comply with the On-Site Requirement, the Approvals require the Project to include approximately 33 inclusionary below-market-rate units that are affordable to income-eligible households. All of the Project's approximately 165 residential units are located on the highest 17 floors of the building. The residential units will be for-sale units with homeowners' association ("HOA") assessments that the Project's developer estimates will exceed $2500 per month; and,

WHEREAS, On June 28, 2018, OCII received a request from Developer for a variation from the On-Site Requirement whereby the Developer would construct off-site affordable units instead of providing on-site inclusionary units. Letter, Parcel F Owner LLC, to N. Sesay (June 28, 2018) (the "Original Variation Request"). OCII did not act on the Original Variation Request pending additional negotiations with the Developer. On December 17, 2020, OCII received an amended and restated request in which the Developer proposed that the obligation to provide on-site BMR units for the Project be fulfilled instead by paying to OCII an amount equal to one hundred fifty percent (150%) of the inclusionary housing fee (the "Affordable Housing Fee") that Section 415.5 of the Planning Code would otherwise require if the Project were not subject to the On-Site Requirement. Letter, Parcel F Owner LLC to S. Oerth, OCII (Dec. 17, 2020) ("Revised Variation Request"), attached as Exhibit B to the Commission Memorandum related to this Resolution; and,

WHEREAS, In the Revised Variation Request, the Developer explained that the Project was unique in that it will include a mix of hotel, offices, and residential units in the same high-rise building, its residential units are located on the upper 17 floors of an approximately 61-story tower, it provides desirable public amenities such as a public pedestrian way connecting Howard Street to the Transbay Transit Center, a pedestrian bridge providing public access to the Transit Center's new rooftop park, and its HOA dues will be in excess of $2500 per month. The Revised Variation Request concludes that the application of the On-Site Requirement to the Project creates practical difficulties that would prevent the administration of a successful affordable housing program because the HOA may raise fees at any time without regard to the effect on the BMR units resulting in it simply not being feasible for a BMR unit owner to be protected, over time, and thus creates an undue hardship for the Developer, the HOA, the MOHCD, and future owners of the BMR units; and,

WHEREAS, The Revised Variation Request proposes that the Successor Agency grant a variation on the condition that the Developer pay the Affordable Housing Fee, which is significantly higher than the fee that Section 415.5 of the Planning Code would require if the Project was located outside of the Project Area and not subject to the On-Site Requirement. Payment of the Affordable Housing Fee for OCII's development of affordable housing within the Project Area ensures that the variation's removal of on-site affordable units does not adversely affect the Successor Agency's compliance with the Transbay Affordable Housing Obligation; and,

WHEREAS, The following facts support a finding that the On-Site Requirement imposes practical difficulties for the Project creating undue hardships for the owners of the inclusionary below-market-rate units ("BMR Owners") and MOHCD, as the housing successor responsible for enforcing the long-term affordability restrictions on the units:

1) HOA fees pay for the costs of operating and maintaining the common areas and facilities of a luxury condominium project, including in this case the shared use of luxury hotel amenities in the lower hotel floors of the Project, such as a spa and fitness center, and generally must be allocated equally among all of the units subject to the assessment, Cal. Code Reg., title 10, § 2792.16(a). HOA fees may not be adjusted based on the below-market-rate ("BMR") status of the unit or the income level of the homeowner. If HOA fees increase, BMR Owners will generally be required to pay the same amount of increases in regular assessments and of special assessments as other owners.

2) The Successor Agency's Limited Equity Homeownership Program ("LEHP") ensures that income-eligible households are able to afford, at initial occupancy, all of the housing costs, but does not cover increases in HOA dues that occur over time. Initially, the LEHP will decrease the cost of the BMR unit itself to ensure that income-eligible applicants are able to meet all of the monthly costs, including HOA fees. Moreover, the Successor Agency nor MOHCD (which ultimately assumes authority over the BMR unit as a transferred housing asset) does not have a program for assisting owners in BMR units when increases in regular monthly HOA fees occur.

3) Members of homeowner associations may approve increases in HOA fees without the support of the BMR Owners because BMR Owners, particularly in a development with inclusionary units, typically constitute a small minority of the total HOA membership. Increases less than 20 percent of the regular assessment may occur without a vote of the HOA; increases exceeding 20 percent require a majority vote of members in favor. Cal. Civil Code § 5605 (b). In addition, a homeowner association may impose special assessments to cover the costs of capital expenditures for repairs and other purposes. *Id.*

4) When HOA fees increase or special assessments are imposed, BMR Owners whose incomes have not increased comparably may have difficulty making the higher monthly payments for HOA fees. *See e.g.* Carol Lloyd, *Owners' Dues Keep Going Up*, S.F. Chronicle, Aug. 5, 2007, *available at:* http://www.sfgate.com/default/article/Owners-dues-keep-going-up-2526988.php. The result is that housing costs may become unaffordable and some BMR Owners will face the hardship of having to sell their unit at the reduced prices required under the limited equity programs of the Successor Agency and MOHCD.

5) If the BMR Owner is forced to sell the inclusionary unit because of the high HOA fees, the cost of the restricted affordable unit, which will now include the high HOA fees, will be assumed by either the subsequent income-eligible buyer or by MOHCD, as the housing successor required to comply with the affordability restrictions. In either case, the high HOA dues will have caused an additional hardship, and it is not feasible for a BMR Owner to be protected, over time, from increases in regular and special HOA assessments; and,

WHEREAS, The hardship imposed by the On-Site Requirement constitutes an unreasonable limitation beyond the intent of the Redevelopment Plan to create affordable housing for the longest feasible time, as required under the Transbay Affordable Housing Obligation; and,

WHEREAS, The following facts support a finding that extraordinary circumstances apply to the Project:

1) The Project is unique in that it is a mixed-use building with its residential units located on the upper 17 floors of a 61-story tower. Of the high-rise developments recently approved or proposed in the Project Area, the Project will be the first building in San Francisco to include a mix of hotel, offices, and residential units in the same high-rise building. As noted above, the construction of affordable housing units at the top of a high-rise creates practical difficulties for maintaining the affordability of the units.

2) The Developer will pay OCII approximately $45 - 47 million, which is an amount equal to one hundred fifty percent (150%) of the inclusionary housing fee that Section 415.5 of the Planning Code would otherwise require if the Project was located outside of the Project Area and not subject to the On-Site Requirement.. *See* San Francisco Planning Code, §§ 415.1 et seq; and,

WHEREAS, OCII's use of the Affordable Housing Fee for affordable housing in the Project Area ensures that the variation will not be materially detrimental to the public welfare and is necessary to comply with Transbay Affordable Housing Obligation; and,

WHEREAS, Approval of the Revised Variation Request would be subject to approval by the Board of Supervisors, in its capacity as legislative body for the Successor Agency, because it constitutes a material change to a Successor Agency affordable housing program, Ordinance No. 215-12, §6(a) (providing that "the Successor Agency Commission shall not modify the Major Approved Development Projects or the Retained Housing Obligations in any manner that would . . . materially change the obligations to provide affordable housing without obtaining the approval of the Board of Supervisors...."); and,

WHEREAS, The San Francisco Planning Commission and Board of Supervisors will consider approving a development agreement that would be consistent with this Resolution by providing relief from the on-site affordable housing requirement in Section 249.28 of the Planning Code, and would require the Developer to pay the Affordable Housing Fee (based on the 2021 San Francisco Citywide Development Impact Fee Register) to OCII for affordable housing in the Project Area to further the Successor Agency's obligation to fulfill the Transbay Affordable Housing Obligation (the "Development Agreement"). The proposed Development Agreement would also provide that the Developer may pay the Affordable Housing Fee on the earlier to occur of: (a) issuance of the temporary certificate of occupancy associated with the residential portions of the Project; or (b) on the date that is two years after the effective date of the Project's Development Agreement between the City and the Parcel F Owner LLC (but only if the "first construction document," as defined in Section 401 of the Planning Code and Section 107A.13.1 of the Building

Code, has been issued for the Project). In addition, the proposed Development Agreement would require the Developer to provide OCII, prior to payment of the Affordable Housing Fee, with an irrevocable letter of credit for the full amount of the fee if the Developer and OCII reach agreement on a project at Transbay Block 4; and,

WHEREAS, On May 24, 2012, the San Francisco Planning Commission, as lead agency under the California Environmental Quality Act ("CEQA"), certified the FEIR, which analyzed the development of land under the Transit Center District Plan, including the development of the Project on the Project site. The Transit Center District is located approximately between Folsom and Market Streets, and between New Montgomery Street and the Embarcadero and includes Zone 2 of the Redevelopment Plan wherein the Planning Commission has land use authority under the Delegation Agreement. The FEIR is available for review at the Planning Department's website at: http://sfmea.sfplanning.org/2007.0558E_FEIR1.pdf, http://sfmea.sfplanning.org/2007.0558E_FEIR2.pdf,and, http://sfmea.sfplanning.org/2007.0558E_FEIR3.pdf; and,

WHEREAS, Prior to the Approvals for the Project, the Planning Department determined that the Project was eligible for review under CEQA Guideline § 15183 and issued a Certificate of Determination for a Community Plan Evaluation on August 27, 2019 (the "CPE"), determining the following: the Project would not result in effects on the environment that are peculiar to the Project or the Project site or that were not identified as significant effects in the FEIR; the Project would not result in potentially significant off-site or cumulative impacts that were not identified in the FEIR; the Project would not result in significant effects, which, as a result of substantial new information that was not known at the time the FEIR was certified, would be more severe than were already analyzed and disclosed in the FEIR; and the Project sponsor will undertake feasible mitigation measures specified in the FEIR to mitigate project-related significant impacts; and,

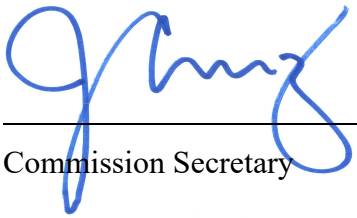
WHEREAS, A copy of the CPE is on file with the Commission Secretary and are incorporated herein by reference; now, therefore, be it

RESOLVED, That the Commission determines that its approval of the Revised Variation Request is not subject to further environmental review pursuant to CEQA Guidelines Section 15183 for the following reasons: the Project, irrespective of whether it provides affordable housing units off-site or the Affordable Housing Fee, would have the same density and would not result in effects on the environment that are peculiar to the Project or the Project site that were not identified as significant effects in the FEIR; the Project and the Variation Request would not result in potentially significant off-site or cumulative impacts that were not identified in the FEIR; the Project and the Variation Request would not result in significant effects, which, as a result of substantial new information that was not known at the time the FEIR was certified, would be more severe than were already analyzed and disclosed in the FEIR; and the Project sponsor will undertake feasible mitigation measures specified in the FEIR to mitigate project-related significant impacts; and, be it further

RESOLVED, That the Commission hereby approves a variation to the Redevelopment Plan's On-Site Requirement for the Project at 543-550 Howard Street that relieves the Developer from complying with the On-Site Requirements ,but that requires the Developer to pay OCII an amount equal to one hundred fifty percent (150%) of the inclusionary housing fee that Section 415.5 of the Planning Code would otherwise require if the Project were not subject to the On-Site Requirement, subject to approval by the Board of Supervisors, acting in its capacity as the legislative body for the Successor Agency; and, be it further

RESOLVED, The Commission on Community Investment and Infrastructure authorizes the Executive Director to take appropriate and necessary actions to effectuate the purpose of this resolution.

I hereby certify that the foregoing resolution was adopted by the Commission at its meeting of January 19, 2021.



Commission Secretary

RECORDING REQUESTED BY
CLERK OF THE BOARD OF SUPERVISORS
OF THE CITY AND COUNTY OF SAN FRANCISCO

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

AND WHEN RECORDED MAIL TO:

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

DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY AND COUNTY OF SAN FRANCISCO
AND PARCEL F OWNER, LLC,
RELATIVE TO THE DEVELOPMENT KNOWN AS
542-550 HOWARD STREET (TRANSBAY PARCEL F) DEVELOPMENT PROJECT

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DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY AND COUNTY OF SAN FRANCISCO
AND PARCEL F OWNER, LLC, A DELAWARE LIMITED LIABILITY COMPANY,
RELATIVE TO THE DEVELOPMENT KNOWN AS
THE 181 FREMONT DEVELOPMENT PROJECT

THIS DEVELOPMENT AGREEMENT (this "**Agreement**") dated for reference purposes only as of this _____ day of _____, 2021, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a political subdivision and municipal corporation of the State of California (the "**City**"), acting by and through its Planning Department, and Parcel F Owner, LLC, a Delaware limited liability company, its permitted successors and assigns (the "**Developer**"), pursuant to the authority of Section 65864 *et seq.* of the California Government Code.

RECITALS

This Agreement is made with reference to the following facts:

A. Developer is the owner of that certain property known as 542-550 Howard Street (Transbay Parcel F) (the "**Project Site**") which is an irregularly shaped property formed by four parcels measuring a total of approximately 32,229 square feet, located on the north side of Howard Street, between 1st Street and 2nd Street. The Project Site is within the C-3-0 (SD) District, the 750-S-2 and 450-S Height and Bulk Districts, the Transit Center C-3-0 (SD) Commercial Special Use District, the Transbay C-3 Special Use District, the Transit Center District Plan area (the "**TCDP**") and in Zone 2 of the Transbay Redevelopment Project Area (the "**Project Area**").

B. Developer submitted development applications for a proposal to construct on the Project Site a new 61-story mixed use building reaching a height of approximately 750 feet (approximately 800 feet including rooftop screen/mechanical equipment), and including 165 dwelling units, 189 hotel rooms, 275,674 gross square feet of office use floor area, approximately 9,000 square feet of retail space, approximately 20,000 square feet of open space, 178 Class 1 and 34 Class 2 bicycle parking spaces, and four below-grade levels to accommodate up to 183 vehicle parking spaces for the residential, hotel, and office uses (the "**Project**").

C. The Redevelopment Plan for the Project Area ("**Plan**") establishes land use controls and imposes other requirements on development within the Project Area. Notably, the Plan incorporates, in section 4.9.2, state law requirements that 25 percent of the residential units developed in the Project Area "shall be available to" low-income households, and an additional 10 percent "shall be available to" moderate income households. Cal. Public Resources Code § 5027.1 (the "**Transbay Affordable Housing Obligation**"). To fulfill the Transbay Affordable Housing Obligation, the Plan requires that all housing developments within the Project Area contain a minimum of 15 percent on-site affordable housing. Redevelopment Plan, § 4.9.3. A similar requirement in § 249.28(b)(6) of the San Francisco Planning Code (the "**Planning Code**") provides that housing developments must provide the higher of (i) the 15 percent on-site affordable housing set forth in the Plan, or (ii) the amount required by Planning Code Section 415.6 (the "**On-Site Requirement**"). As of the date of this Agreement, Planning Code Section 415.6 would require 20 percent on-site affordable housing in connection with the Project, or 33 units. Neither the Redevelopment Plan nor the Planning Code authorize off-site affordable housing construction or an "in-lieu" fee payment as an alternative to the On-Site Requirement in the Project Area.

D. The Plan provides that the land use controls for Zone 2 of the Project Area shall be the Planning Code, as amended from time to time, so long as any amendments to the Planning Code are consistent with the Plan. Through a Delegation Agreement, the former Redevelopment Agency of the City and County of San Francisco (the "**Former Agency**") delegated jurisdiction for permitting of projects in Zone 2 (including the Project Site) to the Planning Department, with the Planning Code governing development, except for certain projects that require Redevelopment Agency action. The Plan also provides that exactions imposed by the Planning Code on development within the Project Area shall be administered by the Successor Agency to the Former Agency or provide direct benefits to the Project Area.

E. However, pursuant to Section 3.5.5 of the Plan, the Commission on Community Investment and Infrastructure (**"CCII"**) (as the Commission to the Successor Agency to the Former Agency, a public body organized and existing under the laws of the State of California, also known as the Office of Community Investment and Infrastructure (**"Successor Agency"** or **"OCII"**)) has the authority to grant a variation from the Plan and the associated Transbay Development Controls and Design Guidelines, or the Planning Code where the enforcement of these controls would otherwise result in practical difficulties for development creating undue hardship for the property owner and constitute an unreasonable limitation beyond the intent of the Plan, the Transbay Design for Development or the Transbay Development Controls and Design Guidelines.

F. Where a variation or other action of the Successor Agency materially changes the Successor Agency's obligations to provide affordable housing, the Board of Supervisors ("**Board**") must approve that action. San Francisco Ordinance No. 215-12, § 6(a) (Oct. 4, 2012).

G. On _____, 2020, OCII received a request from the Developer for a variation from the On-Site Requirement. Letter, C. Higley, Farella Braun + Martel on behalf of Parcel F Owner, LLC, to N. Sesay, OCII (_____, 2020) ("**Variation Request**"), attached to this Agreement as Exhibit A.

H. The Variation Request concludes that the application of the On-Site Requirement to the Project would create practical difficulties for maintaining the affordability of the units because homeowners association ("HOA") fees, which are already high in such developments, will likely increase over time such that the original residents would not be able to afford the payments. Non-payment of HOA fees by affordable residents would lead to legal actions by the HOA to recover unpaid amounts, including action to place liens on the units themselves, and ultimately to the loss of the units by the residents. Thus, undue hardship would be created for both the Project Sponsor and the owners of the inclusionary housing units and undermine the intent of the Plan to provide affordable units to low- and moderate-income households.

I. In order to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Section 65864 et seq. (the "**Development Agreement Statute**"), which authorizes the City to enter into a development agreement with any person having a legal or equitable interest in real property related to the development of such property. Pursuant to the Development Agreement Statute, the City adopted Chapter 56 **("Chapter 56")** of the San Francisco Administrative Code establishing procedures and requirements for entering into a development agreement. The Parties are entering into this Agreement in accordance with the Development Agreement Statute and Chapter 56.

J. It is the intent of the Parties that all acts referred to in this Agreement shall be accomplished in a way as to fully comply with CEQA, the CEQA Guidelines, Chapters 31 and 56 of the San Francisco Administrative Code, the Development Agreement Statute, the Enacting Ordinance and all

other applicable laws as of the Effective Date. This Agreement does not limit the City's obligation to comply with applicable environmental laws, including CEQA, before taking any discretionary action regarding the Project, or Developer's obligation to comply with all applicable laws in connection with the development of the Project

K. The San Francisco Planning Department, in compliance with the California Environmental Quality Act (CEQA), issued a Community Plan Exemption (CPE) certificate for the Project on August 27, 2019. F

L. On January 9, 2020, the San Francisco Planning Commission held a public hearing on the Project, and approved Motions 20613 (recommending approval of certain General Plan amendments), 20614 (recommending approval of certain Zoning Map, Height Map, and Planning Code amendments), 20615 (adopting Shadow Findings), 20616 (approving Downtown Project Authorization), 20617 (approving an Office Development Allocation), and 20618 (approving a Condition Use Authorization for hotel development). The Project approvals required compliance with the On-Site Requirement.

M. On June 5, 2020 the Zoning Administrator issued a variance decision to allow bike parking to be located on the 4th story of the Project.

N. On _____, the CCII held a public hearing on the Variation Request and approved, pursuant to Resolution No. _____, a variation pursuant to Section 3.5.5 of the Plan, attached as Exhibit B (the "**OCII Variation**") on the condition that the Developer contribute to OCII an amount equal to one hundred fifty percent (150%) of the inclusionary housing fee that Section 415.5 of the Planning Code would otherwise require if the Project were not subject to the On-Site Requirement, pursuant to the terms in Section 2.1 of this Agreement (the "**Affordable Housing Fee**").

O. On _____, the Planning Commission held a public hearing on the Project, duly noticed and conducted under the Development Agreement Statute and Chapter 56, to consider revisions to the previously recommended zoning legislation, as well as this Agreement. Following the public hearing, the Planning Commission made General Plan Consistency Findings with respect to the zoning changes and this Agreement, and approved Motion _____ (recommending approval of revisions to the previously endorsed Planning Code amendments), and Motion _____ (recommending adoption of an ordinance approving this Agreement).

P. On _____, the Board, in its capacity as the governing body of OCII, reviewed the OCII Variation under the authority that it reserved to itself in Ordinance No. 215-12 to approve material changes to the Successor Agency's affordable housing program and approved, by Board of Supervisors Resolution No. ____, the actions of OCII in granting the OCII Variation.

Q. The City has determined that as a result of the development of the Project in accordance with this Agreement additional, clear benefits to the public will accrue that could not be obtained through application of existing City ordinances, regulations, and policies because the payment of the Affordable Housing Fee at an amount equal to 150% of the inclusionary housing fee that Section 415.5 of the Planning Code would otherwise require and its use thereof in accordance with this Agreement rather than compliance with the On-Site Requirements will result in more affordable housing units within the Project Area while maintaining land values necessary for the financing assumptions of the Transbay Joint Powers Authority (the "**TJPA**"). The basis for this determination is the following:

- To achieve the overall goal of at least 35% affordability of all new housing development units within the Project Area, there must be both inclusionary units and stand-alone affordable housing developments in the Project Area.

- The Plan's 2005 report set a goal of 388 inclusionary units and approximately 795 stand-alone affordable housing units but at the time of the Plan's adoption, mixed-use, high-rise developments were not contemplated within the Project Area.

- The Project Area covers 40 acres and includes blocks programmed for: (i) stand-alone affordable housing developments; (ii) all or a majority of office space; and (iii) a combination of market and affordable housing.

- The TJPA established specific land value goals for each block in its funding plan for the Transbay Transit Center (the "**TTC**") and there are a limited number of publicly-owned blocks (including Transbay Block 4) remaining upon which affordable housing may be built to meet the Plan's 35% affordability requirement.

- Adding affordable housing to blocks that must be sold to finance the TTC is not feasible without significantly reducing the land value and thereby creating shortfalls in the TTC funding.

- The Affordable Housing Fee is intended to assist OCII in meeting its Transbay Affordable Housing Obligation, which may include the use of the funds for the development of affordable housing units at Transbay Block 4.

R. On _____, the Board, having received the Planning Commission recommendations, adopted Ordinance No. _____, amending the Zoning Map, Height Map, and Planning Code, and Ordinance No. _____, approving this Agreement (File No. _____), and authorizing the Planning Director to execute this Agreement on behalf of the City (the "**Enacting Ordinance**"). The Enacting Ordinance took effect on _____. The above described actions are referred to in this Agreement as the "**Approvals**" for the Project.

Now therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. GENERAL PROVISIONS

1.1. **Incorporation of Preamble, Recitals and Exhibits**. The preamble paragraph, Recitals, and Exhibits, and all defined terms contained therein, are hereby incorporated into this Agreement as if set f**orth in full.**

1.2. **Definitions**. In addition to the definitions set forth in the above preamble paragraph, Recitals and elsewhere in this Agreement, the following definitions shall apply to this Agreement:

1.2.1. "**Administrative Code**" shall mean the San Francisco Administrative Code.

1.2.2. "**Affiliate**" shall mean any entity controlling, controlled by, or under common control with Developer (and 'control' and its correlative terms 'controlling', 'controlled by' or 'under common control with' mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of Developer, whether through the ownership of voting securities, by contract or otherwise).

1.2.3. "**Affordable Housing Fee**" shall mean the payment, pursuant to Section 2.1 of this Agreement, from the Developer to OCII of an amount that is equal to one hundred fifty percent (150%) of the inclusionary housing fee that Section 415.5 of the Planning Code would otherwise require

if the Project were not subject to the On-Site Requirement (based on the published fee schedule applicable to calendar year 2021).

1.2.4. "**Board of Supervisors**" or "**Board**" shall mean the Board of Supervisors of the City and County of San Francisco.

1.2.5. "**CCII**" shall mean the Commission on Community Investment and Infrastructure.

1.2.6. "**City**" shall have the meaning set forth in the preamble paragraph. Unless the context or text specifically provides otherwise, references to the City shall mean the City acting by and through the Planning Director or, as necessary, the Planning Commission or the Board of Supervisors. The City's approval of this Agreement will be evidenced by the signatures of the Planning Director and the Clerk of the Board of Supervisors [need to confirm if the Clerk needs to sign].

1.2.7. "**City Agency**" or "**City Agencies**" shall mean, where appropriate, all City departments, agencies, boards, commissions, and bureaus that execute or consent to this Agreement and that have subdivision or other permit, entitlement or approval authority or jurisdiction over the Project or the Project Site, together with any successor City agency, department, board, or commission.

1.2.8. "**City Attorney's Office**" shall mean the Office of the City Attorney of the City and County of San Francisco.

1.2.9. "**Director**" or "**Planning Director**" shall mean the Director of Planning of the City and County of San Francisco.

1.2.10. "**Impact Fees and Exactions**" shall mean any fees, contributions, special taxes, exactions, impositions, and dedications charged by the City, whether as of the date of this Agreement or at any time thereafter during the Term, in connection with the development of the Project, including but not limited to transportation and transit fees, child care requirements or in-lieu fees, housing (including affordable housing) requirements or fees, dedication or reservation requirements, and obligations for on- or off-site improvements. For development within the Project Area, Section 5.9 of the Plan requires that the Jobs-Housing Program Linkage Fee and the Downtown Park Fee shall be administered by the Successor Agency and that all Impact Fees and Exactions must provide direct benefits to the Project Area.. Impact Fees and Exactions shall not include the Mitigation Measures, Processing Fees, taxes or special assessments or school district fees, SFPUC Capacity Charges, Transit Center District Plan Transit Delay Mitigation Fee (Planning Code Section 424.7.2(c)) and any fees, taxes, assessments impositions imposed by any non-City agency, all of which shall be due and payable by Developer as and when due in accordance with applicable Laws.

1.2.11. "**Indemnify**" shall mean to indemnify, defend, reimburse, and hold harmless.

1.2.12. "**OCII**" shall mean Office of Community Investment and Infrastructure.

1.2.13. "**Official Records**" shall mean the official real estate records of the City and County of San Francisco, as maintained by the City's Recorder's Office.

1.2.14. "**On-Site Requirement**" is defined in Recital B.

1.2.15. "**Party**" means, individually or collectively as the context requires, the City and Developer (and, as Developer, any Transferee that is made a Party to this Agreement under the terms of an Assignment and Assumption Agreement). "**Parties**" shall have a correlative meaning.

1.2.16. "**Plan**" shall mean the Transbay Project Area Redevelopment Plan, Approved by Ordinance No. 124-05, Adopted by the Board of Supervisors on June 21, 2005 and Ordinance No. 99-06 adopted by the Board of Supervisors May 9, 2006, as amended from time to time.

1.2.17. "**Planning Code**" shall mean the San Francisco Planning Code.

1.2.18. "**Planning Commission**" or "**Commission**" shall mean the Planning Commission of the City and County of San Francisco.

1.2.19. "**Planning Department**" shall mean the Planning Department of the City and County of San Francisco.

1.3. Effective Date. This Agreement shall take effect upon the later of (i) the full execution of this Agreement by the Parties and (ii) the effective date of the Enacting Ordinance ("**Effective Date**"). The Effective Date is _____.

1.4. Term. The term of this Agreement shall commence upon the Effective Date and shall continue in full force and effect for the earlier of (i) Project completion (as evidenced by issuance of the Temporary Certificate of Occupancy) or (ii) ten (10) years after the effective date., unless extended or earlier terminated as provided herein ("**Term**"). Following expiration of the Term, this Agreement shall be deemed terminated and of no further force and effect except for any provisions which, by their express terms, survive the expiration or termination of this Agreement.

2. PROJECT CONTROLS AND VESTING

2.1. Affordable Housing Fee; Impact Fees.

2.1.1. During the term of this Agreement, Developer shall have the vested right to develop the Project Site in accordance with the Approvals, provided Developer shall pay the Affordable Housing Fee to OCII to fund OCII's obligation to fulfill the Transbay Affordable Housing Obligation on the earlier to occur of: (a) issuance of the temporary certificate of occupancy associated with the residential portions of the Project; or (b) on the date that is two years after the effective date of this Agreement (but only if the "first construction document," as defined in Section 401 of the Planning Code and Section 107A.13.1 of the Building Code, has been issued for the Project). The fee collection procedure set forth in Section 402 of the Planning Code shall not apply to the Project, nor shall any other provision of the San Francisco Municipal Code that conflicts with the fee collection and timing described in this Section 2.1.1. In addition, within thirty (30) days after the effective date of the Disposition and Development Agreement between OCII and Developer or an entity affiliated with Developer for Transbay Block 4, Developer shall submit to OCII an enforceable letter of credit on commercially reasonable terms for the full amount of the Affordable Housing Fee, substantially in the form attached to this Agreement as Exhibit ___.

2.1.2. Developer shall pay applicable Impact Fees and Exactions calculated on the basis of the schedule of fees published by the City for calendar year 2021. Planning Code Section 409(b), regarding annual escalation of Impact Fees and Exactions, shall not apply to the Project.

2.2. Vested Rights. The City, by entering into this Agreement, is limiting its future discretion with respect to Project approvals that are consistent with this Agreement during the Term. Consequently, the City shall not use its discretionary authority in considering any application to change the policy decisions reflected by the Agreement or otherwise to prevent or to delay development of the Project as set forth in the Agreement. Instead, implementing approvals that substantially conform to or implement the Agreement shall be issued by the City so long as they substantially comply with and conform to this Agreement. The City shall not use its discretionary authority to change the policy decisions reflected by this Agreement or otherwise to prevent or to delay development of the Project as contemplated in this Agreement. The City shall take no action under this Agreement nor impose any condition on the Project that would conflict with this Agreement.

2.3. Changes in Federal or State Laws. If Federal or State Laws issued, enacted, promulgated, adopted, passed, approved, made, implemented, amended, or interpreted after the Effective Date have gone into effect and (i) preclude or prevent compliance with one or more provisions of this Agreement, or

(ii) materially and adversely affect Developer's or the City's rights, benefits or obligations, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such Federal or State Law. In such event, this Agreement shall be modified only to the extent necessary or required to comply with such Law. If any such changes in Federal or State Laws would materially and adversely affect the construction, development, use, operation or occupancy of the Project such that the Development becomes economically infeasible, then Developer shall notify the City and propose amendments or solutions that would maintain the benefit of the bargain (that is this Agreement) for both Parties.

2.4. Changes to Development Agreement Statute. This Agreement has been entered into in reliance upon the provisions of the Development Agreement Statute. No amendment of or addition to the Development Agreement Statute which would affect the interpretation or enforceability of this Agreement or increase the obligations or diminish the development rights of Developer hereunder, or increase the obligations or diminish the benefits to the City hereunder shall be applicable to this Agreement unless such amendment or addition is specifically required by Law or is mandated by a court of competent jurisdiction. If such amendment or change is permissive rather than mandatory, this Agreement shall not be affected.

2.5. Taxes. Nothing in this Agreement limits the City's ability to impose new or increased taxes or special assessments, or any equivalent or substitute tax or assessment.

3. DEVELOPER REPRESENTATIONS, WARRANTIES AND COVENANTS

3.1. Interest of Developer; Due Organization and Standing. Developer represents that it is the legal owner of the Project Site, and that all other persons with an ownership or security interest in the Project Site have consented to this Agreement. Developer is a Delaware limited liability company. Developer has all requisite power to own its property and authority to conduct its business as presently conducted. Developer has made all required state filings required to conduct business in the State of California and is in good standing in the State of California.

3.2. No Conflict with Other Agreements; No Further Approvals; No Suits. Developer warrants and represents that it is not a party to any other agreement that would conflict with Developer's obligations under this Agreement. Neither Developer's articles of organization, bylaws, or operating agreement, as applicable, nor any other agreement or law in any way prohibits, limits or otherwise affects the right or power of Developer to enter into and perform all of the terms and covenants of this Agreement. 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 Developer of this Agreement or any of the terms and covenants contained in this Agreement. To Developer's knowledge, there are no pending or threatened suits or proceedings or undischarged judgments affecting Developer or any of its members before any court, governmental agency, or arbitrator which might materially adversely affect Developer's business, operations, or assets or Developer's ability to perform under this Agreement.

3.3. No Inability to Perform; Valid Execution. Developer warrants and represents that it has no knowledge of any inability to perform its obligations under this Agreement. The execution and delivery of this Agreement and the agreements contemplated hereby by Developer have been duly and validly authorized by all necessary action. This Agreement will be a legal, valid and binding obligation of Developer, enforceable against Developer in accordance with its terms.

3.4. Conflict of Interest. Through its execution of this Agreement, Developer acknowledges that it is familiar with the provisions of Section 15.103 of the City's Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code, and Section 87100 *et seq.* and Section 1090 *et seq.* of the California Government Code, and certifies that it does not know of any facts which constitute a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the Term.

3.5. Notification of Limitations on Contributions. Through execution of this Agreement, Developer acknowledges that it is familiar with Section 1.126 of City's Campaign and Governmental

Conduct Code, which prohibits any person who contracts with 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 the officer at any time from the commencement of negotiations for a contract as defined under Section 1.126 of the Campaign and Governmental Conduct Code until six (6) months after the date the contract is approved by the City elective officer or the board on which that City elective officer serves. San Francisco Ethics Commission Regulation 1.126 1 provides that negotiations are commenced when a prospective contractor first communicates with a City officer or employee about the possibility of obtaining a specific contract. This communication may occur in person, by telephone or in writing, and may be initiated by the prospective contractor or a City officer or employee. Negotiations are completed when a contract is finalized and signed by the City and the contractor. Negotiations are terminated when the City and/or the prospective contractor end the negotiation process before a final decision is made to award the contract.

3.6. Other Documents. No document furnished or to be furnished by Developer to the City in connection with this Agreement contains or will contain to Developer's knowledge any untrue statement of material fact or omits or will omit a material fact necessary to make the statements contained therein not misleading under the circumstances under which any such statement shall have been made.

3.7. No Suspension or Debarment. Neither Developer, nor any of its officers, have been suspended, disciplined or debarred by, or prohibited from contracting with, the U.S. General Services Administration or any federal, state or local governmental agency.

3.8. No Bankruptcy. Developer represents and warrants to City that Developer has neither filed nor is the subject of any filing of a petition under the federal bankruptcy law or any federal or state insolvency laws or laws for composition of indebtedness or for the reorganization of debtors, and, to the best of Developer's knowledge, no such filing is threatened.

3.9. Taxes. Without waiving any of its rights to seek administrative or judicial relief from such charges and levies, Developer shall pay and discharge all taxes, assessments and governmental charges or levies imposed on it or on its income or profits or on any of its property before the date on which penalties attach thereto, and all lawful claims which, if unpaid, would become a lien upon the Project Site.

3.10. Notification. Developer shall promptly notify City in writing of the occurrence of any event which might materially and adversely affect Developer or Developer's business, or that would make any of the representations and warranties herein untrue, or that would, with the giving of notice or passage of time over the Term, constitute a default under this Agreement.

3.11. Nexus/Reasonable Relationship Waiver. Developer consents to, and waives any rights it may have now or in the future, to challenge with respect to the Project, the legal validity of, the conditions, requirements, policies, or programs required by this Agreement, including, without limitation, any claim that they constitute an abuse of police power, violate substantive due process, deny equal protection of the laws, effect a taking of property without payment of just compensation, or impose an unlawful tax.

3.12. Indemnification of City. Developer shall Indemnify the City and OCII (each an "Indemnified Party") and the Indemnified Party's officers, agents and employees from and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims ("Losses") arising or resulting directly or indirectly from this Agreement and Developer's performance (or nonperformance) of this Agreement, regardless of the negligence of and regardless of whether liability without fault is imposed or sought to be imposed an Indemnified Party, except to the extent that such Indemnity is void or otherwise unenforceable under applicable law, and except to the extent such Loss is the result of the active negligence or willful misconduct of an Indemnified Party. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs, and the Indemnified Party's cost of investigating any claims against the Indemnified Party. All Indemnifications set forth in this Agreement shall survive the expiration or termination of this Agreement.

3.13. Payment of Fees and Costs.

3.13.1. Developer shall pay to the City all City Costs (defined below) during the Term within thirty (30) days following receipt of a written invoice from the City. Each City Agency shall submit to the Planning Department or another City agency as designated by the Planning Department monthly or quarterly invoices for all City Costs incurred by the City Agency for reimbursement under this Agreement, and the Planning Department or its designee shall gather all such invoices so as to submit one City bill to Developer each month or quarter. To the extent that a City Agency fails to submit such invoices, then the Planning Department or its designee shall request and gather such billing information, and any City Cost that is not invoiced to Developer within eighteen (18) months from the date the City Cost was incurred shall not be recoverable. For purposes of this Agreement, "**City Costs**" means the actual and reasonable costs incurred by a City Agency or OCII in preparing, adopting or amending this Agreement, in performing its obligations or defending its actions under this Agreement or otherwise contemplated by this Agreement, as determined on a time and materials basis, including reasonable attorneys' fees and costs but excluding work, hearings, costs or other activities contemplated or covered by the standard fee(s) (i.e., processing fees) imposed by the City upon the submission of an application for a permit or approval, other than impact fees or exactions, in accordance with City practice on a City-wide basis.

3.13.2. The City shall not be required to process any requests for approval or take other actions under this Agreement during any period in which payments from Developer are past due. If such failure to make payment continues for a period of more than sixty (60) days following notice, it shall be a Default for which the City shall have all rights and remedies as set forth in Section 7.4.

3.14. Mello-Roos Community Facilities District. The Project shall be subject to the provisions of the proposed City and County of San Francisco Transbay Center District Plan [Mello-Roos] Community Facilities District No. 2014-1 (Transbay Transit Center) ("**CFD**"), once established, to help pay the costs of constructing the new Transbay Transit Center, the Downtown Rail Extension ("DTX"), and other improvements in the Transit Center District Plan area. The special tax rate has been established, as included in the CFD Rate and Method of Apportionment ("RMA") attached hereto as Exhibit C.

3.14.1. If the Project is not subject to a CFD that will help pay the costs of constructing the new Transbay Transit Center, the DTX, and other improvements in the Transit Center District Plan area on the date that a Final C of O is issued to the Developer, then the Developer will be required to pay to the City for transmittal to the TJPA, and retention by the City as applicable, of the estimated CFD taxes amount that would otherwise be due to the San Francisco Office of the Assessor-Recorder ("**Assessor-Recorder**") if the CFD had been established in accordance with the rates established in the RMA.

3.14.2. The "amount that would otherwise be due" under 3.14(i) above shall be based on the RMA attached hereto as Exhibit C, calculated as if the Project were subject to the RMA from the date of issuance of the Final C of O until the Project is subject to the CFD.

3.14.3. If the City proposes a CFD covering the Site, Developer agrees to cast its vote in favor of the CFD, provided that the tax rates are not greater than the Base Special Tax rates in the RMA attached as Exhibit C to this Agreement.

4. MUTUAL OBLIGATIONS

4.1. Notice of Completion or Revocation. Upon the Parties' completion of performance or revocation of this Agreement, a written statement acknowledging such completion or revocation, signed by the appropriate agents of City and Developer, shall be recorded in the Official Records.

4.2. Estoppel Certificate. Developer may, at any time, and from time to time, deliver written notice to the Planning Director requesting that the Planning Director certify in writing that to the best of his or her knowledge: (i) this Agreement is in full force and effect and a binding obligation of the Parties; (ii) this Agreement has not been amended or modified either orally or in writing, and if so amended or modified, identifying the amendments or modifications and stating their date and nature; (iii) Developer is not in default in the performance of its obligations under this Agreement, or if in default, describing therein the nature and amount of any such defaults; and (iv) the findings of the City with respect to the most recent annual review performed pursuant to Section 9.2 below. The Planning Director shall execute

and return such certificate within forty-five (45) days following receipt of the request. Each Party acknowledges that any mortgagee with a mortgage on all or part of the Project Site, acting in good faith, may rely upon such a certificate. A certificate provided by the City establishing the status of this Agreement with respect to any lot or parcel shall be in recordable form and may be recorded with respect to the affected lot or parcel at the expense of the recording party.Cooperation in the Event of Third-Party Challenge.

4.3.1. In the event any legal action or proceeding is instituted challenging the validity of any provision of this Agreement, the Parties shall cooperate in defending against such challenge. The City shall promptly notify Developer of any Third-Party Challenge instituted against the City.

4.3.2. Developer shall assist and cooperate with the City at its own expense in connection with any Third-Party Challenge. The City Attorney's Office may use its own legal staff or outside counsel in connection with defense of the Third-Party Challenge, at the City Attorney's sole discretion. Developer shall reimburse the City for its actual costs in defense of the action or proceeding, including but not limited to the time and expenses of the City Attorney's Office and any consultants; *provided, however,* Developer shall have the right to receive monthly invoices for all such costs. Developer shall Indemnify the City from any other liability incurred by the City, its officers, and its employees as the result of any Third-Party Challenge, including any award to opposing counsel of attorneys' fees or costs, except where such award is the result of the willful misconduct of the City or its officers or employees. This section shall survive any judgment invalidating all or any part of this Agreement.

4.3.3. Affordable Housing Fee Challenge. The Parties agree that if a Third-Party Challenge is initiated regarding the validity or enforceability of this Agreement or, specifically of the Affordable Housing Fee, Developer shall not sell or lease the residential units designated for and required to complete the On-Site Requirements until the validity and enforceability of this Agreement, including payment of the Affordable Housing Fee, has been finally determined and upheld. If this Agreement or the Affordable Housing Fee is not upheld (on any final appeal), then Developer will satisfy the On-Site Requirements with the designated residential units.

4.4. Good Faith and Fair Dealing. The Parties shall cooperate with each other and act in good faith in complying with the provisions of this Agreement. In their course of performance under this Agreement, the Parties shall cooperate and shall undertake such actions as may be reasonably necessary to implement the Project as contemplated by this Agreement.

4.5. Agreement to Cooperate; Other Necessary Acts. The Parties agree to cooperate with one another to expeditiously implement the Project in accordance with this Agreement, and to undertake and complete all actions or proceedings reasonably necessary or appropriate to ensure that the objectives of the Agreement are fulfilled during the Term. Each Party shall use good faith efforts to take such further actions as may be reasonably necessary to carry out this Agreement, in accordance with the terms of this Agreement (and subject to all applicable laws) in order to provide and secure to each Party the full and complete enjoyment of its rights and privileges hereunder.

5. PERIODIC REVIEW OF DEVELOPER'S COMPLIANCE

5.1. Annual Review. Pursuant to Section 65865.1 of the Development Agreement Statute, at the beginning of the second week of each January following final adoption of this Agreement and for so long as the Agreement is in effect (the "**Annual Review Date**"), the Planning Director shall commence a review to ascertain whether Developer has, in good faith, complied with the Agreement. The failure to commence such review in January shall not waive the Planning Director's right to do so later in the calendar year. The Planning Director may elect to forego an annual review if no significant construction work occurred on the Project Site during that year, or if such review is otherwise not deemed necessary.

5.2. Review Procedure. In conducting the required initial and annual reviews of Developer's compliance with this Agreement, the Planning Director shall follow the process set forth in this Section.Required Information from Developer. Upon request by the Planning Director but not more than sixty (60) days and not less than forty-five (45) days before the Annual Review Date, Developer shall

provide a letter to the Planning Director confirming, with appropriate backup documentation, Developer's compliance with this Agreement for the preceding calendar year. The Planning Director shall post a copy of Developer's submittals on the Planning Department's website.

5.2.2. City Compliance Review. The Planning Director shall notify Developer in writing whether Developer has complied with the terms of this Agreement (the "City Report"), and post the City Report on the Planning Department's website. If the Planning Director finds Developer not in compliance with this Agreement, then the City may pursue available rights and remedies in accordance with this Agreement and Chapter 56. The City's failure to initiate or to timely complete the annual review shall not be a Default and shall not be deemed to be a waiver of the right to do so at a later date. All costs incurred by the City under this section shall be included in the City Costs.

6. AMENDMENT; TERMINATION; EXTENSION OF TERM

6.1. Amendment or Termination. Except as provided in Section XX (Changes in State and Federal Rules and Regulations) and Section XXX (Remedies), this Agreement may only be amended or terminated with the mutual written consent of the Parties. Except as provided in this Agreement to the contrary, the amendment or termination, and any required notice thereof, shall be accomplished in the manner provided in the Development Agreement Statute and Chapter 56.Extension Due to Legal Action, Referendum, or Excusable Delay.If any litigation is filed challenging this Agreement or the validity of this Agreement or any of its provisions and it directly or indirectly delays this Agreement, then the Term shall be extended for the number of days equal to the period starting from the commencement of the litigation or the suspension to the end of such litigation or suspension (a "Litigation Extension"). The Parties shall document the start and end of a Litigation Extension in writing within thirty (30) days from the applicable dates.

6.2.2. In the event of changes in State or Federal Laws or regulations, inclement weather, delays due to strikes, inability to obtain materials, civil commotion, war, acts of terrorism, fire, acts of God, litigation, lack of availability of commercially-reasonable project financing (as a general matter and not specifically tied to Developer), or other circumstances beyond the control of Developer and not proximately caused by the acts or omissions of Developer that substantially interfere with carrying out the obligations under this Agreement ("Excusable Delay"), the Parties agree to extend the time periods for performance, as such time periods have been agreed to by Developer, of Developer's obligations impacted by the Excusable Delay. In the event that an Excusable Delay occurs, Developer shall notify the City in writing of such occurrence and the manner in which such occurrence substantially interferes with the ability of Developer to perform under this Agreement. In the event of the occurrence of any such Excusable Delay, the time or times for performance of the obligations of Developer, will be extended for the period of the Excusable Delay if Developer cannot, through commercially reasonable and diligent efforts, make up for the Excusable Delay within the time period remaining before the applicable completion date; *provided*, *however*, within thirty (30) days after the beginning of any such Excusable Delay, Developer shall have first notified City of the cause or causes of such Excusable Delay and claimed an extension for the reasonably estimated period of the Excusable Delay. In the event that Developer stops any work as a result of an Excusable Delay, Developer must take commercially reasonable measures to ensure that the affected real property is returned to a safe condition and remains in a safe condition for the duration of the Excusable Delay.

6.2.3. The foregoing Section 6.2.2 notwithstanding, Developer may not seek to delay the payment of the Affordable Housing Fee as a result of an Excusable Delay related to the lack of availability of commercially reasonable project financing.

7. ENFORCEMENT OF AGREEMENT; REMEDIES FOR DEFAULT; DISPUTE RESOLUTION

7.1. Enforcement. The only Parties to this Agreement are the City and Developer. This Agreement is not intended, and shall not be construed, to benefit or be enforceable by any other person or entity whatsoever.

7.2. Default. For purposes of this Agreement, the following shall constitute an event of default (an "**Event of Default**") under this Agreement: (i) except as otherwise specified in this Agreement, the failure to make any payment within ninety (90) calendar days of when due; and (ii) the failure to perform or fulfill any other material term, provision, obligation, or covenant hereunder, including complying with all terms of the Conditions of Approval, attached hereto as Exhibit D, and the continuation of such failure for a period of thirty (30) calendar days following a written notice of default and demand for compliance (a "**Notice of Default**"); *provided*, *however*, if a cure cannot reasonably be completed within thirty (30) days, then it shall not be considered a default if a cure is commenced within said 30-day period and diligently prosecuted to completion thereafter.

7.3. Notice of Default. Prior to the initiation of any action for relief specified in Section XX below, the Party claiming default shall deliver to the other Party a Notice of Default. The Notice of Default shall specify the reasons for the allegation of default with reasonable specificity. If the alleged defaulting Party disputes the allegations in the Notice of Default, then that Party, within twenty-one (21) calendar days of receipt of the Notice of Default, shall deliver to the other Party a notice of non-default which sets forth with specificity the reasons that a default has not occurred. The Parties shall meet to discuss resolution of the alleged default within thirty (30) calendar days of the delivery of the notice of non-default. If, after good faith negotiation, the Parties fail to resolve the alleged default within thirty (30) calendar days, then the Party alleging a default may (i) institute legal proceedings pursuant to Section XX to enforce the terms of this Agreement or (ii) send a written notice to terminate this Agreement pursuant to Section XX. The Parties may mutually agree in writing to extend the time periods set forth in this Section.Remedies.

7.4.1. Specific Performance; Termination. In the event of an Event of Default under this Agreement, the remedies available to a Party shall include specific performance of the Agreement in addition to any other remedy available at law or in equity (subject to the limitation on damages set forth in Section XX below). In the event of an Event of Default under this Agreement, and following a public hearing at the Board of Supervisors regarding such Event of Default and proposed termination, the non-defaulting Party may terminate this Agreement by sending a notice of termination to the other Party setting forth the basis for the termination. The Party alleging a material breach shall provide a notice of termination to the breaching Party, which notice of termination shall state the material breach. The Agreement will be considered terminated effective upon the date set forth in the notice of termination, which shall in no event be earlier than ninety (90) days following delivery of the notice. The Party receiving the notice of termination may take legal action available at law or in equity if it believes the other Party's decision to terminate was not legally supportable.

7.4.2. Actual Damages. Developer agrees that the City shall not be liable to Developer for damages under this Agreement, and the City agrees that Developer shall not be liable to the City for damages under this Agreement, and each covenants not to sue the other for or claim any damages under this Agreement and expressly waives its right to recover damages under this Agreement, except as follows: (1) the City shall have the right to recover actual damages only (and not consequential, punitive or special damages, each of which is hereby expressly waived) for (a) Developer's failure to pay sums to the City as and when due under this Agreement, but subject to any express conditions for such payment set forth in this Agreement, and (b) Developer's failure to make payment due under any Indemnity in this Agreement, and (2) either Party shall have the right to recover attorneys' fees and costs as set forth in Section XX, when awarded by an arbitrator or a court with jurisdiction. For purposes of the foregoing, "actual damages" shall mean the actual amount of the sum due and owing under this Agreement, with interest as provided by law, together with such judgment collection activities as may be ordered by the judgment, and no additional sums.

7.5. Dispute Resolution. The Parties recognize that disputes may arise from time to time regarding application to the Project. Accordingly, in addition and not by way of limitation to all other remedies available to the Parties under the terms of this Agreement, including legal action, the Parties agree to follow the dispute resolution procedure in Section XX that is designed to expedite the resolution of such disputes. If, from time to time, a dispute arises between the Parties relating to application to the Project the dispute shall initially be presented by Planning Department staff to the Planning Director, for

resolution. If the Planning Director decides the dispute to Developer's satisfaction, such decision shall be deemed to have resolved the matter. Nothing in this section shall limit the rights of the Parties to seek judicial relief in the event that they cannot resolve disputes through the above process.

7.6. Dispute Resolution Related to Changes in State and Federal Rules and Regulations. The Parties agree to the follow the dispute resolution procedure in this Section XX for disputes regarding the effect of changes to State and federal rules and regulations to the Project pursuant to Section XX. Good Faith Meet and Confer Requirement. The Parties shall make a good faith effort to resolve the dispute before non-binding arbitration. Within five (5) business days after a request to confer regarding an identified matter, representatives of the Parties who are vested with decision-making authority shall meet to resolve the dispute. If the Parties are unable to resolve the dispute at the meeting, the matter shall immediately be submitted to the arbitration process set forth in Section XX.

7.6.2. Non-Binding Arbitration. The Parties shall mutually agree on the selection of an arbiter at JAMS in San Francisco or other mutually agreed to Arbiter to serve for the purposes of this dispute. The arbiter appointed must meet the Arbiters' Qualifications. The "Arbiters' Qualifications" shall be defined as at least ten (10) years of experience in a real property professional capacity, such as a real estate appraiser, broker, real estate economist, or attorney, in the Bay Area. The disputing Party(ies) shall, within ten (10) business days after submittal of the dispute to non-binding arbitration, submit a brief with all supporting evidence to the arbiter with copies to all Parties. Evidence may include, but is not limited to, expert or consultant opinions, any form of graphic evidence, including photos, maps or graphs and any other evidence the Parties may choose to submit in their discretion to assist the arbiter in resolving the dispute. In either case, any interested Party may submit an additional brief within ten (10) business days after distribution of the initial brief. The arbiter thereafter shall hold a telephonic hearing and issue a decision in the matter promptly, but in any event within five (5) business days after the submittal of the last brief, unless the arbiter determines that further briefing is necessary, in which case the additional brief(s) addressing only those items or issues identified by the arbiter shall be submitted to the arbiter (with copies to all Parties) within five (5) business days after the arbiter's request, and thereafter the arbiter shall hold a telephonic hearing and issue a decision promptly but in any event not sooner than two (2) business days after submission of such additional briefs, and no later than thirty-two (32) business days after initiation of the non-binding arbitration. Each Party will give due consideration to the arbiter's decision before pursuing further legal action, which decision to pursue further legal action shall be made in each Party's sole and absolute discretion.

7.7. Attorneys' Fees. Should legal action be brought by either Party against the other for an Event of Default under this Agreement or to enforce any provision herein, the prevailing party in such action shall be entitled to recover its reasonable attorneys' fees and costs. For purposes of this Agreement, "reasonable attorneys' fees and costs" shall mean the fees and expenses of counsel to the Party, which may include printing, duplicating and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals, librarians and others not admitted to the bar but performing services under the supervision of an attorney. The term "reasonable attorneys' fees and costs" shall also include, without limitation, all such fees and expenses incurred with respect to appeals, mediation, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees and costs were incurred. For the purposes of this Agreement, the reasonable fees of attorneys of City Attorney's Office 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 Office'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.

7.8. No Waiver. Failure or delay in giving a Notice of Default shall not constitute a waiver of such Event of Default, nor shall it change the time of such Event of Default. Except as otherwise expressly provided in this Agreement, any failure or delay by a Party in asserting any of its rights or remedies as to any Event of Default shall not operate as a waiver of any Event of Default or of any such rights or remedies, nor shall it deprive any such Party of its right to institute and maintain any actions or proceedings that it may deem necessary to protect, assert, or enforce any such rights or remedies.

7.9. Future Changes to Existing Standards. Pursuant to Section 65865.4 of the Development Agreement Statute, unless this Agreement is terminated by mutual agreement of the Parties or terminated for default as set forth in Section XX, either Party may enforce this Agreement notwithstanding any change in any applicable general or specific plan, zoning, subdivision, or building regulation adopted by the City or the voters by initiative or referendum (excluding any initiative or referendum that successfully defeats the enforceability or effectiveness of this Agreement itself).

7.10. Joint and Several Liability. If Developer consists of more than one person or entity with respect to any real property within the Project Site or any obligation under this Agreement, then the obligations of each such person and/or entity shall be joint and several.

8. MISCELLANEOUS PROVISIONS

8.1. Entire Agreement. This Agreement, including the preamble paragraph, Recitals and Exhibits, constitute the entire understanding and agreement between the Parties with respect to the subject matter contained herein.

8.2. Binding Covenants; Run With the Land. Pursuant to Section 65868 of the Development Agreement Statute, from and after recordation of this Agreement, all of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the Parties and, subject to Article XX above, their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, and all persons or entities acquiring the Project Site, or any portion thereof, or any interest therein, whether by sale, operation of law, or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. All provisions of this Agreement shall be enforceable during the Term as equitable servitudes and constitute covenants and benefits running with the land pursuant to applicable law, including but not limited to California Civil Code section 1468.

8.3. Applicable Law and Venue. This Agreement has been executed and delivered in and shall be interpreted, construed, and enforced in accordance with the laws of the State of California. All rights and obligations of the Parties under this Agreement are to be performed in the City and County of San Francisco, and such City and County shall be the venue for any legal action or proceeding that may be brought, or arise out of, in connection with or by reason of this Agreement.Construction of Agreement. The Parties have mutually negotiated the terms and conditions of this Agreement and its terms and provisions have been reviewed and revised by legal counsel for both the City and Developer. Accordingly, no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement. Language in this Agreement shall be construed as a whole and in accordance with its true meaning. The captions of the paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of construction. Each reference in this Agreement or to this Agreement shall be deemed to refer to the Agreement as amended from time to time pursuant to the provisions of the Agreement, whether or not the particular reference refers to such possible amendment.Project Is a Private Undertaking; No Joint Venture or Partnership.

8.5.1. The Project is a private development and no portion shall be deemed a public work. The City has no interest in, responsibility for, or duty to third persons concerning the Project. Developer shall exercise full dominion and control over the Project Site, subject only to the limitations and obligations of Developer contained in this Agreement.

8.5.2. Nothing contained in this Agreement, or in any document executed in connection with this Agreement, shall be construed as creating a joint venture or partnership between the City and Developer. Neither Party is acting as the agent of the other Party in any respect hereunder. Developer is not a state or governmental actor with respect to any activity conducted by Developer hereunder.

8.6. Recordation. Pursuant to Section 65868.5 of the Development Agreement Statute, the clerk of the Board shall cause a copy of this Agreement or any amendment thereto to be recorded in the

Official Records within ten (10) business days after the Effective Date of this Agreement or any amendment thereto, as applicable, with costs to be borne by Developer.

8.7. Obligations Not Dischargeable in Bankruptcy. Developer's obligations under this Agreement are not dischargeable in bankruptcy.Signature in Counterparts. This Agreement may be executed in duplicate counterpart originals, each of which is deemed to be an original, and all of which when taken together shall constitute one and the same instrument.

8.9. Time of the Essence. Time is of the essence in the performance of each and every covenant and obligation to be performed by the Parties under this Agreement.

8.10. Notices. Any notice or communication required or authorized by this Agreement shall be in writing and may be delivered personally or by registered mail, return receipt requested. Notice, whether given by personal delivery or registered mail, shall be deemed to have been given and received upon the actual receipt by any of the addressees designated below as the person to whom notices are to be sent. Either Party to this Agreement may at any time, upon written notice to the other Party, designate any other person or address in substitution of the person and address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

To City:

Rich Hillis
Director of Planning
San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco, California 94102

with a copy to:

Dennis J. Herrera, Esq.
City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102

To Developer:

Parcel F Owner, LLC
c/o Hines
101 California Street, Suite 1000
San Francisco, CA 94111
Attn: Cameron Falconer
Telephone: (415) 982-6200

with a copy to:

Charles J. Higley, Esq.
Farella Braun + Martel LLP
235 Montgomery Street, 17th Floor
San Francisco, California, 94104

8.11. Limitations on Actions. Pursuant to Section 56.19 of the Administrative Code, any decision of the Board of Supervisors made pursuant to Chapter 56 shall be final. Any court action or proceeding to attack, review, set aside, void, or annul any final decision or determination by the Board shall be commenced within ninety (90) days after such decision or determination is final and effective. Any court action or proceeding to attack, review, set aside, void or annul any final decision by (i) the Planning Director made pursuant to Administrative Code Section 56.15(d)(3) or (ii) the Planning Commission pursuant to Administrative Code Section 56.17(e) shall be commenced within ninety (90) days after said decision is final.Severability. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, or if any such term, provision, covenant, or condition does not become effective until the approval of any Non-City Responsible Agency, the remaining provisions of this Agreement shall continue in full force and effect unless enforcement of the remaining portions of the Agreement would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement. Notwithstanding the foregoing, the Developer and the City agree that the Agreement will terminate and be on no force or effect if Section 2.1 herein is found invalid, void or unenforceable.

8.13. Sunshine. Developer understands and agrees that under the City's Sunshine Ordinance (Administrative Code, Chapter 67) and the California Public Records Act (California Government Code section 6250 *et seq.*), this Agreement and any and all records, information, and materials submitted to the City hereunder are public records subject to public disclosure. To the extent that Developer in good faith believes that any financial materials reasonably requested by the City constitutes a trade secret or confidential proprietary information protected from disclosure under the Sunshine Ordinance and other applicable laws, Developer shall mark any such materials as such, . When a City official or employee receives a request for information that has been so marked or designated, the City may request further evidence or explanation from Developer. If the City determines that the information does not constitute a trade secret or proprietary information protected from disclosure, the City shall notify Developer of that conclusion and that the information will be released by a specified date in order to provide Developer an opportunity to obtain a court order prohibiting disclosure.

8.14. OCII an Intended Third Party Beneficiary. OCII is an express third party beneficiary of this Agreement and shall be entitled to enforce the provisions of this Agreement as if it were a party hereto.

[Remainder of Page Intentionally Blank;

Signature Page Follows]

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

CITY

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

By:_____

Director of Planning

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

By:_____
Heidi J. Gewertz
Deputy City Attorney

Approved on _____
Board of Supervisors Ordinance No. _____

DEVELOPER

Parcel F Owner, LLC, a Delaware limited liability company

By: _____

Name: _____

Title: _____

DRAFT FOR NEGOTIATION PURPOSES ONLY – SUBJECT TO CHANGE

EXHIBIT

Exhibit Test START HERE

SAN FRANCISCO
PLANNING DEPARTMENT

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Planning Commission Motion No. 20615

HEARING DATE: JANUARY 9, 2020

Record Number:	**2016-013312SHD**
Project Address:	**542-550 Howard Street (Transbay Parcel F)**
Existing Zoning:	C-3-O(SD) Downtown-Office (Special Development) Zoning District 750-S-2 and 450-S Height and Bulk Districts Transit Center C-3-O(SD) Commercial and Transbay C-3 Special Use Districts Downtown and Transit Center District Plan Areas
Block/Lot:	3721/016, 135, 136, 138
Project Sponsor:	F4 Transbay Partners, LLC 101 California Street, Suite 1000 San Francisco, CA 94111
Property Owner:	Parcel F Owner, LLC 101 California Street, Suite 1000 San Francisco, CA 94111
Staff Contact:	Nicholas Foster, AICP, LEED GA nicholas.foster@sfgov.org, (415) 575-9167

ADOPTING FINDINGS, WITH THE RECOMMENDATION OF THE RECREATION AND PARK COMMISSION, THAT NET NEW SHADOW CAST UPON UNION SQUARE PLAZA AND WILLIE "WOO WOO" WONG PLAYGROUND BY THE PROPOSED PROJECT AT 542-550 HOWARD STREET ("PARCEL F") WOULD NOT BE ADVERSE TO THEIR USE.

PREAMBLE

Under Planning Code Section 295, a building permit application for a project exceeding a height of 40 feet cannot be approved if there is any shadow impact on a property under the jurisdiction of the Recreation and Park Department, unless the Planning Commission, upon recommendation from the Recreation and Park Commission, makes a determination that the shadow impact will not be significant or adverse.

On February 7, 1959, the Recreation and Park Commission and the Planning Commission adopted criteria establishing absolute cumulative limits for additional shadows on fourteen parks throughout San Francisco (Planning Commission Resolution No. 11595).

Planning Code Section 295 was adopted in 1985 in response to voter-approved Proposition K, which required Planning Commission disapproval of any structure greater than 40 feet in height that cast a shadow on property under the jurisdiction of the Recreation and Park Department, unless the Planning Commission found the shadow would not be significant. In 1989, the Recreation and Park Commission and Planning Commission jointly adopted a memorandum ("1989 Memorandum") which identified quantitative and qualitative criteria for determinations of significant shadows in parks under the jurisdiction of the Recreation and Park Department.

The 1989 Memorandum established generic criteria for determining a potentially permissible quantitative limit for additional shadows, known as the absolute cumulative limit, for parks not named in the memorandum. Guy Place Mini Park ("Park") is a proposed new park under the jurisdiction of the Recreation and Park Department. The Park was not named in the 1989 Memorandum and is considered a small park which is shadowed more than 20 percent of the time during the year. As such, the 1989 Memorandum recommended that no additional shadow could be potentially permitted unless the shadow meets the qualitative criteria of the 1989 Memorandum. The qualitative criteria includes existing shadow profiles, important times of day and seasons in the year associated with the park's use, the size and duration of new shadows, and the public good served by the buildings casting new shadow. Approval of new shadow on the Park would require hearings at the Recreation and Park Commission and the Planning Commission.

The environmental effects of the Project were determined by the San Francisco Planning Department to have been fully reviewed under the Transit Center District Plan Environmental Impact Report (hereinafter "EIR"). On May 24, 2012, the Planning Commission reviewed and considered the Final EIR ("FEIR") and found that the contents of said report and the procedures through which the FEIR 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").

The Transit Center District Plan EIR is a program-level EIR. Pursuant to CEQA Guideline 15168(c)(2), if the lead agency finds that no new effects could occur or no new mitigation measures would be required of a subsequent project in the program area, the agency may approve the project as being within the scope of the project covered by the program EIR, and no new or additional environmental review is required. In certifying the Transit Center District Plan FEIR, the Planning Commission adopted CEQA findings in its Motion No. 18629 and hereby incorporates such Findings by reference herein.

The TCDP PEIR considered reasonably foreseeable future projects on 13 specific sites in the TCDP, based on generalized massing models of buildings at the heights that would be allowed under the TCDP. The PEIR found that new shadows from development within the plan area would affect nine parks, eight of which have established Absolute Cumulative Limits (ACLs) for net new shadow under section 295. Considered together, development under the TCDP would require that the ACLs be increased on seven downtown parks. No mitigation is available for shadow impacts on existing parks, because it not possible to lessen the intensity or otherwise reduce the shadow cast by a building at a given height and bulk. Therefore, the TCDP PEIR found the plan would have a significant and unavoidable impact with respect to shadow.

On October 11, 2012, the Planning Commission and the Recreation and Park Commission held a duly noticed joint public hearing on and adopted Planning Commission Resolution No. 18717 and Recreation and Park Commission Resolution No. 1201-001 raising the ACLs for seven open spaces under the jurisdiction of the Recreation & Park Department that could be shadowed by likely cumulative development sites in the Plan area, including the Project. In revising these ACLs the Commissions also adopted qualitative criteria for each park related to the characteristics of shading within these ACLs that

would not be considered adverse, including the duration, time of day, time of year, and location of shadows on the particular parks. At the hearing on October 11, 2012, the Recreation and Park Commission also recommended that the General Manager of the Recreation & Park Department recommend to the Planning Commission that the shadows cast by the Project on certain properties under the jurisdiction of the Recreation & Park Department are not adverse to the use of these properties, and that the Planning Commission allocate to the Project allowable shadow from the absolute cumulative shadow limits of six of these properties.

On August 27, 2019, the Department determined that the Project did not require further environmental review under Section 15183 of the CEQA Guidelines and Public Resources Code Section 21083.3. The Project is consistent with the adopted zoning controls in the Transit Center District Plan and was encompassed within the analysis contained in the Transit Center District Plan FEIR. Since the Transit Center District Plan FEIR was finalized, there have been no substantial changes to the Transit Center District Plan and no substantial changes in circumstances that would require major revisions to the FEIR due to the involvement of new significant environmental effects or an increase in the severity of previously identified significant impacts, and there is no new information of substantial importance that would change the conclusions set forth in the FEIR. The file for this Project, including the Transit Center District Plan FEIR and the Community Plan Exemption certificate, is available for review at the San Francisco Planning Department, 1650 Mission Street, Suite 400, San Francisco, California.

The Planning Department prepared an initial shadow fan that indicated the Project may cast a shadow on both Union Square Plaza and Willie "Woo Woo" Wong Playground, properties under the jurisdiction of the San Francisco Recreation and Park Department.

On October 17, 2018, Cameron Falconer of Hines, acting on behalf of F4 Transbay Partners, LLC (hereinafter "Project Sponsor"), filed application No. 2016-013312SHD to analyze shadow impacts associated with the proposed project ("Project") located at 542-550 Howard Street ("Parcel F"), within Lots 016,135,136 and 138 of Assessor's Block 3721. The Project includes the construction of a new 61-story mixed-use building reaching a height of 749'-10" tall (800' inclusive of rooftop screening/mechanical equipment). The Project would include 165 dwelling units, 189 hotel rooms, approximately 276,000 square feet of office use floor area, approximately 79,000 square feet of floor area devoted to shared amenity space, approximately 9,000 square feet of retail space, approximately 20,000 square feet of open space, 177 Class 1 and 39 Class 2 bicycle parking spaces, and four below-grade levels that would accommodate up to 183 vehicle parking spaces provided for the residential, hotel, and office uses. The Project also would construct a pedestrian bridge providing public access to Salesforce Park located on the roof of the Transbay Transit Center.

To evaluate the design of the Project, a project-specific shadow study ("Shadow Study") was performed using a detailed 3-D model. The analysis performed by qualified consultants ("FASTCAST") modeled the proposed Project and site consistent with the projects architectural and engineering plan description in addition to utilizing high resolution topography mapping. FASTCAST's methodology and base data is considered highly accurate and to the appropriate level of detail required for a Section 295 shadow analysis. The results of the Shadow Study, including a

quantitative analysis of potential shadow impacts on Section 295 parks and qualitative analysis of project consistency with other Planning Code sections regulating new shadow [Sections 146(c), 147, and 260(b)(1)(M)], and potential significant shadow impacts under CEQA were discussed in the Project's Community Plan Exemption certificate.

Union Square Plaza is an approximately 2.42-acre (105,516-square feet) public plaza, located approximately 0.50 mile west of the Site. Union Square Plaza contains landscaped areas, walkways, and areas for active and passive uses. The Project would add new shadow to Union Square Plaza in the early morning between 7:44 a.m. until no later than 8:15 a.m. from August 30 through September 13 and from March 29 through April 12 for a total of six weeks. Net new shadow would be cast on the northwest portion of Union Square Plaza, which includes primarily open space, stairs, and portable seating with tables, chairs, and umbrellas.

The average duration of new shadow from the proposed project on Union Square Plaza would be 18 minutes. The maximum extent of net new shadow cast by the proposed project would occur on September and April 5 at 7:44 a.m., when approximately 14,956 square feet of project shadow would fall on the northwest portion of Union Square, covering approximately 14.17 percent of the park and increasing shadow coverage from 82.33 percent of the park to 96.5 percent coverage of the park, with only a small sliver of sunlight remaining. The greatest amount of net new daily shadow from the proposed project would also occur on September 6 and April 5, when the project would add approximately 4,687 square foot hours of new shadow.

The existing annual shadow coverage on Union Square Plaza is 44.99 percent shaded relative to the TAAS (approximately 392,667,242 square foot hours of shadow). The quantitative analysis found that the Project would add approximately 0.03 percent new shadow, relative to TAAS (approximately 115,526 sfh of shadow) for a total of 45.02 percent shaded under existing plus project conditions. The Project would add 0.03 net new shadow, within the current ACL of 0.14, leaving a remaining "shadow budget" of 0.11 percent of TAAS.

Willie "Woo Woo" Wong Playground is an approximately 0.61-acre (26,563 square feet) urban park, located approximately 0.62 mile northwest of the Site. The park contains two sand-floor playgrounds, and basketball, tennis and volleyball courts. It also includes a recreational center that hosts afterschool programs and indoor gym and ping-pong tables. The Project would add new shadow to Willie "Woo Woo" Wong Playground in the early morning starting after 8:00 a.m. and ending before 8:30 a.m. for a total of 11 weeks of the year between November 15 and November 22 and between January 18 and January 25. The net new shadow would cover 2,628 square feet (or 9.89 percent) of the playground and would be cast on a portion of the northwest side of the tennis courts.

The average duration of new shadow resulting from the proposed project on Willie "Woo Woo" Wong Playground would be 10 minutes, 48 seconds. The greatest amount of net new daily shadow from the proposed project would occur on November 29 and January 11 at 8:15 a.m., when the project would add approximately 2,628 sfh of new shadow. The duration of net new project shadow reaching Willie "Woo Woo" Wong Playground during the year would be 11 weeks, slightly larger than the eight weeks analyzed in the TCDP PEIR. However, the greatest area of new shadow would be less than what was analyzed in

the TCDP PEIR, with the project casting new shadow of approximately 2,628 square feet, compared to the 4,000 square feet analyzed in the TCDP PEIR.

The existing annual shadow coverage on Willie "Woo Woo" Wong Playground is 58.44 percent shaded relative to TAAS (approximately 98,852,508 sfh of shadow). The quantitative analysis found that the Project would add approximately 0.01 percent new shadow, relative to TAAS (approximately 9,845 sfh of shadow) for a total of 58.45 percent shaded under existing plus project conditions. The Project would add 0.01 net new shadow, within the current ACL of 0.03, leaving a remaining "shadow budget" of 0.02 percent of TAAS.

Based upon the amount and duration of new shadow and the importance of sunlight to each of the open spaces analyzed, the Project would not substantially affect, in an adverse manner, the use or enjoyment of these open spaces beyond what was analyzed and disclosed in the TCDP FEIR. The Project's new shadow on Union Square Plaza and Willie "Woo Woo" Wong Playground would contribute considerably to the significant and unavoidable impact identified in the TCDP FEIR with respect to the need to increase the Absolute Cumulative Limit of downtown parks.

On September 19, 2019, the Recreation and Park Commission conducted a duly noticed public hearing at regularly scheduled meeting and recommended, through Resolution No. 1909-016, that the Planning Commission find that the shadows cast by the Project would not be adverse to the use of Union Square Plaza or Willie "Woo Woo" Wong Playground. The Planning Department Commission Secretary is the custodian of records; the File for Case No. 2016-013312SHD is located at 1650 Mission Street, Suite 400, San Francisco, California.

On January 9, 2020, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting on Shadow Analysis Application No. 2016-013312SHD.

The Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of the applicant, Department staff, and other interested parties.

FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The above recitals are accurate and constitute findings of this Commission.

2. The additional shadow cast by the Project would not be adverse and is not expected in interfere with the use of the Park for the following reasons:

a. The magnitude of the additional shadow is well below one percent of TAAS on an annual basis, and amounts to a reasonable and small loss of sunlight for a park in an area of intended for increased building heights and residential density.

b. The Project would result in minor net new shadow (0.03 percent of TAAS) on Union Square Plaza during the early morning hours between 7:44 a.m. and no later than 8:15 a.m. The proposed project would cast new shadow on Union Square Plaza between August 30 and September 13, and again between March 29 and April 12, for a total of six weeks on any day of the year. During these periods, net new shadow would be cast from 7:44 a.m. to no later than 8:15 a.m. The areas affected by new shadow during these times consist mostly of stairs, grass, and pedestrian pathways. The average duration of new shadow resulting from the proposed project on Union Square Plaza would be 18 minutes. The longest new shadow duration resulting from the proposed project would occur on August 30 and April 12 for 26 minutes and 24 seconds. Outside of August 30 through September 13 and March 29 through April 12, the Project would not cast new shadow on Union Square Plaza. Net new shadow cast by the Project would be greatest on September 6 and April 5 with a net new shadow of approximately 4,687 sfh. The largest new shadow (based on area) would occur on September 6 and April 5 at 7:44 a.m., lasting 7 minutes 48 seconds, and would cover an area of approximately 14,956 square feet, or 14.17 percent of Union Square Plaza.

c. The Project would result in minor net new shadow (0.01 percent of TAAS) on Willie "Woo Woo" Wong Playground for limited periods during the early morning hours starting after 8:00 a.m. and ending before 8:30 a.m. During this time a small percentage of the playground would be shaded including a portion of the southwestern side of the tennis court. Additional shadow generated by the proposed project on this portion would be minor and would not noticeably change the shadow conditions at the playground. The Project would cast new shadow on Willie "Woo Woo" Wong Playground between November 15 and January 25, for a total of 11 weeks on any day of the year. During these periods, net new shadow would be cast starting after 8:00 a.m. and ending before 8:30 a.m. The average duration of new shadow resulting from the proposed project on Willie "Woo Woo" Wong Playground would be 10 minutes, 48 seconds. The longest new shadow duration resulting from the Project would occur between November 15 and November 22, and between January 18 and January 25 for 15 minutes. Outside of periods, the Project would not cast any new shadow on Willie "Woo Woo" Wong Playground. Net new shadow cast by the Project would be greatest on November 29 and January 11 and would total approximately 552 sfh. The largest new shadow (based on area) would occur on November 29 and January 11 at 8:15 a.m., lasting 12 minutes 36 seconds, and would cover an area of approximately 2,628 square feet, or 9.89 percent of Willie "Woo Woo" Wong Playground.

d. Shading from the Project would be cast over the top of intervening buildings, which already cast shadows on the park.

e. No single location within Union Square Plaza would be in continuous new shadow for longer than 27 minutes, while no single location within Willie "Woo Woo" Wong Playground would be in continuous new shadow for longer than 16 minutes.

3. **Public Outreach and Comment.** The Department has received correspondence regarding the proposed Project related to shadow impacts on Willie "Woo Woo" Wong Playground, citing concerns around shadows caused by the Project having an adverse impact on the use of the Willie "Woo Woo" Wong Playground. The Project Sponsor has conducted community outreach that includes local community groups to respond to concerns over shadow impacts resulting from the Project, including:
   - Committee for Better Parks and Recreation in Chinatown; 10/26/18
   - Chinatown Community Development Corporation; 11/15/18, 2/11/19
   - SRO Families; 6/6/19, 6/18/19
   - East Cut CBD Board; 10/15/18
   - Transbay CAC; 10/11/19, 2/21/19, 7/11/19
   - South Beach/ Rincon Hill / Mission Bay Neighborhood Association; 8/29/18
   - TODCO; 5/29/19
   - United Playaz; 5/28/19, 10/11/18

4. A determination by the Planning Commission and the Recreation and Park Commission to allocate new shadow to the Project does not constitute an approval of the Project.

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 **DETERMINES,** under Shadow Analysis Application No. 2016-013312SHD that the net new shadow cast by the Project on Union Square Plaza or Willie "Woo Woo" Wong Playground will not be adverse to the use of Union Square Plaza or Willie "Woo Woo" Wong Playground.

I hereby certify that the Planning Commission ADOPTED the foregoing Motion on January 9, 2020.

Jonas P. Ionin
Commission Secretary

AYES: Diamond, Fung, Johnson, Koppel, Melgar

NAYS: Moore

ABSENT: Richards

ADOPTED: January 9, 2020

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Planning Commission Motion No. 20616

HEARING DATE: JANUARY 9, 2020

Record Number:	**2016-013312DNX**
Project Address:	**542-550 Howard Street (Transbay Parcel F)**
Existing Zoning:	C-3-O(SD) Downtown-Office (Special Development) Zoning District 750-S-2 and 450-S Height and Bulk Districts Transit Center C-3-O(SD) Commercial and Transbay C-3 Special Use Districts Downtown and Transit Center District Plan Areas
Block/Lot:	3721/016, 135, 136, 138
Project Sponsor:	F4 Transbay Partners, LLC 101 California Street, Suite 1000 San Francisco, CA 94111
Property Owner:	Parcel F Owner, LLC 101 California Street, Suite 1000 San Francisco, CA 94111
Staff Contact:	Nicholas Foster, AICP, LEED GA nicholas.foster@sfgov.org, (415) 575-9167

ADOPTING FINDINGS TO APPROVE A DOWNTOWN PROJECT AUTHORIZATION PURSUANT TO PLANNING CODE SECTION 309 WITH REQUESTS FOR EXCEPTIONS FOR SETBACK, STREETWALL, TOWER SEPARATION, AND REAR YARD REQUIREMENTS (SECTIONS 132.1 AND 134(D)); DWELLING UNIT EXPOSURE (SECTION 140); REDUCTION OF GROUND-LEVEL WIND CURRENTS IN C-3 DISTRICTS (SECTION 148); OFF-STREET FREIGHT LOADING (SECTIONS 152.1 AND 161); USE REQUIREMENTS IN THE C-3-O(SD) COMMERCIAL SPECIAL USE SUBDISTRICT (SECTION 248); HEIGHT LIMITS FOR BUILDINGS TALLER THAN 550 FEET IN HEIGHT IN THE S-2 BULK DISTRICT FOR ALLOWANCE OF NON-OCCUPIED ARCHITECTURAL, SCREENING, AND ROOFTOP ELEMENTS THAT MEET THE CRITERIA OF SECTION 260(B)(1)(M); AND BULK CONTROLS (SECTIONS 270 AND 272) TO PERMIT THE NEW CONSTRUCTION OF AN APPROXIMATELY 957,000 GROSS SQUARE FOOT, 750-FOOT TALL (800 FEET INCLUSIVE OF ROOFTOP MECHANICAL FEATURES), 61-STORY, MIXED-USE TOWER LOCATED AT 542-550 HOWARD STREET (TRANSAY PARCEL "F"), LOTS 016, 135, 136, 138 OF ASSESSOR'S BLOCK 3721, WITHIN THE C-3-O(SD) DOWNTOWN-OFFICE (SPECIAL DEVELOPMENT) ZONING DISTRICT AND 750-S2 AND 450-S HEIGHT AND BULK DISTRICTS, AND ADOPTING FINDINGS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT. THE PROJECT WOULD INCLUDE 165 DWELLING UNITS, 189 HOTEL ROOMS, 275,674 SQUARE FEET OF OFFICE SPACE, AND APPROXIMATELY 9,000 SQUARE FEET OF RETAIL SPACE. THE PROJECT WOULD INCLUDE FOUR BELOW-GRADE LEVELS TO ACCOMMODATE UP TO 183 VEHICLE PARKING SPACES, AND 178 CLASS 1 AND 34 CLASS 2 BICYCLE PARKING SPACES

PREAMBLE

On October 13, 2016, Cameron Falconer of Hines, acting on behalf of F4 Transbay Partners, LLC (hereinafter "Project Sponsor"), submitted an application with the Planning Department (hereinafter "Department") for a Preliminary Project Assessment ("PPA"). The PPA Letter, assigned to Case No. 2016-013312PPA, was issued on January 9, 2016.

On December 9, 2016, the Project Sponsor submitted Planning Code Text and Map Amendment applications. The application packets were accepted on December 9, 2016 and assigned to Case Numbers 2016-013312MAP and 2016-013312PCA.

On April 19, 2017, the Project Sponsor submitted an Environmental Evaluation Application. The application packet was accepted on July 14, 2016 and assigned Case Number 2016-013312ENV.

On October 17, 2018, the Project Sponsor submitted, as modified by subsequent submittals, the following applications with the Department: Downtown Project Authorization; Conditional Use Authorization; Office Allocation; Variance; Shadow Analysis; and Transportation Demand Management. The application packets were accepted on October 17, 2018 and assigned to Case Numbers: 2016-013312DNX; 2016-013312CUA; 2016-013312OFA; 2016-013312VAR; 2016-013312SHD; and 2016-013312TDM, respectively.

The environmental effects of the Project were determined by the San Francisco Planning Department to have been fully reviewed under the Transit Center District Plan Environmental Impact Report (hereinafter "EIR"). On May 24, 2012, the Commission reviewed and considered the Final EIR ("FEIR") and found that the contents of said report and the procedures through which the FEIR 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").

The Transit Center District Plan EIR is a program-level EIR. Pursuant to CEQA Guideline 15168(c)(2), if the lead agency finds that no new effects could occur or no new mitigation measures would be required of a subsequent project in the program area, the agency may approve the project as being within the scope of the project covered by the program EIR, and no new or additional environmental review is required. In certifying the Transit Center District Plan FEIR, the Commission adopted CEQA findings in its Motion No. 18629 and hereby incorporates such Findings by reference herein.

Additionally, State CEQA Guidelines Section 15183 provides a streamlined environmental review for projects that are consistent with the development density established by existing zoning, community plan or general plan policies for which an EIR was certified, except as might be necessary to examine whether there are project-specific effects which are peculiar to the project or its site. Section 15183 specifies that examination of environmental effects shall be limited to those effects that (a) are peculiar to the project or parcel on which the project would be located, (b) were not analyzed as significant effects in a prior EIR on the zoning action, general plan or community plan with which the project is consistent, (c) are potentially

significant off-site and cumulative impacts which were not discussed in the underlying EIR, or (d) are previously identified in the EIR, but which are determined to have a more severe adverse impact than that discussed in the underlying EIR. Section 15183(c) specifies that if an impact is not peculiar to the parcel or to the proposed project, then an EIR need not be prepared for that project solely on the basis of that impact.

On August 27, 2019, the Department determined that the proposed application did not require further environmental review under Section 15183 of the CEQA Guidelines and Public Resources Code Section 21083.3. The Project is consistent with the adopted zoning controls in the Transit Center District Plan and was encompassed within the analysis contained in the Transit Center District Plan FEIR. Since the Transit Center District Plan FEIR was finalized, there have been no substantial changes to the Transit Center District Plan and no substantial changes in circumstances that would require major revisions to the FEIR due to the involvement of new significant environmental effects or an increase in the severity of previously identified significant impacts, and there is no new information of substantial importance that would change the conclusions set forth in the FEIR. The file for this Project, including the Transit Center District Plan FEIR and the Community Plan Exemption certificate, is available for review at the San Francisco Planning Department, 1650 Mission Street, Suite 400, San Francisco, California.

Planning Department staff prepared a Mitigation Monitoring and Reporting Program (MMRP) setting forth mitigation measures that were identified in the Transit Center District Plan FEIR that are applicable to the project. These mitigation measures are set forth in their entirety in the MMRP attached to the draft Motion as Exhibit C.

The Planning Department Commission Secretary is the custodian of records; all pertinent documents are located in the File for Case No. 2016-013312DNX, at 1650 Mission Street, Fourth Floor, San Francisco, California.

On September 19, 2019, the Recreation and Park Commission conducted a duly noticed public hearing at regularly scheduled meeting and recommended, through Resolution No. 1909-016, that the Planning Commission find that the shadows cast by the Project would not be adverse to the use of Union Square and Willie "Woo Woo" Wong Playground.

On October 8, 2019, the Project Sponsor filed a request for a General Plan Amendment. The application packet was accepted on October 8, 2019 and assigned to Case Number 2016-013312GPA.

On October 17, 2019, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the initiation of a General Plan Amendment for Case No. 2016-013312GPA. After hearing the item, the Commission voted 5-0 (Koppel absent) to continue the item to December 5, 2019.

On December 5, 2019 the Commission conducted a duly noticed public hearing at a regularly scheduled meeting to consider the initiation of a General Plan Amendment for Case No. 2016-013312GPA. The

Commission voted 6-0 (Richards absent) to initiate the General Plan Amendment for Case No. 2016-013312GPA.

On January 9, 2020, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting on Downtown Project Authorization application No. 2016-001794DNX.

The Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of the applicant, Department staff, and other interested parties.

MOVED, that the Commission hereby authorizes the Downtown Project Authorization as requested in Application No. 2016-013312DNX, subject to the conditions contained in "EXHIBIT A" of this motion, and to the Mitigation, Monitoring and Reporting Program contained in "EXHIBIT C", and incorporated by reference, based on the following findings:

FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The above recitals are accurate and constitute findings of this Commission.

2. **Project Description.** The proposed project ("Project") includes the construction of a new 61-story mixed-use building reaching a height of 749'-10" tall (799'-9" inclusive of rooftop screening/mechanical equipment). The Project would include 165 dwelling units, 189 hotel rooms, 275,674 square feet of office use floor area, approximately 9,000 square feet of retail space, approximately 20,000 square feet of open space, 178 Class 1 and 34 Class 2 bicycle parking spaces, and four below-grade levels that would accommodate up to 183 vehicle parking spaces provided for the residential, hotel, and office uses. The Project also would construct a pedestrian bridge providing public access to Salesforce Park located on the roof of the Transbay Transit Center.

3. **Site Description and Present Use.** The Project Site ("Site") consists of four contiguous lots (Lots 016, 135, 136, and 137) within Assessor's Block 3721, totaling 32,229 square feet (0.74 acres) in area. The site, bounded by Howard Street to the south and Natoma Street to the north, is undeveloped at-grade and served as a construction staging area for the adjacent Salesforce Transit Center during its construction. A below-grade "Train Box" is located within the northwest corner of the Site, occupying approximately 12,000 square feet of the Site. The Train Box consists of a two-story structure that will allow Caltrain—and eventually High-Speed Rail—trains to enter and exit the adjacent Salesforce Transit Center below-grade. Because the Train Box can only support a very limited structural load above-grade, the proposed mixed-use building is purposely set back from the northwest corner of the Site (along the Natoma Street frontage), towards the southeast corner of the Site (along the Howard Street frontage). The Project responds to the unique site constraint

by cantilevering the building podium over the area of the Train Box, thereby shifting the majority of the tower's mass onto Lots 016 and 135, away from the area of the Train Box.

4. **Surrounding Properties and Neighborhood.** The Site is located within the Downtown Core, and more specifically, within the Transit Center District Plan (TCDP) area. Development in the vicinity consists primarily of high-rise office buildings, interspersed with low-rise mixed-use buildings. The block on which the Site is located contains several low to mid-rise office buildings and construction staging for planned developments. The 5-story Salesforce Transit Center (STC) and the Salesforce Park are located to the north of the Site, 2- to 3- story buildings at 547, 555, and 557 Howard streets are located to the south of the Site, and a 3-story building at 540 Howard Street, a 4-story building at 530 Howard Street, and a parking lot at 524 Howard Street are located east of the Site. The 2- to 3-story buildings at 547, 555, and 557 Howard streets are planned to be replaced with an approximately 385 foot-tall, 36-story mixed use residential and hotel development project. The parking lot at 524 Howard Street is planned to be replaced with an approximately 495-foot tall, 48-story mixed use residential and hotel development. Several other high-rise buildings are planned, under construction, or have recently completed construction in the surrounding area, including a newly completed office-residential tower at 181 Fremont Street.

5. **Public Outreach and Comments.** The Department has received correspondence regarding the proposed Project related to shadow impacts on Willie "Woo Woo" Wong Park, citing concerns around shadows caused by the Project having an adverse impact on the use of the Willie "Woo Woo" Wong Park. The Project Sponsor has conducted community outreach that includes local community groups to respond to concerns over shadow impacts resulting from the Project.

6. **Planning Code Compliance.** The Commission finds that the Project is consistent with the relevant provisions of the Planning Code in the following manner:

   A. **Permitted Uses in the C-3-O(SD) Zoning District (Section 210.2).** The Planning Code lists the use controls for residential and non-residential uses within the C-3-O(SD) Zoning District

   The Project involves the construction of a new 61-story mixed-use building with a total of 1,140,458 sf of uses (956,995 gross square feet (gsf) of uses per the Planning Code. The Project would include 433,556 gsf of residential use, 275,674 gsf of general office use (a non-retail sales and service use), 247,765 gsf of hotel use (a retail sales and service use), and 8,900 gsf of retail uses. Residential uses, retail sales and service uses, and non-retail sales and service uses (office) are all principally permitted within the C-3-O(SD) Zoning District. As Residential, Retail Sales and Service Uses, and Non-Retail Sales and Service Uses are principally permitted uses within the C-3-O(SD) Zoning District, the Project complies with Section 210.2. The office use requires an office allocation, pursuant to Section 321, whereas the hotel use requires Conditional Use Authorization. The Project Sponsor has filed Office Allocation and Conditional Use Authorization applications (Case Nos. 2016-013312OFA and 2016-013312CUA). Please see the required findings for the office allocation and conditional use authorization

under their respective motions (Motion No. 20617 for Case No. 2016-013312OFA and Motion No. 20618 for Case No. 2016-013312CUA).

B. **Floor Area Ratio (Sections 123, 124, 128, and 210.2).** The Planning Code establishes a basic floor area ratio (FAR) for all zoning districts. For C-3 zoning districts, the numerical basic FAR limit is set in Section 210.2. The FAR for the C-3-O (SD) District is 6.0 to 1. Under Section 123, FAR can be increased to 9.0 to 1 with the purchase of transferable development rights (TDR), and may exceed 9.0 to 1 without FAR limitations by participating in the Transit Center District Mello-Roos Community Facilities District as required in Section 424.8.

The Site is 32,229 square feet (0.74 acres) in area. Therefore, up to 193,374 gsf is allowed under the basic FAR limit, and up to 290,061 gsf is permitted with the purchase of TDR. The Project proposes a total of 956,995 gsf, for a floor-area ratio of approximately 29.7-to-1. Conditions of Approval are included to require the Project Sponsor to purchase TDR for the increment of development between 6.0 to 1 FAR and 9.0 to 1 FAR (96,687 gsf), and to participate in the Transit Center District Mello-Roos Community Facilities District.

C. **Useable Open Space (Section 135).** The Planning Code requires that a minimum of 36 square feet of private usable open space, or 48 square feet (1.33 times 36 square feet) of common usable open space be provided for dwelling units in C-3 zoning districts. The area counting as usable open space must meet minimum requirements for area, horizontal dimensions, and exposure.

The Project includes 165 dwellings units, and therefore requires private and/or common useable open space in service of the residential use. The Project would include two areas of common useable open space that meet the strict dimensional requirements for common useable open space (Code Section 135(g)). These areas include a 7,949 square foot rooftop terrace and a 1,948 square foot terrace located on level 33. Together, the amount of common useable open space is 9,442 square feet where 7,920 square feet are required by Code. Therefore, the Project complies with Section 135.

D. **Publicly Accessible Open Space (Section 138).** The Planning Code requires new buildings, or additions of Gross Floor Area equal to 20 percent or more to an existing building, in the C-3-O (SD) zoning district to provide public open space at a ratio of one square-foot per 50 gross square feet of all uses, except residential uses, institutional uses, and uses in a predominantly retail/personal services building.

The Project includes a total of 523,439 gross square feet of non-residential use, and therefore requires 10,469 square feet of privately-owned public open space (POPOS). The Project would provide POPOS in three primary areas: within an elevated pedestrian bridge, linking the building to Salesforce Park located atop the Salesforce Transit Center; within an exterior area located outside of the shared residential/hotel lobby adjacent Natoma Street; and within a midblock passageway along the west edge of the Site, promoting connectivity from Howard Street to the Salesforce Transit Center, through the Site. A glass elevator cab will provide public vertical connection to the Salesforce Transit Center rooftop

park. Both the atrium and the public elevator will be highly visible to the pedestrians on Natoma Street and the Salesforce Park. Pursuant to Section 138(j)(1)(F)(i-iv), the horizontal connection (pedestrian bridge), along with any floor area devoted to vertical circulation (elevator) dedicated specifically to provide public access to Salesforce Park shall count towards the POPOS floor area requirement, inclusive of a 5,000 square foot bonus for providing connection to Salesforce Park itself. For all locations, the Project Sponsor shall comply with all applicable Section 138 requirements relating to this space, including signage, seating, landscaping, and public access. In total, the amount of POPOS credited is 10,796 square feet where 10,469 square feet is required by Code.

E. **Streetscape and Pedestrian Improvements (Section 138.1).** Planning Code Section 138.1 requires that additions of Gross Floor Area equal to 20 percent or more to an existing building provide streetscape improvements consistent with the Better Streets Plan. Under Section 138.1(c), the Commission may also require the Project Sponsor to install additional sidewalk improvements such as lighting, special paving, seating and landscaping in accordance with the guidelines of the Downtown Streetscape Plan if it finds that these improvements are necessary to meet the goals and objectives of the General Plan

The Project Sponsor shall comply with this requirement. The conceptual plan shows improved pedestrian amenities along both frontages (Howard and Natoma Streets) not limited to improved sidewalks, along with the installation of street trees, lighting, and street furniture. The precise location, spacing, and species of the street trees, as well as other streetscape improvements, will be further refined throughout the building permit review process. Moreover, the Project would provide a mid-block connection through the Site, connecting Howard and Natoma Streets. This critical pedestrian connection will provide pedestrian access to the Salesforce Transit Center through the Site, ameliorating the conditions and impacts associated with large blocks that inhibit pedestrian movement—such as the case with the subject block (Block 3721) which extends over 800 linear feet. Therefore, the Project complies with Section 138.1.

F. **Standards for Bird-Safe Buildings (Section 139).** The Planning Code outlines the standards for bird-safe buildings, including the requirements for location-related and feature-related hazards.

The Site is not located in close proximity to an Urban Bird Refuge as defined in Section 139. As such, the Project will include feature-related standards. Therefore, the Project complies with Section 139.

G. **Street Frontage in Commercial Districts (145.1).** The Planning Code requires that within Downtown Commercial Districts, space for "active uses" shall be provided within the first 25 feet of building depth on the ground floor. Spaces such as lobbies are considered active uses only if they do not exceed 25% of the building's frontage at the ground level, or 40 feet, whichever is greater. Section 145.1(c)(2) of the Planning Code requires that no more than one-third of the width or 20 feet, whichever is less, of any given street frontage of a new or altered structure parallel to and facing a street shall be devoted to parking and loading ingress or

egress. With the exception of space allowed for parking and loading access, building egress, and access to mechanical systems, space for active uses as defined in Subsection (b)(2) and permitted by the specific district in which it is located shall be provided within the first 25 feet of building depth on the ground floor and 15 feet on floors above from any facade facing a street at least 30 feet in width. Section 145.1(c)(4) of the Planning Code requires that ground floor non-residential uses in all C-3 Districts shall have a minimum floor-to-floor height of 14 feet, as measured from grade. Section 145.1(c)(5) requires the floors of street-fronting interior spaces housing non-residential active uses and lobbies shall be as close as possible to the level of the adjacent sidewalk at the principal entrance to these spaces. Section 145.1(c)(6) of the Planning Code requires that within Downtown Commercial Districts, frontages with active uses must be fenestrated with transparent windows and doorways for no less than 60 percent of the street frontage at the ground level and allow visibility to the inside of the building.

Related to active uses. the Project includes active uses at the ground floor, including retail spaces along both street frontages (Howard and Natoma Streets). While the floor-to-floor height, location of active uses, and transparency requirements of the Code (Sections 145.1(c)(4-6)) are satisfied, the Project includes a significant amount of lobby space servicing the three primary uses (residential, office and hotel). With 98'-6" feet (or approximately 83 percent) of the Howard Street frontage, and 44'-6" (or approximately 28 percent) of the Natoma Street frontage devoted to lobby space (separate lobbies), the total amount of linear frontage devoted to lobbies exceeds what is permitted by the Code. Therefore the Project requires a Variance from Section 145.1(b)(2)(C). The Project Sponsor has submitted a Variance application (Case No. 2016-013312VAR) and the Zoning Administrator shall review the application and make a determination on the request for an exception from the Planning Code standard.

H. **Shadows on Public Sidewalks (Section 146).** The Planning Code establishes design requirements for buildings on certain streets in order to maintain direct sunlight on public sidewalks in certain downtown areas during critical use periods. Section 146(c) requires that other buildings should be shaped so as to reduce substantial shadow impacts on public sidewalks, if doing so would not create an unattractive design and without unduly restricting the development potential of the site in question.

Section 146(a) does not apply to Howard or Natoma Streets, and therefore does not apply to the Project. Regarding Section 146(c), the Project would create new shadows on sidewalks and pedestrian areas adjacent to the Site. The amount of shadow cast on sidewalks would vary based on time of day, day of year, and weather conditions. Additionally, in certain locations, existing and future development would mask or subsume new shadows from the Project that would otherwise be cast on sidewalks in the Project vicinity. The Project's shadows would be limited in scope and would not increase the total amount of shading above levels that are commonly accepted in dense urban areas. Therefore, the Project complies with Section 146.

I. **Shadows on Public Open Spaces (Section 147).** The Planning Code requires new buildings in the C-3 districts exceeding 50 feet in height to be shaped, consistent with the dictates of good design and without unduly restricting the development potential of the site, to reduce substantial

shadow impacts on public plazas and other publicly-accessible spaces other than those under the jurisdiction of the Recreation and Parks Department under Section 295. The following factors shall be taken into account: (1) the amount of area shadowed; (2) the duration of the shadow; (3) the importance of sunlight to the type of open space being shadowed.

Existing Open Spaces

Salesforce Park

Salesforce Park is a 5.4-acre rooftop park located atop the Transbay Transit Center, less than 100 feet north from the Site across Natoma Street. Salesforce Park is under the jurisdiction of the Transbay Joint Powers Authority. The rooftop park is 1,400-foot long and includes an amphitheater, a children's play space, a café, a restaurant, and open grass areas. Salesforce Park would be shaded by the Project throughout the year, beginning at 7:52 a.m. and lasting no later than 7:00 p.m. The existing annual shadow coverage on Salesforce Park is 41.83 percent shaded. The quantitative analysis found that the Project would add approximately 8.25 percent new shadow, relative to theoretical annual available sunlight (TAAS) (approximately 63,887,258 sfh) for a total of 50.07 percent shaded under existing plus project conditions.

The Transit Center District Plan Programmatic EIR (TCDP PEIR) stated that the TCDP plan area buildings, including the proposed project, would add new shadow to Salesforce Park (referred to as City Park in the TCDP PEIR). Existing buildings located near the Salesforce Park, including the Salesforce Tower, would cast shadow throughout the year on most of the park area. The TCDP PEIR acknowledged that this park would be surrounded by high-rise development; thus, it was expected that buildings that were existing at the time of the preparation of the TCDP PEIR, as well as future buildings anticipated as a result of upzoning proposed in that PEIR would cast shadows onto the park during the day. The TCDP PEIR found the plan would have a significant and unavoidable impact with respect to shadow on parks. The Project's net new shadow would not result in any significant shadow impacts that were not identified in the PEIR, nor would it result in more severe impacts than identified in the PEIR.

Rincon Park

Rincon Park is a 2-acre waterfront park, located along the Embarcadero, approximately 0.5 mile northeast of the Site. Rincon Park is leased from the Port of San Francisco and developed by Gap Inc. in conjunction with the construction of its headquarters office building. Rincon Park is adjacent to the Bay Trail and includes groomed patches of grass and landscaped areas along a paved promenade area.

The TCDP PEIR found that the non-section 295 public open space that would be most greatly affected by the plan area development is Rincon Park. This open space would be newly shaded in the late afternoon throughout much of the year, except from mid-fall through mid-winter, by the Salesforce Tower, 181 Fremont, the 50 First Street project, and potential 700-foot buildings at the Golden Gate University site and at 350 Mission Street. New buildings in the plan area would add additional shadow between the shadow cast by existing buildings, obscuring some of the existing sunlight. The existing annual shadow coverage on Rincon Park is 30.52 percent shaded. The quantitative analysis found that the proposed project would add 0.00024 percent (1,136 sfh) increase in annual shadow on the

furthermost northwestern edge of Rincon Park, which consists mostly of a small portion of dirt. As the Project would add minor net new shadow to Rincon Park, the Project's new shadow would not result in an adverse physical change to this park.

Future Open Spaces

There are four proposed parks in the vicinity of the proposed project, including Transbay Park (to be located 0.2 miles east of the Site), Under Ramp Park (referred to as Oscar Park in the TCDP PEIR) (to be located 100 feet southeast of the Site, under Fremont Street offramp), Second & Howard Plaza (to be located 250 feet southwest of the Site) and Mission Square (to be located 950 feet northeast of the Site). The Project has the potential to cast new shadow on the future Transbay Park during the evening hours of the fall and spring months covering the eastern portion of the park consisting of open grass areas. Regarding Under Ramp Park, the Project has the potential to add minor new shadow to this park; however, all net new shadow would be subsumed by the existing overhead freeway structures. The Project has the potential to cast new shadow on the future Second & Howard Plaza during the early morning hours of summer on the northwestern and northern portions of the plaza consisting of open space, a fountain, and trees. The Project has the potential to cast new shadow on the future Mission Square during the early afternoon hours of fall, spring, and winter months. During this time, the southern portion of the park with outdoor tables would be shaded by the proposed project.

Conclusion

Based upon the amount and duration of new shadow and the importance of sunlight to each of the open spaces analyzed, the Project would not substantially affect, in an adverse manner, the use or enjoyment of these open spaces beyond what was analyzed and disclosed in the TCDP FEIR. The Project would either contribute very minor amount of shadow to those spaces (i.e., Rincon Park) or its shadow impacts were already anticipated with the implementation of the TCDP plan (i.e., Salesforce Park). Thus, the Project would not result in new or more severe shadow impacts than those identified in the PEIR. This conclusion is consistent with the findings of the PEIR, and the Project would not result in individual or cumulative shadow impacts beyond those analyzed in the PEIR, nor would it result it in substantially more severe impacts than identified in the PEIR.

J. **Off-Street Parking (Section 151.1).** The Planning Code does not require any off-street parking spaces be provided, but instead provides maximum parking amounts based on land use type. Off-street accessory parking for all non-residential uses in the C-3-O (SD) zoning district is limited to 3.5% of the gross floor area for such uses. For residential uses, one off-street parking space is principally permitted for every two dwelling units.

The Project would provide a total of 183 off-street accessory parking spaces. 83 parking spaces would be available for 165 dwelling units, equating to parking ratio of 0.5 spaces per dwelling unit (within the 0.5 ratio limit as established by Code). The balance of the parking spaces (100 spaces) would be available for the non-residential uses (hotel and office uses). For the hotel use, 12 spaces would be provided where 12 are permitted (within the limit as established by Code). For office and retail sales and service uses, 88 spaces (or 6,520 square feet) would be devoted to parking, equating to a ratio of approximately 2.3%

of gross floor area (within the limit of 3.5% of gross floor area as established by Code). As the total amount of off-street accessory parking for both residential and non-residential uses is within the limits established by Code, the Project therefore complies with Section 151.1

K. **General Standards for Location and Arrangement of Off-Street Parking, Freight Loading, and Service Vehicle Facilities (Section 155).** The Planning Code requires all off-street freight loading and service vehicle spaces in the C-3 Zoning District be completely enclosed, and access from a public Street or Alley shall be provided by means of a private service driveway that is totally contained within the structure. Such a private service driveway shall include adequate space to maneuver trucks and service vehicles into and out of all provided spaces, and shall be designed so as to facilitate access to the subject property while minimizing interference with street and sidewalk circulation. Any single development is limited to a total of two façade openings of no more than 11 feet wide each or one opening of no more than 22 feet wide for access to off-street parking and one façade opening of no more than 15 feet wide for access to off-street loading. Shared openings for parking and loading are encouraged. The maximum permitted width of a shared parking and loading garage opening is 27 feet. In addition, the Planning Code prohibits curb cuts along Natoma Street for garage entries, private driveways, or other direct access to off-street parking or loading, except when the curb cut would create new publicly-accessible streets and alleys.

The Site is a through lot with frontages along both Howard Street to the south, and Natoma Street to the north. The Project would utilize two vehicular access points, one along Howard Street for freight loading servicing all residential and non-residential uses, and a second along Natoma Street for access to all accessory off-street parking and car share spaces. The Natoma Street garage is developed with three, separate garage doors for three, independent car lifts accessing the below-grade parking garage. The three garage doors are arranged contiguously, and are positioned perpendicular the Natoma Street, with a curvilinear driveway accessing the garages. The driveway also functions as a port cochere, which, is permitted under Code Section 155(s)(3)(B) because the Project includes hotel use. As developed, the Project requires Code relief from the general standards for location and arrangement of off-street parking, freight loading, and service vehicle facilities as follows:

First, the area devoted to freight loading, while screened on all sides, is not fully enclosed. Therefore the Project requires a Variance pursuant to Section 155(d).

Second, the width of the two façade openings accessing off-street parking and loading exceed the limits established by Code. The Howard Street opening is approximately 38 feet wide and the three garage door openings fronting Natoma Street are, on aggregate, approximately 35 feet wide. As the widths of the two building openings exceed what is permitted by Code, the Project therefore requires a Variance pursuant to Section 155(d).

Lastly, the location of the off-street garage access point and driveway along Natoma Street is within 300' westerly of first street, between first and second streets. This section of Natoma Street is a named street prohibiting curb cuts, therefore the Project requires a Variance pursuant to Section 155(r)(2)(V). The Project Sponsor has submitted a Variance application (Case No. 2016-013312VAR) and the Zoning

Administrator shall review the application and make a determination on the request for an exception from the Planning Code standards.

L. **Bicycle Parking (Sections 155.1, 155.2).** The Planning Code establishes bicycle parking requirements for new developments, depending on use. For projects with over 100 residential dwelling units, 100 Class 1 spaces are required, plus 1 additional space for every four units over 100. One Class 2 space is required for every 20 dwelling units. For office, one Class 1 space is required for every 5,000 occupied square feet, and two Class 2 spaces are required for the first 5,000 gross square feet, plus one Class 2 space for each additional 50,000 occupied square feet. One Class 1 space is required for every 7,500 square feet of occupied floor area devoted to Restaurants, Limited Restaurants, and Bars. One Class 2 space is required for every 750 square feet of occupied retail area devoted to Restaurants, Limited Restaurants, and Bars, and in no case less than two Class 2 spaces. For hotel use, one Class 1 space and one Class 2 space is required for every 30 hotel rooms, plus one Class 2 space for every 5,000 square feet of occupied floor area of conference, meeting or function rooms. A Class 1 space is located in a secure, weather-protected facility and intended for long-term use by residents and employees. A Class 2 space is located in a publicly-accessible and visible location, and intended for use by visitors, guests, and patrons.

The Project includes 178 Class 1 and 34 Class 2 bicycle parking spaces (where 178 Class 1 and 34 Class 2 spaces are required by Code). The Class 2 bicycle parking spaces would be located within two distinct locations: one location along the Howard Street frontage, directly in front of the office lobby and adjacent retail space; and a second location along the Natoma Street frontage, adjacent the garage accessing the off-street accessory parking. The Project Sponsor anticipates payment of the lieu fee to satisfy up to 50 percent of the Class 2 bicycle parking requirement, as permitted by Section 430.

To promote greater access to the Class 1 bicycle spaces, the Project would locate all of the required Class 1 bicycle parking spaces within a safe and convenient storage facility located on level 4 of the tower podium. The location is particularly optimal due to the collocation of the required showers and locker facilities, in addition to a independently accessible elevator that would provide direct access from bicycle storage facility to both the ground floor and the level 5 pedestrian bridge accessing the adjacent Salesforce Park. Because Code requires that Class 1 bicycle parking be located either on the ground floor, or within the off-street vehicular parking area, the proposal to locate the Class 1 bicycle parking on level 4 requires a Variance from Section 155.1(b). The Project Sponsor has submitted a Variance application (Case No. 2016-013312VAR) and the Zoning Administrator shall review the application and make a determination on the request for an exception from the Planning Code standard.

M. **Shower Facilities and Lockers (Section 155.4).** The Planning Code requires shower facilities and lockers for Non-Retail Sales and Service Uses in the following amounts: two showers and 12 clothes lockers where the Occupied Floor Area exceeds 20,000 square feet but is no greater than 50,000 square feet, and four showers and 24 clothes lockers are required where the Occupied Floor Area exceeds 50,000 square feet.

The Project includes more than 50,000 square feet of non-residential uses and thus a total of 4 showers 24 lockers are required per Code. The Project would provide 4 showers and 24 lockers on level 4, adjacent the Class 1 bicycle storage facility. Therefore, the Project complies with Section 155.4.

N. **Transportation Management Programs (Section 163).** The Planning Code requires, for all applicable projects, that property owner provide on-site transportation brokerage services for the actual lifetime of the project.

The Project contains over 100,000 square feet of residential use (or 100 dwelling units) and is therefore subject to the requirements of Section 163. The Project will provide on-site transportation brokerage services for the actual lifetime of the project. Prior to the issuance of a temporary permit of occupancy, the property owner shall execute an agreement with the Planning Department for the provision of on-site transportation brokerage services. Therefore, the Project complies will Section 163.

O. **Car Sharing (Section 166).** The Planning Code establishes requirements for new developments to provide off-street parking spaces for car-sharing services. The number of spaces depends on the amount and type of residential or office use. One car share space is required for any project with between 50-200 residential units. Projects with over 200 residential units but less than 400 units require two spaces. For non-residential uses, one space is required if the project provides 25-49 off-street spaces for those uses. One car share space is required for every 50 additional parking spaces devoted to non-residential use. The car-share spaces must be made available to a certified car-share organization at the building site or within 800 feet of it.

The Project includes 3 car share spaces for both the residential and non-residential uses where 3 are required by Code. Therefore, the Project complies with Section 163.

P. **Unbundled Parking (Section 167).** The Planning Code requires all off-street parking spaces accessory to residential uses in new structures of 10 dwelling units or more, or in new conversions of non-residential buildings to residential use of 10 dwelling units or more, shall be leased or sold separately from the rental or purchase fees for dwelling units for the life of the dwelling units, such that potential renters or buyers have the option of renting or buying a residential unit at a price lower than would be the case if there were a single price for both the residential unit and the parking space.

The Project will lease or sell all accessory off-street parking spaces separately from the rental or purchase fees for dwelling units for the life of the dwelling units. Therefore the Project complies with Section 167.

Q. **Transportation Demand Management (TDM) Plan (Section 169).** The Planning Code requires applicable projects to finalize a TDM Plan prior Planning Department approval of the first Building Permit or Site Permit.

The Project submitted a completed Environmental Evaluation deemed complete on or after September 5, 2016, and before January 1, 2018. Therefore, the Project must only achieve 75% of the point target

established in the TDM Program Standards, resulting in a required target of 31 points (75% of 41). As currently proposed, the Project will achieve its required 31 points through the following TDM measures:

- Bicycle Parking (Option A)
- Showers and Lockers
- Bike Membership (Option B)
- Bicycle Repair Station
- Bicycle Maintenance Services
- Car Share Parking (Option A)
- Contributions or Incentives for Sustainable Transportation (Option A)
- Tailored Transportation Marketing Services (Option A)
- Unbundled Parking (Option C)
- Parking Supply (Option C (Residential)/Option G (Office))

Therefore the Project complies with Section 169.

R. **Dwelling Unit Mix (Section 207.7).** The Planning Code requires that no less than 25% of the total number of proposed dwelling units shall contain at least two bedrooms and that no less than 10% of the total number of proposed dwelling units shall contain at least three bedrooms. Any fraction resulting from this calculation shall be rounded to the nearest whole number of dwelling units and units counted towards the three bedroom requirement may also count towards the requirement for units with two or more bedrooms

The Project will provide a total of 165 dwelling units, with the following dwelling unit mix: 21 one-bedroom units (13%), 92 two-bedroom units (56%), and 52 three-bedroom units (32%). With 87% of the dwelling units containing at least two bedrooms, the Project exceeds the dwelling unit mix requirement established by Code. Therefore, the Project complies with Section 207.7.

S. **Height (Section 260).** The Planning Code requires that the height of buildings not exceed the limits specified in the Zoning Map and defines rules for the measurement of height. In any S-2 Bulk District for any building which exceeds 550 feet in height, unoccupied building features including mechanical and elevator penthouses, enclosed and unenclosed rooftop screening, and unenclosed architectural features not containing occupied space that extend above the height limit, only as permitted by the Planning Commission according to the procedures of Section 309.

The Site is located within two distinct Height and Bulk Districts. Lots 135 and 138, are located entirely within the 750-S-2 District, whereas Lot 016 is located entirely within the 450-S District. Lot 136 is an irregular-shaped lot, split zoned between the 450-S and 750-S-2 District, with the "panhandle" portion of Lot 136 located within the 450-S. The Project would construct a single tower positioned approximately within the center of Lot 136, closest to the Howard Street frontage. (The building is purposely set back from the northwest corner of the Site (along the Natoma Street frontage), towards the southeast corner of the Site (along the Howard Street frontage) due to presence of a critical component

of below-grade infrastructure serving the adjacent Salesforce Transit Center.) The tower would contain both a distinct lower tower and upper tower. The lower tower contains a larger floorplate that rises to a height of 429'-10", while the slightly narrower upper tower reaches a maximum finished floor height of 749'-10". The unoccupied building features including mechanical and elevator penthouses, enclosed and unenclosed rooftop screening, and unenclosed architectural features not containing occupied space up to 800' tall. As a portion of the tower would encroach into Lot 016, which is within the 450-S District, legislative amendments are required to facilitate the Project. Specifically, a legislative amendment (Board File No. 191259) would amend Zoning Map HT-01, effectively result in a height and bulk swap between Lots 016 and 136 with Lot 138. 1,310 square feet of Lot 016 and 190 square feet of Lot 136 would be rezoned to increase the allowable height from 450' to 750'. Correspondingly, 5,850 square feet of Lot 138 would be rezoned to decrease the allowable height from 750' to 450' (a difference of 4,350 square feet). With benefit of the proposed legislative amendment (Board File No. 191259), the Project would be compliant with the height limits. See Sections 7(I) and (H) for additional findings required for exceptions under Section 309 related to height and bulk.

T. **Mid-Block Connections (Section 270.2).** The Planning Code requires projects provide a publicly-accessible mid-block alley for the entire depth of the property, generally located toward the middle of the subject block face, perpendicular to the subject frontage and connecting to any existing streets and alleys for all new construction on lots with greater than 300 linear feet of street frontage. For development lots with frontage on more than one street that exceeds the above dimensions, one such mid-block alley will be required per frontage.

The Site is a through lot with greater than 300 feet of linear street frontage; therefore the mid-block connections requirement applies. The Project includes a mid-block passageway along the western edge of the Site, positioned in between the Project's freight loading area to the east and the future TJPA bicycle ramp accessing the below-grade bicycle facilities of the Salesforce Transit Center to the west. This important passageway will link Underground Ramp Park south of Howard Street to the future pedestrian paseo along Natoma Street to the north. Conceptually, the passageway is designed as an artistic expression, with an skeleton-like structure resembling "whale-bones" comprised of archways of varying heights. The design is intended to create a sense of projection from the adjacent vehicular and bicycle lanes while remaining transparent and open to the sky above. The mid-block passageway is required to meet the design and performance standards of Section 270.2(e). The Project Sponsor shall continue to work with the Department to further refine the overall design of the passageway post entitlement.

U. **Shadows on Parks (Section 295).** The Planning Code requires a shadow analysis for projects over 40 feet in height to ensure that new buildings do not cast new shadows on properties that are under the jurisdiction of the San Francisco Recreation and Park Department.

Background

The TCDP PEIR considered reasonably foreseeable future projects on 13 specific sites in the TCDP, based on generalized massing models of buildings at the heights that would be allowed under the TCDP.

The PEIR found that new shadows from development within the plan area would affect nine parks, eight of which have established Absolute Cumulative Limits (ACLs) for net new shadow under section 295. Considered together, development under the TCDP would require that the ACLs be increased on seven downtown parks. No mitigation is available for shadow impacts on existing parks, because it not possible to lessen the intensity or otherwise reduce the shadow cast by a building at a given height and bulk. Therefore, the TCDP PEIR found the plan would have a significant and unavoidable impact with respect to shadow.

On October 11, 2012, the Planning Commission and the Recreation and Park Commission held a duly noticed joint public hearing on and adopted Planning Commission Resolution No. 18717 and Recreation and Park Commission Resolution No. 1201-001 raising the ACLs for seven open spaces under the jurisdiction of the Recreation & Park Department that could be shadowed by likely cumulative development sites in the Plan area, including the Project. In revising these ACLs the Commissions also adopted qualitative criteria for each park related to the characteristics of shading within these ACLs that would not be considered adverse, including the duration, time of day, time of year, and location of shadows on the particular parks. At the hearing on October 11, 2012, the Recreation and Park Commission also recommended that the General Manager of the Recreation & Park Department recommend to the Planning Commission that the shadows cast by the Project on certain properties under the jurisdiction of the Recreation & Park Department are not adverse to the use of these properties, and that the Planning Commission allocate to the Project allowable shadow from the absolute cumulative shadow limits of six of these properties.

Related to the Project, the Planning Department prepared an initial shadow fan that indicated the Project may cast a shadow on both Union Square Plaza and Willie "Woo Woo" Wong Park, properties under the jurisdiction of the San Francisco Recreation and Park Department.

To evaluate the design of the Project, a project-specific shadow study ("Shadow Study") was performed using a detailed 3-D model. The analysis performed by qualified consultants ("FASTCAST") modeled the proposed Project and site consistent with the projects architectural and engineering plan description in addition to utilizing high resolution topography mapping. FASTCAST's methodology and base data is considered highly accurate and to the appropriate level of detail required for a Section 295 shadow analysis. The results of the Shadow Study, including a quantitative analysis of potential shadow impacts on Section 295 parks and qualitative analysis of project consistency with other Planning Code sections regulating new shadow [Sections 146(c), 147, and 260(b)(1)(M)], and potential significant shadow impacts under CEQA were discussed in the Project's Community Plan Exemption certificate.

Shadow Analysis Results

Union Square Plaza

Union Square Plaza is an approximately 2.42-acre (105,516-square feet) public plaza, located approximately 0.50 mile west of the Site. Union Square Plaza contains landscaped areas, walkways, and areas for active and passive uses. The Project would add new shadow to Union Square Plaza in the early morning between 7:44 a.m. until no later than 8:15 a.m. from August 30 through September 13

and from March 29 through April 12 for a total of six weeks. Net new shadow would be cast on the northwest portion of Union Square Plaza, which includes primarily open space, stairs, and portable seating with tables, chairs, and umbrellas.

The existing annual shadow coverage on Union Square Plaza is 44.99 percent shaded relative to the TAAS (approximately 392,667,242 square foot hours of shadow). The quantitative analysis found that the Project would add approximately 0.03 percent new shadow, relative to TAAS (approximately 115,526 sfh of shadow) for a total of 45.02 percent shaded under existing plus project conditions. The Project would add 0.03 net new shadow, within the current ACL of 0.14, leaving a remaining "shadow budget" of 0.11 percent of TAAS.

Willie "Woo Woo" Wong Playground

Willie "Woo Woo" Wong Playground is an approximately 0.61-acre (26,563 square feet) urban park, located approximately 0.62 mile northwest of the Site. The park contains two sand-floor playgrounds, and basketball, tennis and volleyball courts. It also includes a recreational center that hosts afterschool programs and indoor gym and ping-pong tables. The Project would add new shadow to Willie "Woo Woo" Wong Playground in the early morning starting after 8:00 a.m. and ending before 8:30 a.m. for a total of 11 weeks of the year between November 15 and November 22 and between January 18 and January 25. The net new shadow would cover 2,628 square feet (or 9.89 percent) of the playground and would be cast on a portion of the northwest side of the tennis courts.

The existing annual shadow coverage on Willie "Woo Woo" Wong Playground is 58.44 percent shaded relative to TAAS (approximately 98,852,508 sfh of shadow). The quantitative analysis found that the Project would add approximately 0.01 percent new shadow, relative to TAAS (approximately 9,845 sfh of shadow) for a total of 58.45 percent shaded under existing plus project conditions. The Project would add 0.01 net new shadow, within the current ACL of 0.03, leaving a remaining "shadow budget" of 0.02 percent of TAAS.

Conclusion

Based upon the amount and duration of new shadow and the importance of sunlight to each of the open spaces analyzed, the Project would not substantially affect, in an adverse manner, the use or enjoyment of these open spaces beyond what was analyzed and disclosed in the TCDP FEIR. The Project's new shadow on Union Square Plaza and Willie "Woo Woo" Wong Playground would contribute considerably to the significant and unavoidable impact identified in the TCDP FEIR with respect to the need to increase the Absolute Cumulative Limit of downtown parks.

As referenced in Motion No. 18717, the resolution that raised the ACLs for seven Recreation and Parks properties impacted by reasonably-foreseeable projects identified with the TCDP PEIR, a provision specifically stated that any project that seeks allocation of available ACL within the new limits must adequately demonstrate a good faith effort to sculpt the massing and architectural elements of a proposed building so that the effects of any net new shadow on the parks protected under Section 295 are minimized as compared to the building's shadows as analyzed in the TCDP PEIR.

Given the TCDP PEIR utilized generalized massing models for each of the reasonably-foreseeable projects identified with the TCDP PEIR, the Project's bulk and mass is smaller than what was analyzed. For example, whereas a building with a larger volume that meets the strict Code requirements related to bulk and height would allow for a larger building with 1,385,032 gsf, with an upper tower average floor plate area of 18,750 sf, the Project proposes a smaller building with a total of 1,140,458 gsf (approximately 18% smaller), which, with a much narrow upper tower average floor plate area of 15,330 sf (approximately 18% smaller).

Thus, the Project would not result in new or more severe shadow impacts than those identified in the PEIR. This conclusion is consistent with the findings of the PEIR, and the Project would not result in individual or cumulative shadow impacts beyond those analyzed in the PEIR, nor would it result it in substantially more severe impacts than identified in the PEIR.

On September 19, 2019 the Recreation and Park Commission conducted a duly noticed public hearing at regularly scheduled meetings and recommended, through Resolution No. 1909-016, that the Planning Commission find that the shadows cast by the Project would not be adverse to the use of Union Square Plaza or Willie "Woo Woo" Wong Playground.

V. **Inclusionary Affordable Housing Program (Section 415).** The Planning Code Section sets forth the requirements and procedures for the Inclusionary Affordable Housing Program. Under Planning Code Section 415.3, these requirements would apply to projects that consist of ten or more units. The applicable percentage is dependent on the number of units in the project, the zoning of the property, and the date that the project submitted a complete Environmental Evaluation Application. A complete Environmental Evaluation Application was submitted on July 14, 2016; therefore, pursuant to Planning Code Section 415.3 the Inclusionary Affordable Housing Program requirement for the Off-site Affordable Housing Alternative is to provide 33% of the proposed dwelling units as affordable with a minimum of 18% of the units affordable to low-income households, 8% of the units affordable to moderate-income households, and the remaining 7% of the units affordable to middle-income households as defined by the Planning Code and the Procedures Manual. Off-site units must be located within a one (1) mile radius of the principal project.

The Project is located within the Transbay C-3 Special Use District, which, only permits compliance with the inclusionary affordable housing requirements through the on-site alternative, pursuant to Section 249.28(b)(6)(B)(C). The Project is also located within the Transbay Redevelopment Plan Area, which, is under the jurisdiction of the Office of Community Investment and Infrastructure (OCII). One of the overarching goals of the Transbay Redevelopment Plan was the creation of affordable housing units, with a target goal of 35 percent of all dwelling units provided as affordable within the Plan Area

In an effort to meet the Plan Area goals and provide a higher inclusionary affordable housing rate than would otherwise be provided on-site at the Site, the Project would develop the required inclusionary housing units off-site, within the Transbay Plan Area.

Through a legislative amendment as only applied to the Project (Board File No. 191259), the Project would be relieved of strict compliance with Code Section 249.28(b)(6)(B)(C), allowing the Project the option to provide the inclusionary affordable housing units off-site, at another site within the Transbay Redevelopment Plan Area, potentially located in a future building on Transbay Block 4 on Howard Street between Beale and Main Streets, approximately three blocks east of the Site (and within one (1) mile radius of the principal project).

With benefit of the proposed legislative amendment as only applied to the Project (Board File No. 191259), the Project Sponsor has demonstrated that it is eligible for the Off-site Affordable Housing Alternative under Planning Code Section 415.5 and 415.7, and has submitted a 'affidavit of Compliance with the Inclusionary Affordable Housing Program: Planning Code Section 415,' to satisfy the requirements of the Inclusionary Affordable Housing Program by providing the affordable housing off-site instead of payment of the Affordable Housing Fee. In order for the Project Sponsor to be eligible for the Off-site Affordable Housing Alternative, the Project Sponsor must submit an 'Affidavit to Establish Eligibility for Alternative to Affordable Housing Fee' to the Planning Department stating that any affordable units designated as off-site units shall be provided as rental units and will remain as rental units for the life of the project. The Project Sponsor submitted such Affidavit on December 9, 2019. The applicable percentage is dependent on the total number of units, the zoning of the property, and the date that the project submitted a complete Environmental Evaluation Application. A complete Environmental Evaluation Application was submitted on July 14, 2016; therefore, pursuant to Planning Code Section 415.3 the Inclusionary Affordable Housing Program requirement for the Off-site Affordable Housing Alternative is to provide 33% of the total proposed dwelling units as affordable with a minimum of 18% of the units affordable to low-income households, 8% of the units affordable to moderate-income households, and the remaining 7% of the units affordable to middle-income households as defined by the Planning Code and the Procedures Manual. 54 units (7 one-bedrooms, 30 two-bedrooms, and 17 three-bedroom units). provided will be affordable units. The proposed ordinance (Board File No. 191259) stipulates that in the event that the Project is unable to comply with the off-site inclusionary affordable housing requirements, that the Project comply with the on-site inclusionary affordable housing requirements under Planning Code Section 249.28(b)(6).

W. **Public Art (Section 429).** The Planning Code Section requires a project to include works of art costing an amount equal to one percent of the construction cost of the building for construction of a new building or addition of floor area in excess of 25,000 sf to an existing building in a C-3 District.

The Project will comply with this Code requirement by dedicating one percent of the Project's construction cost to works of art. The public art concept and location will be subsequently presented to the Planning Commission at an informational presentation.

7. **Exceptions Request Pursuant to Planning Code Section 309.** The Planning Commission has considered the following exceptions to the Planning Code, makes the following findings, and grants each exception to the Project as further described below:

A. **Setbacks and Streetwall Articulation (Section 132.1(c)(1)).** In order to establish an appropriate street wall in relation to the width of the street and to adjacent structures, and to avoid the perception of overwhelming mass that would be created by a number of tall buildings built close together with unrelieved vertical rise, Planning Code Section 132.1(c) specifies that new buildings taller than 150 feet within the C-3-0(SD) District must establish a streetwall height between 50 and 110 feet, through the use of a horizontal relief totaling at least 10 feet for a minimum of 40 percent of the linear frontage. Exceptions to this subsection (c)(1) may be allowed in accordance with the procedures of Section 309 if the Planning Commission affirmatively determines that all of the following criteria have been met:

i. the design of the proposed project successfully creates a clearly defined building base that establishes or maintains an appropriate streetwall at the height or height range described above,
ii. the base is not defined solely by recessing the base,
iii. the overall building mass tapers or steps away from the street above the streetwall reducing any sense of unrelieved vertical rise directly from the sidewalk edge, and
iv. the overall architectural expression of the proposed project is exceptional, unique, and consistent with the intent of the streetwall requirement.

The Project does not incorporate a literal setback meeting the strict requirements of the Code, however, the Commission may approve other designs that fulfill the intent of the streetwall base requirements. The Site is a through lot with frontages on both Howard and Natoma Streets. The height and context of the existing streetwall along Howard Street differs from that of the streetwall along Natoma Street. As such, the Project has established two separate and distinct streetwall bases to respond to the unique site conditions along its two street frontages.

Along the Howard frontage, the streetwall base is established at 81 feet, to align with the prevailing streetwall. The subject building establishes a lower pedestrian zone with a ten-foot projecting canopy at 12-feet above grade to create a human-scaled entryway for the building. The primary building wall is otherwise unrelieved in horizontal dimensions up through the established streetwall base. Then, beginning at the established streetwall base, the primary building wall is setback 5 feet for two floors (levels 6 and 7). Beginning at level 8, the primary building is then unrelieved in horizontal dimensions up through the top of the finished roof height (749'-10'). The two-story "notch" located at floors 6 and 7 serves to differentiate the building's base from the upper towers above, which, is accentuated by the strong horizontality of the building's base façade articulation, as compared to the strong verticality of the buildings upper tower façade articulation.

Along the Natoma frontage, the streetwall base is established at 64 feet, to align approximately with Saleforce Park, the rooftop park located atop the Salesforce Transit Center. Beginning at the ground floor, a one-story high building volume provides human scale and acts as a balanced counterpart to the undulating metal screens of the adjacent Salesforce Transit Center façade. A four-story setback begins at floor 2, averaging 25'-3" in depth across the length of the Natoma Street frontage, with the greatest

setback (50'-6") located along the western edge of the building. At level 5, there is an additional variable setback with the greatest setback (50') located along the eastern edge of the building, providing shelter for an outdoor terrace and pedestrian bridge that connects to the adjacent Salesforce Park.

In order to achieve a comparable amount of developable floor area, uninhibited by a constrained developable Site, the Project necessitates vertical development with limited setbacks. Therefore, the Project requests an exception from strict application of the streetwall base requirements of the Code due to significant physical constraints on the buildable area of the Site that make technical adherence to the setback requirements of Section 132.1(c) infeasible. The presence of a below-grade "Train Box" located within the northwest corner of the Site, coupled with a bus ramp easement along the western boundary of the Site limit the area of the Site that can be vertically developed since development is generally restricted to the southeastern portion of the Site (closest to Howard Street) and away from the northwestern portion of the Site (closest to Natoma Street).

With a combination of distinctive façade treatments and attention to the pedestrian activity around and through the building, the Project meets the intent of the setbacks and streetwall articulation requirement of the Code (Section 132.1(c)(1)). The façade to the west of the public passageway reinforces a pedestrian scale at the ground floor with building materials and textures that differentiate the public nature of the building lobby and amenity spaces from the guest rooms, offices and residences above. Therefore, the exception from the is warranted.

B. **Tower Separation (Section 132.1(d)(1)).** The Planning Code requires that the Project provide tower separation in order to preserve the openness of the street to the sky and to provide light and air between structures. This requirement applies to new structures located within the "S" and "S-2" Bulk Districts. Exceptions can be granted to the extent restrictions on adjacent properties make it unlikely that development will occur at a height or bulk which will, overall, impair access to light and air or the appearance of separation between buildings, thereby making full setbacks unnecessary. The minimum setback for such facades shall be partially or fully reduced as appropriate by the Planning Commission as an exception according to the procedures of Section 309 for any of the following conditions: for lots on Assessor's Blocks 3719, 3720, and 3721 which have property lines that directly abut the Transbay Transit Center or directly face it across Minna or Natoma Streets; or for development lots abutting preservation lots that have transferred all potential development rights according to the procedures of Section 128.

The Project partially conforms to the requirements for tower separation. Code Section 132.1(d)(1) requires a minimum of 15 horizontal feet measured from the interior property line or the center of a public right-of-way, as the case may be, beginning at a height which is 1.25 times the width of the principal street on which the building faces, and increasing in width as the building increases in height (leading to a 35 foot horizontal setback at a height of 550 feet above grade). Along the Howard Street frontage, the tower separation requirements begin at a height of approximately 110 feet, whereas the tower separation requirements begin at a height of approximately 44 feet along the Natoma Street

frontage. However, the average streetwall base (110 feet) is used as the base for the interior property line tower separation measurements.

For tower separation requirements as measured from the center of public right-of-ways, the Project partially conforms to the requirements along the Howard and Natoma Street frontages. However, the tower encroaches the 35-foot setback plane that begins above 300 feet in height along both street frontages. As measured from the Howard Street frontage, a small area of non-conformity begins on level 53 (or 645'-7' in height), while a slightly larger area of non-conformity begins on level 45 (or 560'in height), as measured from the Natoma Street frontage.

The Project is less compliant with tower separation requirements as measured form interior property lines. The 15-foot setback requirement from both interior property lines would commence at 110 feet above grade (the average streetwall base). While the Project completely conforms to this requirement along the western façade up through a height of 800 feet, a significant portion of the eastern façade encroaches into the required setback area beginning at level 24 (or 302'-11' in height), up through a height of 800 feet.

In total, the north, east, and south sections of the building are non-compliant with the Code provisions for tower separation as the Code requires tapering of the overall mass up through a height of 1,000 feet. A strict enforcement of the Code would result in a building that is even narrower than the proposed Project, leading to a reduced overall height, with a substantial reduction in the overall number of dwelling units being provided.

Planning Code Section 132.1(d)(2)(B)(i) allows for the minimum setback for facades to be partially or fully reduced as appropriate by the Planning Commission as an exception according to the procedures of Section 309 for lots on Assessor's Blocks 3719, 3720, and 3721 which have property lines that directly abut the Transbay Transit Center or directly face it across Minna or Natoma Streets. Given that the Site is located within Assessor's Block 3721 and also directly abuts the Transbay Transit Center, it is therefore eligible for partial or full relief from the Code as it pertains to Tower Separation.

Therefore, the Project seeks partial relief from the Code provisions for tower separation for the small areas of non-conformity along: 1) the Howard Street frontage (beginning on level 53); 2) the Natoma Street frontage (beginning on level 45); and 3) the eastern interior lot line frontage (beginning at level 24).

C. **Rear Yard (Section 134(a)(1)).** The Planning Code requires that the Project provide a rear yard equal to 25 percent of the lot depth at the first level containing a dwelling unit, and at every subsequent level. Exceptions to the rear yard requirements may be granted if the building location and configuration assure adequate light and air to the residential units and the open space provided.

With a total lot depth of 165' (as measured from Howard Street), the required rear yard for the subject lot is 41'-3". Due to significant constraints on the buildable area of the Site (i.e., the presence of a below-

grade "Train Box" located within the northwest corner of the Site and the bus ramp easement along the western boundary of the Site), the position, configuration, and building type of the proposed tower require development within the require rear yard. Therefore, strict compliance with the Rear Yard requirement is not feasible. In addition to the common and publicly accessible open space provided on-site, the Project includes a direct connection to the planned 5.4 acre rooftop park atop the Salesforce Transit Center, and is adjacent to the planned Under Ramp Park. As such, residents, employees, and guests of the Project will have extraordinary access to nearby open/green spaces. In addition, the location and configuration of the tower assure that residential units in the Project will have ample access to light and air.

D. **Dwelling Unit Exposure (Section 140).** The Planning Code requires that at least one room of each dwelling unit must face onto a public street, a rear yard, or other open area that meets minimum requirements for area and horizontal dimensions.

The Site is a through lot with frontages along both Howard Street to the south, and Natoma Street to the north, with Howard and Natoma Streets both meeting the minimum requirements established by Code. The dwelling units that face onto one of the abutting streets (Howard or Natoma Streets) would fully comply with Section 140. However, the dwelling units located on floors 33 through 61 that solely face onto the interior property lines do not comply with this requirement because the area of the side setbacks from the interior property lines do not meet the dimensional requirements of Section 140. Therefore, an exception from the exposure requirements of Planning Code Section 140 is sought for the 56 dwelling units that do not meet the dimensional requirements of Section 140. In total, 109 of the 165 dwelling units (or approximately 66%) conform to Section 140, leaving 56 dwelling units (or approximately 34%) that do not conform to Section 140.

E. **Reduction of Ground-Level Wind Currents in C-3 Districts (Section 148).** Within the C-3 zoning districts, new buildings are required to be shaped, or other wind-baffling measures adopted, so that the building will not cause ground-level wind currents to exceed the comfort level of 11 mph equivalent wind speed in areas of substantial pedestrian use or 7 m.p.h. equivalent wind speed in public seating areas, for more than 10 percent of the time year-round, between 7 am and 6 pm. If pre-existing wind speeds exceed the comfort level, or if the building would cause speeds to exceed the comfort level, the building should be designed to reduce wind speeds to the comfort level.

Exceptions can be granted pursuant to Section 309 allowing the building to add to the amount of time the comfort level is exceeded if (1) the building cannot be shaped and other wind-baffling features cannot be adopted without creating an unattractive and ungainly building form, and without unduly restricting the development potential of the site; and (2) the addition is insubstantial, either due to the limited amount of exceedances, the limited location where the exceedances take place, or the short time when the exceedances occur. No exception shall be granted and no building or addition shall be permitted that causes equivalent wind speeds to reach or exceed the hazard level of 26 miles per hour for a single hour of the year.

A qualified wind consultant (Cermak Peterka Peterson, "CPP") analyzed ground-level wind currents in the vicinity of the Site, and performed a wind tunnel analysis of three scenarios: existing, existing plus Project, and Project plus cumulative. The wind study measured wind speeds for the existing, existing plus project, and cumulative scenario. As with the PEIR wind study, the cumulative scenario included a model for the Transit Tower (now known as the Salesforce Tower or Transbay Tower) and massing models of other potential future development in the vicinity of the Transit Tower Site. Wind speed measurements were taken at 38 locations for the project and cumulative scenarios. The addition of 7 pedestrian comfort criterion exceedances requires an exception under the (Section 309) Downtown Project Authorization process.

Hazard Criterion

The Wind Assessment found that, under the existing scenario, two locations exceeded the 26-mile-per hour wind hazard criterion for 1 hour per year: one on the rooftop at the south end of the Transit Center (location 31) at a total of 1.1 hours per year and one on the rooftop of the Transit Center, north of the Site (location 38) at a total of 3.9 hours per year. The Wind Assessment found that, under the existing plus project scenario, the same two locations would exceed the 26-mile-per-hour wind hazard criterion. As such, the Project would not result in any net new exceedances as compared to the existing conditions.

Pedestrian/Seating Comfort Criterion

The Wind Assessment found that existing wind conditions near the Site average 11 mph for the 38 test locations tested. Under the existing scenario, wind speeds at 16 of the 38 locations exceed the planning code's 11 mph pedestrian-comfort criterion an average of 12 percent of the year. These areas are along Natoma Street at New Montgomery Street, along Second Street at Natoma and Howard streets, along Howard Street east of the project site, along First Street at Tehama Street, at Minna Street west of the Site, atop the Salesforce Park, and at localized areas to the north and east of the project site. Under the existing plus project scenario, the average comfort wind speed would increase by 0.9 mph at all locations. This increase in comfort criteria exceedances are generally in the same locations as under the existing scenario, but would result in 7 additional comfort criterion exceedances for a total of 23 of the 38 locations. These additional exceedances would be along Natoma Street toward the northeast end of the Transit Center, on the eastern side of the project site, and along Howard Street to the east of the project site.

Conclusion

The number of test points along Howard Street and First Street were greater in the Wind Assessment than the number of locations addressed in the TCDP PEIR wind study. Therefore, the project-specific wind assessment provides a more fine-grained analysis of the Project's potential wind impacts and would be less than significant under CEQA. Development of the Site would not present a new significant impact not previously identified in the PEIR, nor a substantially more severe impact than identified in the PEIR.

It is unlikely the Project could be designed in a manner that would affect wind conditions substantially enough to eliminate all existing exceedances, particularly considering the number of high-rise buildings existing and under construction in immediate proximity to the Site. The majority of the locations where wind speeds would exceed the comfort criterion are not immediately adjacent to the Site, making it infeasible

to incorporate wind baffles or other design features to reduce wind at these locations, without creating an unattractive building or unduly restricting the development potential of the Project.

Overall, no net new hazard exceedances would occur under the cumulative scenario compared to the existing and existing plus project scenarios. As a result, under the cumulative scenario, the proposed project is not anticipated to cause adverse wind impacts or result in new hazardous wind conditions in or around the Site.

F. **Off-street freight loading (Sections 152.1 and 161).** The Planning Code requires certain amounts of off-street freight loading space based on the type and size of uses in a project. For office, 0.1 spaces are required for every 10,000 gsf, rounded to the nearest whole number. For hotels and residential units, 2 off-street spaces are required between 200,001 and 500,000 gsf of each use, and hotel and residential uses exceeding 500,000 gsf are required 3 spaces, plus one space for each additional 400,000 gsf. No building in the C-3-O (SD) District can be required to provide more than six off-street freight loading or service vehicle spaces in total. Pursuant to Section 153(a)(6), two service vehicle spaces can be substituted for one required freight loading space if at least 50% of the required number of freight loading spaces are provided. Planning Code Section 154 sets forth standards as to location and arrangement of off-street freight loading and service vehicle spaces. Off-street loading spaces are required to have a minimum length of 35 feet, a minimum width of 12 feet, and a minimum vertical clearance including entry and exit of 14 feet, except that the first freight loading space required for any structure or use shall have a minimum width of 10 feet, a minimum length of 25 feet, and a minimum vertical clearance, including entry and exit, of 12 feet.

In recognition of the fact that site constraints may make provision of required freight loading and service vehicle spaces impractical or undesirable, a reduction in or waiver of the provision of freight loading and service vehicle spaces for uses may be permitted, by the Zoning Administrator in all districts, or in accordance with the provisions of Section 309 of this Code in C-3 Districts. In considering any such reduction or waiver, the following criteria shall be considered:

i. Provision of freight loading and service vehicle spaces cannot be accomplished underground because site constraints will not permit ramps, elevators, turntables and maneuvering areas with reasonable safety;
ii. Provision of the required number of freight loading and service vehicle spaces on-site would result in the use of an unreasonable percentage of ground-floor area, and thereby preclude more desirable use of the ground floor for retail, pedestrian circulation or open space uses;
iii. A jointly used underground facility with access to a number of separate buildings and meeting the collective needs for freight loading and service vehicles for all uses in the buildings involved, cannot be provided; and
iv. Spaces for delivery functions can be provided at the adjacent curb without adverse effect on pedestrian circulation, transit operations or general traffic circulation, and

off-street space permanently reserved for service vehicles is provided either on-site or in the immediate vicinity of the building.

The Project proposes to provide four (4) off-street loading spaces, rather than the six (6) spaces otherwise required by Code. The constrained area of the Site makes underground provision of loading spaces infeasible. Providing the full amount of required spaces is operationally unnecessary and would result in the use of an unreasonable percentage of the ground floor area within the Site, thereby precluding more desirable active pedestrian-oriented uses.

G. **Use requirements in the C-3-O(SD) Commercial Special Use Subdistrict (Section 248).** The Transit Center C-3-O(SD) Special Use District requires all new development on lots larger than 15,000 square feet in the Special Use District shall include not less than 2 gross square feet of principally or conditionally permitted commercial uses for every 1 gross square foot of dwellings or other housing uses. Exceptions to the controls in Section 248(c) may be granted by the Planning Commission according to the procedures in Section 309 only if the Commission makes one of the following affirmative findings listed in Section 248(d):

i. That the development consists of multiple buildings on a single lot or adjacent lots that are entitled as a single development project pursuant to Section 309, and that commercial uses account for greater than 50 percent of the project's aggregate total gross floor area for all buildings and where the project sponsor demonstrates that it is infeasible or impractical to construct commercial uses on the footprint of the portion of the site dedicated to dwellings and/or other housing uses due to the size and configuration of that portion of the lot; or

ii. That the footprint of the portion of the site dedicated to dwellings and/or other housing uses is less than 15,000 square feet and the lot contains existing buildings which are to be retained.

The Project contains a total of approximately 945,000 gross square feet of three distinct uses: residential, office, and hotel. With approximately 435,000 gross square feet devoted to residential use and approximately 515,000 gross square feet devoted to non-residential uses (or "commercial uses" for purposes of applicability to Section 248), the Project does not meet the required 2:1 ratio of commercial uses to residential or housing uses. Therefore, the Project seeks an exception from the minimum requirements for commercial uses in the Transit Center C-3-O(SD) Commercial Special Use District, pursuant to Section 248(d).

The Project, while containing more than 50 percent of the Project's aggregate total gross floor area devoted to commercial uses, is developed a single building and not within multiple buildings on a single lot or adjacent lots. Further, the footprint of the portion of the building devoted to residential uses is 15,305 sf, thereby exceeding the 15,000 sf limit. Therefore, the Project is therefore not eligible for a 309 exception from Section 248(c).

Through a legislative amendment as only applied to the Project (Board File No. 191259), the square footage threshold for the footprint of the portion of the building devoted to residential uses would be 15,500 sf, thereby allowing the Project to utilize the 309 exception, pursuant to Section 248(d)(2).

H. **Height limits for buildings taller than 550 feet in height in the S-2 bulk district for allowance of non-occupied architectural, screening, and rooftop elements (Section 260(b)(1)(M).** In any S-2 Bulk District for any building which exceeds 550 feet in height, unoccupied building features including mechanical and elevator penthouses, enclosed and unenclosed rooftop screening, and unenclosed architectural features not containing occupied space that extend above the height limit, only as permitted by the Planning Commission according to the procedures of Section 309 and meeting all of the following criteria:

i. such elements are demonstrated to not add more than insignificant amounts of additional shadow compared to the same building without such additional elements on any public open spaces as deemed acceptable by the Planning Commission; and

ii. such elements are limited to a maximum additional height equivalent to 7.5 percent of the height of the building to the roof of the highest occupied floor, except that in the case of a building in the 1,000-foot height district such elements are not limited in height, and any building regardless of building height or height district may feature a single spire or flagpole with a diagonal in cross-section of less than 18 feet and up to 50 feet in height in addition to elements allowed according to this subsection (M); and

iii. such elements are designed as integral components of the building design, enhance both the overall silhouette of the building and the City skyline as viewed from distant public vantage points by producing an elegant and unique building top, and achieve overall design excellence.

The Project would reach a maximum finished roof height of 749'-10". The Project's design incorporates an additional building height of 50 feet for unoccupied building features including mechanical and elevator penthouses, enclosed and unenclosed rooftop screening, and unenclosed architectural features not containing occupied space above the height limit of 750 feet. This additional height is less than the 7.5 percent, or 56'-3", of additional height that otherwise may be granted for non-occupied architectural, screening, and rooftop elements, pursuant to Code Section 260(b)(1)(M). The extended height is incorporated into the overall building design and allows for improved architectural treatment of the crown of the building. The result is an elegant and unique building crown that enhances the building silhouette and City skyline.

I. **Bulk Controls (Sections 270, 272).** Section 270 establishes bulk controls by district. For buildings located within the "S" Bulk District, the following bulk controls apply to the lower tower: a maximum length of 160 feet, a maximum diagonal dimension of 190 feet, and a maximum floor size of 20,000 sq. ft. The upper tower bulk controls are as follows: a maximum

length of 130 feet, a maximum diagonal dimension of 160 feet, a maximum floor size of 17,000 sq. ft., and a maximum average floor size of 12,000 sq. ft. The lower tower controls apply above the base height (1.25 times the widest abutting street or 50 feet whichever is greater). The upper tower controls apply above a point that varies with the height of the building, as defined in Chart B of Code Section 270. A volume reduction requirement also applies to the upper tower where the floor size of the lower tower exceeds 5,000 sq. ft. For buildings taller than 650 feet in the "S-2" Bulk District, the following bulk controls apply: there are no bulk controls for the lower tower except as required by Section 132.1. The lower tower for such buildings shall be defined as the bottom two-thirds of the building from sidewalk grade to roof of the uppermost occupied floor. The average floor size of the upper tower shall not exceed 75 percent of the average floor size of the lower tower, and the average diagonal dimension shall not exceed 87 percent of the average diagonal dimension of the lower tower. In determining the average floor size and average diagonal of the upper tower, unoccupied architectural elements permitted according to Section 260(b)(1)(M), except for levels consisting of singular spires with a diagonal in cross-section of less than 18 feet, may be included in the calculations if the Planning Commission determines, according to the procedures of Section 309, that:

i. such unoccupied architectural elements produce a distinct visual tapering of the building as intended by the controls of Section 260(d)(3)(B); and
ii. create an elegant profile for the upper tower from key public vantage points throughout the City and beyond. In calculating the floor size and diagonal of such architectural elements, a cross section floor proscribed by the most distant outside points of all elements shall be assumed at 12.5-foot intervals.

The bulk limits prescribed by Section 270 have been carefully considered in relation to objectives and policies for conservation and change in C-3 Districts. However, there may be some exceptional cases in which these limits may properly be permitted to be exceeded to a certain degree, provided, however, that there are adequate compensating factors. Exceptions to the bulk limits may be approved in the manner provided in Section 309, provided that at least one of the criteria listed within Section 272 is met.

The Project proposes an exception from Section 270(d)(4)(B), which requires that average floorplates of the upper tower may not exceed 75% of the average floorplates of the lower tower and the average diagonal dimension of the upper tower may not exceed 87% of the average diagonal dimension of the lower tower.

In order to provide feasible area for residential development, the Project's upper tower floorplates are reduced only to 82% of the lower tower floorplates, and the diagonal dimension of the upper tower is reduced only to 95% of the lower tower diagonal dimension The limited bulk reduction is attributable to significant constraints on the buildable area of the Site. Due to the presence of a below-grade "Train Box" located within the northwest corner of the Site and the bus ramp easement along the western

boundary of the Site) the lower tower floorplates and diagonal dimension are significantly smaller than that would otherwise be permitted.

The proposed upper tower bulk reductions are such that there is a clear delineation between the lower and upper tower, with reduced bulk of the upper tower contributing to an overall slender appearance of the overall building. Along the south and north façades, the slenderness of the tower is accentuated by vertical piers. The west and east facades feature a horizontal expression while a series of setbacks and transparency gradients express the different components of the building's form. The curved corners of the tower offer a streamlined and transparent expression that softens the overall massing. As the tower reaches its top, the vertical piers progressively transform themselves into an elegant latticework. In addition, the redefinition of the glass surfaces between piers into concave glass surfaces, and a series of subtle setbacks create an elegant and iconic crown. This crown will be softly lit at night, making it visible from afar, creating an elegant profile within the San Francisco skyline.

The Project provides major variations in the planes of wall surfaces, in either depth or direction, that significantly alter the mass as well as significant differences in the heights of various portions of the building, structure or development that divide the mass into distinct elements (Sections 272(a)(4)(A) and (B). Therefore, the Project is eligible for exceptions from the minor exceedances of bulk controls as permitted under Section 309(a)(13). Overall, the Project achieves a distinctly better design, in both a public and a private sense, than would be possible with strict adherence to the bulk limits, avoiding an unnecessary prescription of building form while carrying out the intent of the bulk limits and the principles and policies of the Master Plan.

8. **General Plan Compliance.** The Project is, on balance, consistent with the following Objectives and Policies of the Transit Center District Plan ("TCDP") (a sub-area of the Downtown Area Plan), the Downtown Area Plan, and the General Plan as follows:

GENERAL PLAN: HOUSING ELEMENT

Objectives and Policies

OBJECTIVE 1
IDENTIFY AND MAKE AVAILABLE FOR DEVELOPMENT ADEQUATE SITES TO MEET THE CITY'S HOUSING NEEDS, ESPECIALLY PERMANENTLY AFFORDABLE HOUSING.

Policy 1.1
Plan for the full range of housing needs in the City and County of San Francisco, especially affordable housing.

Policy 1.8
Promote mixed use development, and include housing, particularly permanently affordable housing, in new commercial, institutional or other single use development projects.

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.

OBJECTIVE 4
FOSTER A HOUSING STOCK THAT MEETS THE NEEDS OF ALL RESIDENTS ACROSS LIFECYCLES.

Policy 4.1
Develop new housing, and encourage the remodeling of existing housing, for families with children.

Policy 4.5
Ensure that new permanently affordable housing is located in all of the City's neighborhoods, and encourage integrated neighborhoods, with a diversity of unit types provided at a range of income levels.

OBJECTIVE 5
ENSURE THAT ALL RESIDENTS HAVE EQUAL ACCESS TO AVAILABLE UNITS.

Policy 5.4
Provide a range of unit types for all segments of need, and work to move residents between unit types as their needs change.

OBJECTIVE 11
SUPPORT AND RESPECT THE DIVERSE AND DISTINCT CHARACTER OF SAN FRANCISCO'S NEIGHBORHOODS.

Policy 11.1
Promote the construction and rehabilitation of well-designed housing that emphasizes beauty, flexibility, and innovative design, and respects existing neighborhood character.

Policy 11.2
Ensure implementation of accepted design standards in project approvals.

Policy 11.3
Ensure growth is accommodated without substantially and adversely impacting existing residential neighborhood character.

Policy 11.4
Continue to utilize zoning districts which conform to a generalized residential land use and density plan and the General Plan.

Policy 11.6
Foster a sense of community through architectural design, using features that promote community interaction.

Policy 11.8
Consider a neighborhood's character when integrating new uses, and minimize disruption caused by expansion of institutions into residential areas.

OBJECTIVE 12
BALANCE HOUSING GROWTH WITH ADEQUATE INFRASTRUCTURE THAT SERVES THE CITY'S GROWING POPULATION.

Policy 12.1
Encourage new housing that relies on transit use and environmentally sustainable patterns of movement.

Policy 12.2
Consider the proximity of quality of life elements, such as open space, child care, and neighborhood services, when developing new housing units.

Policy 12.3
Ensure new housing is sustainably supported by the City's public infrastructure systems.

OBJECTIVE 13
PRIORITIZE SUSTAINABLE DEVELOPMENT IN PLANNING FOR AND CONSTRUCTING NEW HOUSING.

Policy 13.1
Support "smart" regional growth that located new housing close to jobs and transit.

Policy 13.3
Promote sustainable land use patterns that integrate housing with transportation in order to increase transit, pedestrian, and bicycle mode share.

GENERAL PLAN: URBAN DESIGN ELEMENT

Objectives and Policies

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.

Policy 1.7
Recognize the natural boundaries of districts, and promote connections between districts.

OBJECTIVE 3
MODERATION OF MAJOR NEW DEVELOPMENT TO COMPLEMENT THE CITY PATTERN, THE RESOURCES TO BE CONSERVED, AND THE NEIGHBORHOOD ENVIRONMENT.

Policy 3.1
Promote harmony in the visual relationships and transitions between new and older buildings.

Policy 3.2
Promote harmony in the visual relationships and transitions between new and older buildings.

GENERAL PLAN: COMMERCE AND INDUSTRY

OBJECTIVE 1
MANAGE ECONOMIC GROWTH AND CHANGE TO ENSURE ENHANCEMENT OF THE TOTAL CITY LIVING AND WORKING ENVIRONMENT.

Policy 1.1
Encourage development which provides substantial net benefits and minimizes undesirable consequences. Discourage development which has substantial undesirable consequences that cannot be mitigated.

Policy 1.2
Assure that all commercial and industrial uses meet minimum, reasonable performance standards.

Policy 1.3
Locate commercial and industrial activities according to a generalized commercial and industrial land use plan.

OBJECTIVE 8
ENHANCE SAN FRANCISCO'S POSITION AS A NATIONAL CENTER FOR CONVENTIONS AND VISITOR TRADE.

Policy 8.1
Guide the location of additional tourist related activities to minimize their adverse impacts on existing residential, commercial, and industrial activities.

GENERAL PLAN: TRANSPORTATION

OBJECTIVE 1
MEET THE NEEDS OF ALL RESIDENTS AND VISITORS FOR SAFE, CONVENIENT, AND NEXPENSIVE 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.

Policy 1.3
Give priority to public transit and other alternatives to the private automobile as the means of meeting San Francisco's transportation needs particularly those of commuters.

Policy 1.6
Ensure choices among modes of travel and accommodate each mode when and where it is most appropriate.

OBJECTIVE 2
USE THE EXISTING TRANSPORTATION INFRASTRUCTURE AS A MEANS FOR GUIDING DEVELOPMENT AND IMPROVING THE ENVIRONMENT.

Policy 2.1
Use rapid transit and other transportation improvements in the city and region as the catalyst for desirable development and coordinate new facilities with public and private development.

DOWNTOWN AREA PLAN

OBJECTIVE 1
MANAGE ECONOMIC GROWTH AND CHANGE TO ENSURE ENHANCEMENT OF THE TOTAL CITY LIVING AND WORKING ENVIRONMENT.

Policy 1.1
Encourage development which produces substantial net benefits and minimizes undesirable consequences. Discourage development which has substantial undesirable consequences which cannot be mitigated.

OBJECTIVE 2
MAINTAIN AND IMPROVE SAN FRANCISCO'S POSITION AS A PRIME LOCATION FOR FINANCIAL, ADMINISTRATIVE, CORPORATE, AND PROFESSIONAL ACTIVITY.

Policy 2.1
Encourage prime downtown office activities to grow as long as undesirable consequences of growth can be controlled.

Policy 2.2
Guide location of office development to maintain a compact downtown core and minimize displacement of other uses.

OBJECTIVE 4
ENHANCE SAN FRANCISCO'S ROLE AS A TOURIST AND VISITOR CENTER

Policy 4.1
Guide the location of new hotels to minimize their adverse impacts on circulation, existing uses, and scale of development.

OBJECTIVE 7
EXPAND THE SUPPLY OF HOUSING IN AND ADJACENT TO DOWNTOWN.

Policy 7.1
Promote the inclusion of housing in downtown commercial developments.

Policy 7.2
Facilitate conversion of underused industrial and commercial areas to residential use.

OBJECTIVE 10
ASSURE THAT OPEN SPACES ARE ACCESSIBLE AND USABLE.

Policy 10.2
Encourage the creation of new open spaces that become a part of an interconnected pedestrian network.

OBJECTIVE 13
CREATE AN URBAN FORM FOR DOWNTOWN THAT ENHANCES SAN FRANCISCO'S STATURE AS ONE OF THE WORLD'S MOST VISUALLY ATTRACTNE CITIES.

Policy 13.1
Relate the height of buildings to important attributes of the city pattern and to the height and character of existing and proposed development.

TRANSIT CENTER DISTRICT PLAN: LAND USE

Policy 1.2
Revise height and bulk districts in the Plan Area consistent with other Plan objectives and considerations.

Policy 1.4
Prevent long-term under-building in the area by requiring minimum building intensities for new development on major sites.

TRANSIT CENTER DISTRICT PLAN: URBAN FORM

OBJECTIVE 2.3
FORM THE DOWNTOWN SKYLINE TO EMPHASIZE THE TRANSIT CENTER AS THE CENTER OF DOWNTOWN, REINFORCING THE PRIMACY OF PUBLIC TRANSIT IN ORGANIZING THE CITY'S DEVELOPMENT PATTERN, AND RECOGNIZING THE LOCATION'S IMPORTANCE IN LOCAL AND REGIONAL ACCESSIBILITY, ACTIVITY, AND DENSITY.

Policy 2.3
Create a balanced skyline by permitting a limited number of tall buildings to rise above the dense cluster that forms the downtown core, stepping down from the Transit Tower in significant height increments.

TRANSIT CENTER DISTRICT PLAN: PUBLIC REALM

OBJECTIVE 3.8
ENSURE THAT NEW DEVELOPMENT ENHANCES THE PEDESTRIAN NETWORK AND REDUCES THE SCALE OF LONG BLOCKS BY MAINTAINING AND IMPROVING PUBLIC ACCESS ALONG EXISTING ALLEYS AND CREATING NEW THROUGH-BLOCK PEDESTRIAN CONNECTIONS WHERE NONE EXIST.

Policy 3.11
Prohibit the elimination of existing alleys within the District. Consider the benefits of shifting or re-configuring alley alignments if the proposal provides an equivalent or greater degree of public circulation.

Policy 3.12
Design new and improved through-block pedestrian passages to make them attractive and functional parts of the public pedestrian network.

OBJECTIVE 4.1:
THE DISTRICT'S TRANSPORTATION SYSTEM WILL PRIORITIZE AND INCENTIVIZE THE USE OF TRANSIT. PUBLIC TRANSPORTATION WILL BE THE MAIN, NON-PEDESTRIAN MODE FOR MOVING INTO AND BETWEEN DESTINATIONS IN THE TRANSIT CENTER DISTRICT.

Policy 4.5:
Support funding and construction of the Transbay Transit Center project to further goals of the District Plan, including completion of the Downtown Extension for Caltrain and High Speed Rail.

The Project is located within an existing high-density downtown area which was re-zoned as part of an area plan to design development around the Transbay Transit Center. The Transbay Transit Center is designed to be the Bay Area's hub of intermodal public transportation, with corresponding infrastructure improvements in this area of downtown. The overarching premise of the Transit Center District Plan ("TCDP") is to continue the concentration of additional growth where it is most responsible and productive to do so—in proximity to San Francisco's greatest concentration of public transit service. The increase in development, in turn, will provide additional revenue for the Transit Center project and for the necessary improvements and infrastructure in the District. Meanwhile, the well-established Downtown Plan envisions a series of high-density residential areas ringing the area, enabling people to live within walking distance of the central business district. The integration of housing reduces the burden on the transit systems, and helps to enliven the central district. This Project implements the vision of both Plans through the construction of 165 dwelling units, 189 hotel rooms, and approximately 275,00 gross square feet of office use located within walking distance of the Transbay Transit Center, as well as the Downtown Core.

One of the specific goals of the Transit Center Plan is to leverage increased development intensity to generate revenue that will enable the construction of new transportation facilities, including support for the Transbay Transit Center, including the Downtown Rail Extension. These revenues will also be directed toward improvements to sidewalks and other important pedestrian infrastructure to create a public realm that is conducive to, and supportive of pedestrian travel. With approximately 435,000 gross square feet of residential uses, approximately 275,000 gross square feet of office use, and approximately 240,000 gross square feet of hotel use, including approximately 9,800 gross square feet of retail uses, the Project will contribute substantial financial resources toward these improvements, and will also serve to leverage these investments by focusing intense employment growth within the core of planned transportation services.

The Project would add a significant amount of housing to a site that is currently undeveloped, well-served by existing and future transit, and is within walking distance of substantial goods and services. Future residents can walk, bike, or access BART, MUNI, or regional bus service from the Site, including all future modes of public transportation proposed to terminate at the Salesforce Transit Center, located immediately adjacent to the Site.

9. **Planning Code Section 101.1(b)** establishes eight priority-planning policies and requires review of permits for consistency with said policies. On balance, the project complies with said policies 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 Project would have a positive effect on existing neighborhood-serving retail uses because it would bring additional residents to the neighborhood, thus increasing the customer base of existing neighborhood-serving retail. The Project will provide significant employment opportunities with the addition of a full-service hotel and various retail uses at the ground level and at level 5, where the Project

connects to Salesforce Park, atop the Salesforce Transit Center. Moreover, the Project would not displace any existing 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 would not negatively affect the existing housing and neighborhood character. The Project site is currently vacant and does not, therefore, contain any existing housing. The Project's unique mixed-use program provides outstanding amenities to visitors and residents, and contributes significantly to the 24-hour neighborhood character envisioned by the Transit Center District Plan.

C. That the City's supply of affordable housing be preserved and enhanced,

The Project would not displace any housing given the Site is currently undeveloped. The Project would improve the existing character of the neighborhood by developing a high-density, mixed-use building containing 165 dwelling units, including the provision of off-site inclusionary affordable units at a rate of no less than 33 percent within one-mile of the Site.

D. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking.

The Project would not impede MUNI transit service or overburden local streets or parking. The Project is located in the most transit-rich environs in the city and would therefore promote rather than impede the use of MUNI transit service. Future residents and employees of the Project could access both the existing MUNI rail and bus services. The Project also provides a minimum amount of off-street parking for future residents so that neighborhood parking will not be overburdened by the addition of new residents.

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 mixed-use Project would not negatively affect the industrial and service sectors, nor would it displace any existing industrial uses. The Project would also be consistent with the character of existing development in the neighborhood, which is characterized by neighborhood serving retail and residential high-rise buildings.

F. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

The Project will be designed and will be constructed to conform to the structural and seismic safety requirements of the Building Code. This proposal will not impact the property's ability to withstand an earthquake.

G. That landmarks and historic buildings be preserved.

Currently, the Project Site does not contain any City Landmarks or historic buildings.

H. That our parks and open space and their access to sunlight and vistas be protected from development.

A Shadow Study indicated the Project may cast a shadow on both Union Square Plaza and Willie "Woo Woo" Wong Park, properties under the jurisdiction of the San Francisco Recreation and Park Department. However, based upon the amount and duration of new shadow and the importance of sunlight to each of the open spaces analyzed, the Project would not substantially affect, in an adverse manner, the use or enjoyment of these open spaces beyond what was analyzed and disclosed in the TCDP FEIR. The Project's new shadow on Union Square Plaza and Willie "Woo Woo" Wong Playground would contribute considerably to the significant and unavoidable impact identified in the TCDP FEIR with respect to the need to increase the Absolute Cumulative Limit of downtown parks. Shadow from the proposed Project on public plazas, and other publicly-accessible spaces other than those protected under Section 295 would be generally be limited to certain days of the year and would be limited in duration on those days.

10. **First Source Hiring.** The Project is subject to the requirements of the First Source Hiring Program as they apply to permits for residential development (Administrative Code Section 83.11), and the Project Sponsor shall comply with the requirements of this Program as to all construction work and on-going employment required for the Project. Prior to the issuance of any building permit to construct or a First Addendum to the Site Permit, the Project Sponsor shall have a First Source Hiring Construction and Employment Program approved by the First Source Hiring Administrator, and evidenced in writing. In the event that both the Director of Planning and the First Source Hiring Administrator agree, the approval of the Employment Program may be delayed as needed.

The Project Sponsor submitted a First Source Hiring Affidavit and prior to issuance of a building permit will execute a First Source Hiring Memorandum of Understanding and a First Source Hiring Agreement with the City's First Source Hiring Administration.

11. The Project is consistent with and would promote the general and specific purposes of the Code provided under Section 101.1(b) in that, as designed, the Project would contribute to the character and stability of the neighborhood and would constitute a beneficial development.

12. The Commission hereby finds that approval of the Downtown Project Authorization would promote the health, safety and welfare of the City.

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 Downtown Project Authorization Application No. 2016-013312DNX** subject to the following conditions attached hereto as "EXHIBIT A" in general conformance with plans on file, dated December 20, 2019, and stamped "EXHIBIT B", which is incorporated herein by reference as though fully set forth.

The Planning Commission hereby adopts the MMRP attached hereto as "EXHIBIT C" and incorporated herein as part of this Motion by this reference thereto. All required improvement and mitigation measures identified in the Transit Center District Plan EIR and contained in the MMRP are included as Conditions of Approval.

APPEAL AND EFFECTIVE DATE OF MOTION: Any aggrieved person may appeal this Section 329/309 Large/Downtown Project Authorization to the Board of Appeals within fifteen (15) days after the date of this Motion. The effective date of this Motion shall be the date of adoption of this Motion if not appealed (after the 15-day period has expired) OR the date of the decision of the Board of Appeals if appealed to the Board of Appeals. Any appeal shall be made to the Board of Appeals, unless an associated entitlement is appealed to the Board of Supervisors, in which case the appeal of this Motion shall also be made to the Board of Supervisors (see Charter Section 4.135). For further information, please contact the Board of Appeals at (415) 575-6880, 1660 Mission, Room 3036, San Francisco, CA 94103, or the Board of Supervisors at (415) 554-5184, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

Protest of Fee or Exaction: You may protest any fee or exaction subject to Government Code Section 66000 that is imposed as a condition of approval by following the procedures set forth in Government Code Section 66020. The protest must satisfy the requirements of Government Code Section 66020(a) and must be filed within 90 days of the date of the first approval or conditional approval of the development referencing the challenged fee or exaction. For purposes of Government Code Section 66020, the date of imposition of the fee shall be the date of the earliest discretionary approval by the City of the subject development.

If the City has not previously given Notice of an earlier discretionary approval of the project, the Planning Commission's adoption of this Motion, Resolution, Discretionary Review Action or the Zoning Administrator's Variance Decision Letter constitutes the approval or conditional approval of the development and the City hereby gives **NOTICE** that the 90-day protest period under Government Code Section 66020 has begun. If the City has already given Notice that the 90-day approval period has begun for the subject development, then this document does not re-commence the 90-day approval period.

I hereby certify that the Planning Commission ADOPTED the foregoing Motion on January 9, 2020.

Jonas P. Ionin
Commission Secretary

AYES: Diamond, Fung, Johnson, Koppel, Melgar, Moore

NAYS: None

ABSENT: Richards

ADOPTED: January 9, 2020

EXHIBIT A

AUTHORIZATION

This authorization is for a **Downtown Project Authorization and Request for Exceptions** relating to a Project that would allow for the construction of an approximately 750-foot tall (800 feet inclusive of rooftop mechanical features) 61-story, mixed-use tower with a total of approximately 957,000 gross square feet, including 165 dwelling units, 189 hotel rooms, 275,674 square feet of office use located at 542-550 Howard Street (Transbay Parcel F), within Assessor's Block 3721, Lots 016, 135, 136, and 138, pursuant to Planning Code Sections 309, 132.1, 134, 140, 148, 152.1, 161, 248, 260, 270 and 272 within the C-3-O(SD) Downtown-Office (Special Development) Zoning District and 750-S-2 and 450-S Height and Bulk Districts, in general conformance with plans, dated **December 20, 2019**, and stamped "EXHIBIT B" included in the docket for Record No. **2016-013312DNX** and subject to conditions of approval reviewed and approved by the Commission on **January 9, 2020** under Motion No. **20616**. This authorization and the conditions contained herein run with the property and not with a particular Project Sponsor, business, or operator.

RECORDATION OF CONDITIONS OF APPROVAL

Prior to the issuance of the building permit or commencement of use for the Project the Zoning Administrator shall approve and order the recordation of a Notice in the Official Records of the Recorder of the City and County of San Francisco for the subject property. This Notice shall state that the project is subject to the conditions of approval contained herein and reviewed and approved by the Planning Commission on **January 9, 2020** under Motion No. **20616**.

PRINTING OF CONDITIONS OF APPROVAL ON PLANS

The conditions of approval under the 'Exhibit A' of this Planning Commission Motion No. **20616** shall be reproduced on the Index Sheet of construction plans submitted with the site or building permit application for the Project. The Index Sheet of the construction plans shall reference to the Conditional Use authorization and any subsequent amendments or modifications.

SEVERABILITY

The Project shall comply with all applicable City codes and requirements. If any clause, sentence, section or any part of these conditions of approval is for any reason held to be invalid, such invalidity shall not affect or impair other remaining clauses, sentences, or sections of these conditions. This decision conveys no right to construct, or to receive a building permit. "Project Sponsor" shall include any subsequent responsible party.

CHANGES AND MODIFICATIONS

Changes to the approved plans may be approved administratively by the Zoning Administrator. Significant changes and modifications of conditions shall require Planning Commission approval of a new Conditional Use authorization.

Conditions of Approval, Compliance, Monitoring, and Reporting

PERFORMANCE

1. **Validity.** The authorization and right vested by virtue of this action is valid for three (3) years from the date that the Planning Code text amendment(s) and/or Zoning Map amendment(s) become effective. The Department of Building Inspection shall have issued a Building Permit or Site Permit to construct the project and/or commence the approved use within this three-year period.
   For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

2. **Expiration and Renewal.** Should a Building or Site Permit be sought after the three (3) year period has lapsed, the project sponsor must seek a renewal of this Authorization by filing an application for an amendment to the original Authorization or a new application for Authorization. Should the project sponsor decline to so file, and decline to withdraw the permit application, the Commission shall conduct a public hearing in order to consider the revocation of the Authorization. Should the Commission not revoke the Authorization following the closure of the public hearing, the Commission shall determine the extension of time for the continued validity of the Authorization.
   For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

3. **Diligent Pursuit.** Once a site or Building Permit has been issued, construction must commence within the timeframe required by the Department of Building Inspection and be continued diligently to completion. Failure to do so shall be grounds for the Commission to consider revoking the approval if more than three (3) years have passed since the date that the Planning Code text amendment(s) and/or Zoning Map amendment(s) became effective.
   For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

4. **Extension.** All time limits in the preceding three paragraphs may be extended at the discretion of the Zoning Administrator where implementation of the project is delayed by a public agency, an appeal or a legal challenge and only by the length of time for which such public agency, appeal or challenge has caused delay.
   For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

5. **Conformity with Current Law.** No application for Building Permit, Site Permit, or other entitlement shall be approved unless it complies with all applicable provisions of City Codes in effect at the time of such approval.
   For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

6. **Additional Project Authorization.** The Project Sponsor must also obtain Conditional Use Authorization Office to establish a hotel use, pursuant to Section 303; an office allocation, pursuant to Section 321; adoption of shadow findings, pursuant to Section 295; Planning Code Text and Map Amendments to amend San Francisco Zoning Maps ZN-01 and HT-01 for height and bulk classification and zoning designation, and uncodified legislative amendments for the residential footprint requirement per Section 248(d)(2), and authorization of off-site inclusionary affordable dwelling units per Section 249.28(b)(6)(B)(C); General Plan Amendment to amend Maps 1 and 5 of the Downtown Plan and Figure 1 of the Transit Center District Plan; and Variances for Parking and Loading Entrance Width per Section 145, Active Street Frontages per Section 145.1, and Vehicular Ingress and Egress on Natoma Street per Section 155; and location of Bicycle Parking per Section 155, and satisfy all the conditions thereof. The conditions set forth below are additional conditions required in connection with the Project. If these conditions overlap with any other requirement imposed on the Project, the more restrictive or protective condition or requirement, as determined by the Zoning Administrator, shall apply.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

7. **Mitigation Measures.** Mitigation and Improvement measures described in the MMRP attached as Exhibit C are necessary to avoid potential significant effects of the proposed project and have been agreed to by the project sponsor. Their implementation is a condition of project approval.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

8. **Transferable Development Rights.** Pursuant to Section 128, the Project Sponsor shall purchase the required number of units of Transferrable Development Rights (TDR) and secure a Notice of Use of TDR prior to the issuance of a site permit for all development which exceeds the base FAR of 6.0 to 1, up to an FAR of 9.0 to 1. The net addition of gross floor area subject to this requirement shall be determined based on drawings submitted with the Building Permit Application.
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

ENTERTAINMENT COMMISSION – NOISE ATTENUATION CONDITIONS

9. **Chapter 116 Residential Projects.** The Project Sponsor shall comply with the "Recommended Noise Attenuation Conditions for Chapter 116 Residential Projects," which were recommended by the Entertainment Commission on August 25, 2015. These conditions state:

   A. **Community Outreach.** Project Sponsor shall include in its community outreach process any businesses located within 300 feet of the proposed project that operate between the hours of 9PM-5AM. Notice shall be made in person, written or electronic form.

   B. **Sound Study.** Project sponsor shall conduct an acoustical sound study, which shall include sound readings taken when performances are taking place at the proximate Places of

Entertainment, as well as when patrons arrive and leave these locations at closing time. Readings should be taken at locations that most accurately capture sound from the Place of Entertainment to best of their ability. Any recommendation(s) in the sound study regarding window glaze ratings and soundproofing materials including but not limited to walls, doors, roofing, etc. shall be given highest consideration by the project sponsor when designing and building the project.

C. **Design Considerations.**
   i. During design phase, project sponsor shall consider the entrance and egress location and paths of travel at the Place(s) of Entertainment in designing the location of (a) any entrance/egress for the residential building and (b) any parking garage in the building.
   ii. In designing doors, windows, and other openings for the residential building, project sponsor should consider the POE's operations and noise during all hours of the day and night.

D. **Construction Impacts.** Project sponsor shall communicate with adjacent or nearby Place(s) of Entertainment as to the construction schedule, daytime and nighttime, and consider how this schedule and any storage of construction materials may impact the POE operations.

E. **Communication.** Project Sponsor shall make a cell phone number available to Place(s) of Entertainment management during all phases of development through construction. In addition, a line of communication should be created to ongoing building management throughout the occupation phase and beyond.

DESIGN – COMPLIANCE AT PLAN STAGE

10. **Final Materials.** The Project Sponsor shall continue to work with Planning Department on the building design. Final materials, glazing, color, texture, landscaping, and detailing shall be subject to Department staff review and approval. The architectural addenda shall be reviewed and approved by the Planning Department prior to issuance.
    For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

11. **Garbage, Composting and Recycling Storage.** Space for the collection and storage of garbage, composting, and recycling shall be provided within enclosed areas on the property and clearly labeled and illustrated on the building permit plans. Space for the collection and storage of recyclable and compostable materials that meets the size, location, accessibility and other standards specified by the San Francisco Recycling Program shall be provided at the ground level of the buildings.
    For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

12. **Rooftop Mechanical Equipment.** Pursuant to Planning Code 141, the Project Sponsor shall submit a roof plan to the Planning Department prior to Planning approval of the building permit application. Rooftop mechanical equipment, if any is proposed as part of the Project, is required to be screened so as not to be visible from any point at or below the roof level of the subject building.
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

13. **Lighting Plan.** The Project Sponsor shall submit an exterior lighting plan to the Planning Department prior to Planning Department approval of the building / site permit application.
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

14. **Streetscape Plan.** Pursuant to Planning Code Section 138.1, the Project Sponsor shall continue to work with Planning Department staff, in consultation with other City agencies, to refine the design and programming of the Streetscape Plan so that the plan generally meets the standards of the Better Streets Plan and all applicable City standards. The Project Sponsor shall complete final design of all required street improvements, including procurement of relevant City permits, prior to issuance of first architectural addenda, and shall complete construction of all required street improvements prior to issuance of first temporary certificate of occupancy.
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

15. **Open Space Provision - C-3 Districts.** Pursuant to Planning Code Section 138, the Project Sponsor shall continue to work with Planning Department staff to refine the design and programming of the public open space so that the open space generally meets the standards of the Downtown Open Space Guidelines in the Downtown Plan of the General Plan.
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

16. **Food Service in Open Spaces - C-3 Districts.** Pursuant to Planning Code Section 138, the Project Sponsor shall make food service available during the hours that the open space is accessible to the public. In the event that the Project Sponsor is unable to lease a retail space to a food service, food service shall be provided by a kiosk, or a cart or similar portable device at the rooftop open space.
[Planner should insert project specific language ....]
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

17. **Open Space Plaques - C-3 Districts.** Pursuant to Planning Code Section 138, the Project Sponsor shall install the required public open space plaques at each building entrance including the standard City logo identifying it; the hours open to the public and contact information for building management. The plaques shall be plainly visible from the public sidewalks on **Natoma** Street and shall indicate that the open space is accessible to the public via the elevators in the lobby. Design

of the plaques shall utilize the standard templates provided by the Planning Department, as available, and shall be approved by the Department staff prior to installation.
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

18. **Signage.** The Project Sponsor shall develop a signage program for the Project which shall be subject to review and approval by Planning Department staff before submitting any building permits for construction of the Project. All subsequent sign permits shall conform to the approved signage program. Once approved by the Department, the signage program/plan information shall be submitted and approved as part of the site permit for the Project. All exterior signage shall be designed to compliment, not compete with, the existing architectural character and architectural features of the building.
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

19. **Transformer Vault Location.** The location of individual project PG&E Transformer Vault installations has significant effects to San Francisco streetscapes when improperly located. However, they may not have any impact if they are installed in preferred locations. Therefore, the Planning Department in consultation with Public Works shall require the following location(s) for transformer vault(s) for this project: within sidewalk along the Howard Street frontage. The above requirement shall adhere to the Memorandum of Understanding regarding Electrical Transformer Locations for Private Development Projects between Public Works and the Planning Department dated January 2, 2019.
For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works at 415-554-5810, http://sfdpw.org

20. **Overhead Wiring.** The Property owner will allow MUNI to install eyebolts in the building adjacent to its electric streetcar line to support its overhead wire system if requested by MUNI or MTA.
For information about compliance, contact San Francisco Municipal Railway (Muni), San Francisco Municipal Transit Agency (SFMTA), at 415-701-4500, www.sfmta.org

21. **Noise.** Plans submitted with the building permit application for the approved project shall incorporate acoustical insulation and other sound proofing measures to control noise.
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

22. **Odor Control Unit.** In order to ensure any significant noxious or offensive odors are prevented from escaping the premises once the project is operational, the building permit application to implement the project shall include air cleaning or odor control equipment details and manufacturer specifications on the plans. Odor control ducting shall not be applied to the primary façade of the building.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

23. **Salesforce Park/Salesforce Transit Center Connections.** The Project Sponsor must provide to the Planning Department a letter from the Executive Director of the TJPA indicating Final approval of the design and operation of both the bridge and the inclined elevator connecting the Project to City Park. Such letter shall be provided prior to approval by the Planning Department of the first site permit.
For information about compliance, contact the Planning Department at 415-558-6378, www.sf-planning.org.

PARKING AND TRAFFIC

24. **Transportation Demand Management (TDM) Program.** Pursuant to Planning Code Section 169, the Project shall finalize a TDM Plan prior to the issuance of the first Building Permit or Site Permit to construct the project and/or commence the approved uses. The Property Owner, and all successors, shall ensure ongoing compliance with the TDM Program for the life of the Project, which may include providing a TDM Coordinator, providing access to City staff for site inspections, submitting appropriate documentation, paying application fees associated with required monitoring and reporting, and other actions.

    Prior to the issuance of the first Building Permit or Site Permit, the Zoning Administrator shall approve and order the recordation of a Notice in the Official Records of the Recorder of the City and County of San Francisco for the subject property to document compliance with the TDM Program. This Notice shall provide the finalized TDM Plan for the Project, including the relevant details associated with each TDM measure included in the Plan, as well as associated monitoring, reporting, and compliance requirements.
    For information about compliance, contact the TDM Performance Manager at tdm@sfgov.org or 415-558-6377, www.sf-planning.org.

25. **Parking for Affordable Units.** All off-street parking spaces shall be made available to Project residents only as a separate "add-on" option for purchase or rent and shall not be bundled with any Project dwelling unit for the life of the dwelling units. The required parking spaces may be made available to residents within a quarter mile of the project. All affordable dwelling units pursuant to Planning Code Section 415 shall have equal access to use of the parking as the market rate units, with parking spaces priced commensurate with the affordability of the dwelling unit. Each unit within the Project shall have the first right of refusal to rent or purchase a parking space until the number of residential parking spaces are no longer available. No conditions may be placed on the purchase or rental of dwelling units, nor may homeowner's rules be established, which prevent or preclude the separation of parking spaces from dwelling units.
    For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

26. **Car Share.** Pursuant to Planning Code Section 166, no fewer than **three (3)** car share space shall be made available, at no cost, to a certified car share organization for the purposes of providing car share services for its service subscribers.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

27. **Bicycle Parking** Pursuant to Planning Code Sections 155, 155.1, and 155.2, the Project shall provide no fewer than **216** bicycle parking spaces (**117** Class 1 and **8** Class 2 spaces for the residential portion of the Project, and **61** Class 1 and **26** Class 2 spaces for the commercial portion of the Project). SFMTA has final authority on the type, placement and number of Class 2 bicycle racks within the public ROW. Prior to issuance of first architectural addenda, the project sponsor shall contact the SFMTA Bike Parking Program at bikeparking@sfmta.com to coordinate the installation of on-street bicycle racks and ensure that the proposed bicycle racks meet the SFMTA's bicycle parking guidelines. Depending on local site conditions and anticipated demand, SFMTA may request the project sponsor pay an in-lieu fee for Class II bike racks required by the Planning Code.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

28. **Showers and Clothes Lockers.** Pursuant to Planning Code Section 155.3, the Project shall provide no fewer than **4** showers and **24** clothes lockers.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org .

29. **Parking Maximum.** Pursuant to Planning Code Section 151 or 151.1, the Project shall provide no more than **183** off-street parking spaces.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

30. **Off-Street Loading.** Pursuant to Planning Code Section 152, the Project will provide **4** off-street loading spaces.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

31. **Managing Traffic During Construction.** The Project Sponsor and construction contractor(s) shall coordinate with the Traffic Engineering and Transit Divisions of the San Francisco Municipal Transportation Agency (SFMTA), the Police Department, the Fire Department, the Planning Department, and other construction contractor(s) for any concurrent nearby Projects to manage traffic congestion and pedestrian circulation effects during construction of the Project.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

PROVISIONS

32. **Anti-Discriminatory Housing.** The Project shall adhere to the requirements of the Anti-Discriminatory Housing policy, pursuant to Administrative Code Section 1.61.
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

33. **First Source Hiring.** The Project shall adhere to the requirements of the First Source Hiring Construction and End-Use Employment Program approved by the First Source Hiring Administrator, pursuant to Section 83.4(m) of the Administrative Code. The Project Sponsor shall comply with the requirements of this Program regarding construction work and on-going employment required for the Project.
For information about compliance, contact the First Source Hiring Manager at 415-581-2335, www.onestopSF.org

34. **Transportation Brokerage Services - C-3, EN, and SOMA.** Pursuant to Planning Code Section 163, the Project Sponsor shall provide on-site transportation brokerage services for the actual lifetime of the project. Prior to the issuance of any certificate of occupancy, the Project Sponsor shall execute an agreement with the Planning Department documenting the project's transportation management program, subject to the approval of the Planning Director.
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

35. **Employment Brokerage Services - C-3 District.** Pursuant to Planning Code Section 164, the Project Sponsor shall provide employment brokerage services for the actual lifetime of the project. Prior to the issuance of any certificate of occupancy, the Project Sponsor shall execute an agreement with the Planning Department documenting the project's local employment program, subject to the approval of the Planning Director.
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

36. **Child Care Brokerage Services - C-3 District.** Pursuant to Planning Code Section 165, the Project Sponsor shall provide on-site child-care brokerage services for the actual lifetime of the project. Prior to the issuance of any certificate of occupancy, the Project Sponsor shall execute an agreement with the Planning Department documenting the project's child-care program, subject to the approval of the Planning Director.
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

37. **Transportation Sustainability Fee.** The Project is subject to the Transportation Sustainability Fee (TSF), as applicable, pursuant to Planning Code Section 411A.
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

38. **Downtown Park Fee - C-3 District.** The Project is subject to the Downtown Park Fee, as applicable, pursuant to Planning Code Section 412.
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

39. **Jobs-Housing Linkage.** The Project is subject to the Jobs Housing Linkage Fee, as applicable, pursuant to Planning Code Section 413.
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

40. **Child-Care Requirements for Office and Hotel Development.** In lieu of providing an on-site child-care facility, the Project has elected to meet this requirement by providing an in-lieu fee, as applicable, pursuant to Planning Code Section 414.
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

41. **Residential Child Care Impact Fee.** The Project is subject to the Residential Child Care Fee, as applicable, pursuant to Planning Code Section 414A.
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

42. **Inclusionary Affordable Housing Program.** The following Inclusionary Affordable Housing Requirements are those in effect at the time of Planning Commission action. In the event that the requirements change, the Project Sponsor shall comply with the requirements in place at the time of issuance of first construction document.

    A. **Number of Required Units.** Pursuant to Planning Code Section 415.7, the Project is currently required to provide 33% of the proposed dwelling units as affordable to qualifying households. The Project contains 165 units; therefore, 54 affordable units are currently required. The Project Sponsor will fulfill this requirement by providing a minimum 54 affordable units off-site within the Transbay Redevelopment Project Area as stipulated in Planning Code Text and Map Amendment Ordinance (Board File No. 191259). If the number of market-rate units changes, the number of required affordable units shall be modified accordingly with written approval from Planning Department staff in consultation with the Mayor's Office of Housing and Community Development ("MOHCD").
    For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org or the Mayor's Office of Housing and Community Development at 415-701-5500, www.sf-moh.org.

    B. **Unit Mix.** The Project contains, 21 one-bedroom, 92 two-bedroom, and 52 three-bedroom units; therefore, the required affordable unit mix is 7 one-bedroom, 30 two-bedroom, and 17 three-bedroom units, or the unit mix that may be required if the inclusionary housing requirements

change as discussed above. If the market-rate unit mix changes, the affordable unit mix will be modified accordingly with written approval from Planning Department staff in consolation with MOH.
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org or the Mayor's Office of Housing at 415-701-5500, www.sf-moh.org.

C. **Mixed Income Levels for Affordable Units.** Pursuant to Planning Code Section 415.3, the Project is required to provide 33% of the proposed dwelling units as affordable to qualifying households. At least 18% must be affordable to low-income households, at least 8% must be affordable to moderate income households, and at least 7% must be affordable to middle income households. Rental Units for low-income households shall have an affordable rent set at 55% of Area Median Income or less, with households earning up to 65% of Area Median Income eligible to apply for low-income units. Rental Units for moderate-income households shall have an affordable rent set at 80% of Area Median Income or less, with households earning from 65% to 90% of Area Median Income eligible to apply for moderate-income units. Rental Units for middle-income households shall have an affordable rent set at 110% of Area Median Income or less, with households earning from 90% to 130% of Area Median Income eligible to apply for middle-income units. For any affordable units with rental rates set at 110% of Area Median Income, the units shall have a minimum occupancy of two persons. If the number of market-rate units change, the number of required affordable units shall be modified accordingly with written approval from Planning Department staff in consultation with the Mayor's Office of Housing and Community Development ("MOHCD").
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org or the Mayor's Office of Housing and Community Development at 415-701-5500, www.sf-moh.org.

D. **Expiration of the Inclusionary Rate.** Pursuant to Planning Code Section 415.6(a)(10), if the Project has not obtained a site or building permit within 30 months of Planning Commission Approval of this Motion No. 20616, then it is subject to the Inclusionary Affordable Housing Requirements in effect at the time of site or building permit issuance.
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org or the Mayor's Office of Housing and Community Development at 415-701-5500, www.sf-moh.org.

E. **Phasing.** If any building permit is issued for partial phasing of the Project, the Project Sponsor shall have designated not less than thirty three percent (33%), or the applicable percentage as discussed above, of each phase's total number of dwelling units as off-site BMR units.
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org or the Mayor's Office of Housing at 415-701-5500, www.sf-moh.org.

F. **Duration.** Under Planning Code Section 415.8, all units constructed pursuant to Sections 415.7 must remain affordable to qualifying households for the life of the project.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org or the Mayor's Office of Housing at 415-701-5500, www.sf-moh.org.

i. **Total Square Footage Requirement.** The total square footage of the off-site affordable units constructed shall be no less than the calculation of the total square footage of the on-site market-rate units in the principal project multiplied by the relevant on-site percentage requirement.

ii. **Interior Features.** The interior features in affordable units should generally be the same as those of the market rate units in the principal project but need not be the same make, model, or type of such item as long as they are of new and good quality and are consistent with then-current standards for new housing and so long as they are consistent with the "Quality Standards for Off-Site Affordable Housing Units" found in the Procedures Manual.

G. **Other Conditions.** The Project is subject to the requirements of the Inclusionary Affordable Housing Program under Section 415 et seq. of the Planning Code and the terms of the City and County of San Francisco Inclusionary Affordable Housing Program Monitoring and Procedures Manual ("Procedures Manual"). The Procedures Manual, as amended from time to time, is incorporated herein by reference, as published and adopted by the Planning Commission, and as required by Planning Code Section 415. Terms used in these conditions of approval and not otherwise defined shall have the meanings set forth in the Procedures Manual. A copy of the Procedures Manual can be obtained at MOH at 1 South Van Ness Avenue or on the Planning Department or Mayor's Office of Housing's websites, including on the internet at:
http://sf-planning.org/Modules/ShowDocument.aspx?documentid=4451.

As provided in the Inclusionary Affordable Housing Program, the applicable Procedures Manual is the manual in effect at the time the subject units are made available for sale.
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org or the Mayor's Office of Housing at 415-701-5500, www.sf-moh.org.

i. The affordable unit(s) shall be designated on the building plans prior to the issuance of the first construction permit by the Department of Building Inspection ("DBI"). The affordable unit(s) shall (1) reflect the unit size mix in number of bedrooms of the principal project market rate units, (2) be constructed, completed, ready for occupancy and marketed no later than the principal project market rate units, (3) be evenly distributed throughout the building; and (4) be of comparable overall quality, construction and exterior appearance as the market rate units in the principal project. The interior features in affordable units should be generally the same as those of the market units in the principal project, but need not be the same make, model or type of such item as long they are of good and new quality and are consistent with then-

current standards for new housing. Other specific standards for off-site units are outlined under "Quality Standards for Off-site BMR Units" as outlined in the Procedures Manual.

ii. If the off-site units in the building are offered for rent, the affordable unit(s) shall be rented to low income households, as defined in the Planning Code and the Procedures Manual. The initial and subsequent rent level of such units shall be calculated according to the Procedures Manual. Limitations on (i) occupancy; (ii) lease changes; (iii) subleasing, and; are set forth in the Inclusionary Affordable Housing Program and the Procedures Manual.

iii. The Project Sponsor is responsible for following the marketing, reporting, and monitoring requirements and procedures as set forth in the Procedures Manual. MOHCD shall be responsible for overseeing and monitoring the marketing of affordable units. The Project Sponsor must contact MOHCD at least six months prior to the beginning of marketing of any unit in the building.

iv. Required parking spaces shall be made available to initial renters of affordable units according to the Procedures Manual.

v. Prior to the issuance of the first construction permit by DBI for the Project, the Project Sponsor shall record a Notice of Special Restriction on the property that contains these conditions of approval. The Project Sponsor shall promptly provide a copy of the recorded Notice of Special Restriction to the Department and to the MOHCD or its successor.

vi. The Project Sponsor has demonstrated that it is eligible for the Off-site Affordable Housing Alternative under Planning Code Section 415.5 and 415.7 instead of payment of the Affordable Housing Fee, and has submitted an *Affidavit of Compliance with the Inclusionary Affordable Housing Program: Planning Code Section 415,* to the Planning Department stating that any affordable units designated as off-site units shall be rental units and will remain as rental units for the life of the Project.

vii. If the Project Sponsor fails to comply with the Inclusionary Affordable Housing Program requirement, the Director of DBI shall deny any and all site or building permits or certificates of occupancy for the development project until the Planning Department notifies the Director of compliance. A Project Sponsor's failure to comply with the requirements of Planning Code Sections 415 et seq. shall constitute cause for the City to record a lien against the development project and to pursue any and all available remedies by law.

viii. If the Project is unable to comply with the Inclusionary Affordable Housing Requirement through the Off-site Affordable Housing Alternative, the Project Sponsor or its successor shall comply with the On-site Affordable Housing Alternative, as required under Planning Code Section 249.28(b)(6) prior to issuance of the first construction permit and penalties.

43. **Transit Center District Open Space Fee.** Pursuant to Section 424.6, the Project Sponsor shall pay a fee of to be deposited in the Transit Center District Open Space Fund.
For information about compliance, contact the Planning Department at 415-558-6378, www.sf-planning.org

44. **Transit Center District Transportation and Street Improvement Fee.** Pursuant to Section 424.7, the Project Sponsor shall pay a fee which will be deposited in the Transit Center District Transportation and Street Improvement Fund.
For information about compliance, contact the Planning Department at 415-558-6378, www.sf-planning.org

45. **Transit Center District Mello Roos Community Facilities District Program.** Pursuant to Section 424.8, the Project Sponsor is required to participate in a Transit Center District Mello Roos Community Facilities District (CFD) and to include the Project Site in the CFD prior to issuance of the First Temporary Certificate of Occupancy for the Project.
For information about compliance, contact the Planning Department at 415-558-6378, www.sf-planning.org

46. **Art.** The Project is subject to the Public Art Fee, as applicable, pursuant to Planning Code Section 429.
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

47. **Art Plaques.** Pursuant to Planning Code Section 429(b), the Project Sponsor shall provide a plaque or cornerstone identifying the architect, the artwork creator and the Project completion date in a publicly conspicuous location on the Project Site. The design and content of the plaque shall be approved by Department staff prior to its installation.
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

48. **Art.** Pursuant to Planning Code Section 429, the Project Sponsor and the Project artist shall consult with the Planning Department during design development regarding the height, size, and final type of the art. The final art concept shall be submitted for review for consistency with this Motion by, and shall be satisfactory to, the Director of the Planning Department in consultation with the Commission. The Project Sponsor and the Director shall report to the Commission on the progress of the development and design of the art concept prior to the submittal of the first building or site permit application
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

MONITORING - AFTER ENTITLEMENT

49. **Enforcement.** Violation of any of the Planning Department conditions of approval contained in this Motion or of any other provisions of Planning Code applicable to this Project shall be subject to the enforcement procedures and administrative penalties set forth under Planning Code Section 176 or Section 176.1. The Planning Department may also refer the violation complaints to other city departments and agencies for appropriate enforcement action under their jurisdiction.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

50. **Monitoring.** The Project requires monitoring of the conditions of approval in this Motion. The Project Sponsor or the subsequent responsible parties for the Project shall pay fees as established under Planning Code Section 351(e) (1) and work with the Planning Department for information about compliance.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

51. **Revocation due to Violation of Conditions.** Should implementation of this Project result in complaints from interested property owners, residents, or commercial lessees which are not resolved by the Project Sponsor and found to be in violation of the Planning Code and/or the specific conditions of approval for the Project as set forth in Exhibit A of this Motion, the Zoning Administrator shall refer such complaints to the Commission, after which it may hold a public hearing on the matter to consider revocation of this authorization.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

OPERATION

52. **Eating and Drinking Uses.** As defined in Planning Code Section 202.2, Eating and Drinking Uses, as defined in Section 102, shall be subject to the following conditions:

    A. The business operator shall maintain the main entrance to the building and all sidewalks abutting the subject property in a clean and sanitary condition in compliance with the Department of Public Works Street and Sidewalk Maintenance Standards. In addition, the operator shall be responsible for daily monitoring of the sidewalk within a one-block radius of the subject business to maintain the sidewalk free of paper or other litter associated with the business during business hours, in accordance with Article 1, Section 34 of the San Francisco Police Code.
    For information about compliance, contact the Bureau of Street Use and Mapping, Department of Public Works at 415-554-.5810, http://sfdpw.org.

    B. When located within an enclosed space, the premises shall be adequately soundproofed or insulated for noise and operated so that incidental noise shall not be audible beyond the

premises or in other sections of the building, and fixed-source equipment noise shall not exceed the decibel levels specified in the San Francisco Noise Control Ordinance.
For information about compliance of fixed mechanical objects such as rooftop air conditioning, restaurant ventilation systems, and motors and compressors with acceptable noise levels, contact the Environmental Health Section, Department of Public Health at (415) 252-3800, www.sfdph.org.

For information about compliance with construction noise requirements, contact the Department of Building Inspection at 415-558-6570, www.sfdbi.org.

For information about compliance with the requirements for amplified sound, including music and television, contact the Police Department at 415-553-0123, www.sf-police.org.

C. While it is inevitable that some low level of odor may be detectable to nearby residents and passersby, appropriate odor control equipment shall be installed in conformance with the approved plans and maintained to prevent any significant noxious or offensive odors from escaping the premises.
For information about compliance with odor or other chemical air pollutants standards, contact the Bay Area Air Quality Management District, (BAAQMD), 1-800-334-ODOR (6367), www.baaqmd.gov and Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

D. Garbage, recycling, and compost containers shall be kept within the premises and hidden from public view, and placed outside only when being serviced by the disposal company. Trash shall be contained and disposed of pursuant to garbage and recycling receptacles guidelines set forth by the Department of Public Works.
For information about compliance, contact the Bureau of Street Use and Mapping, Department of Public Works at 415-554-.5810, http://sfdpw.org.

53. **Sidewalk Maintenance.** The Project Sponsor shall maintain the main entrance to the building and all sidewalks abutting the subject property in a clean and sanitary condition in compliance with the Department of Public Works Streets and Sidewalk Maintenance Standards.
For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works, 415-695-2017, http://sfdpw.org

54. **Community Liaison.** Prior to issuance of a building permit to construct the project and implement the approved use, the Project Sponsor shall appoint a community liaison officer to deal with the issues of concern to owners and occupants of nearby properties. The Project Sponsor shall provide the Zoning Administrator and all registered neighborhood groups for the area with written notice of the name, business address, and telephone number of the community liaison. Should the contact information change, the Zoning Administrator and registered neighborhood groups shall be made aware of such change. The community liaison shall report to the Zoning Administrator what

issues, if any, are of concern to the community and what issues have not been resolved by the Project Sponsor.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

55. **Notices Posted at Bars and Entertainment Venues.** Notices urging patrons to leave the establishment and neighborhood in a quiet, peaceful, and orderly fashion and to not litter or block driveways in the neighborhood, shall be well-lit and prominently displayed at all entrances to and exits from the establishment.
For information about compliance, contact the Entertainment Commission, at 415 554-6678, www.sfgov.org/entertainment

56. **Other Entertainment.** The Other Entertainment shall be performed within the enclosed building only. The building shall be adequately soundproofed or insulated for noise and operated so that incidental noise shall not be audible beyond the premises or in other sections of the building and fixed-source equipment noise shall not exceed the decibel levels specified in the San Francisco Noise Control Ordinance. Bass and vibrations shall also be contained within the enclosed structure. The Project Sponsor shall obtain all necessary approvals from the Entertainment Commission prior to operation. The authorized entertainment use shall also comply with all of the conditions imposed by the Entertainment Commission.
For information about compliance, contact the Entertainment Commission, at 415 554-6678, www.sfgov.org/entertainment

57. **Lighting.** All Project lighting shall be directed onto the Project site and immediately surrounding sidewalk area only, and designed and managed so as not to be a nuisance to adjacent residents. Nighttime lighting shall be the minimum necessary to ensure safety, but shall in no case be directed so as to constitute a nuisance to any surrounding property.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

Exhibit B:

Plans and Renderings

Parcel F Tower

542-550 Howard Street, San Francisco, CA

Architectural Submittal - 309 Application (12/20/19)

Hines & Urban Pacific | **Pelli Clarke Pelli** Architects

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NARRATIVE AND PROJECT DESCRIPTION

Parcel F Tower, designed by internationally acclaimed Pelli Clarke Pelli Architects, will become a significant addition to the skyline of San Francisco. The tower will be highly visible from many primary approaches to the city. Its streamlined volume will present gently curved corners and a series of setbacks on its east and west sides, becoming increasingly slender as it reaches the sky. Incorporating high-performance building systems and sustainable materials, the tower is being designed to achieve a LEED Gold rating. The 62-story tower will accommodate a mixed-use program with a 9 floor hotel, 15 office floors, 29 residential floors and 7 floors of shared amenities, retail and lobby space.

Located close to the southwest corner of the Salesforce Transit Center (STC), Parcel F Tower is one of only three projects currently allowed to connect directly to the STC's 5.4-acre rooftop park. The site has two street frontages, Howard Street to the south and Natoma Street to the north. To the west, the site is bound by the bus ramp bridge connecting to STC. Approximately one third of the site's 32,000 square feet is occupied by a below grade STC train box that will connect to the lower levels of the STC. The train box, along with a bridge maintenance easement driveway on the west side, imposes significant restrictions on the area of the site that can be vertically developed. Due to these restrictions, the conceptual resolution of the structure became one of the major driving forces for the project.

The 800-foot high tower projects 42 feet over the train box and at level 7 all the weight of this sizable overhang is transferred to the core through diagonal struts, avoiding the train box, and down to the bedrock enhanced fundation. In addition, from the 7th to the 2nd level all floor slabs are suspended with tensors from the 7th level struts. Thus, the main lobbies are completely free of columns, which allows for uniquely transparent and inviting street façades.

Overall, Parcel F boasts a 40/60 solid/vision-glass ratio which makes the exterior wall extremely energy-efficient and architecturally expressive. In the south and north facades the slenderness of the tower is accentuated by vertical white piers that are reminiscent of some of San Francisco's most remarkable traditional buildings, such as the Pacific Bell tower. The west and east facades feature a horizontal expression while a series of setbacks and transparency gradients express the different components of the program. The curved corners of the tower offer a streamlined and transparent expression that softens the overall massing.

As the tower reaches its top, the vertical piers progressively transform themselves into an elegant latticework. In addition, the redefinition of the glass surfaces between piers into concave glass surfaces, and a series of subtle setbacks create an elegant and iconic crown. This crown will be softly lit at night, making it visible from afar and providing a beacon to the San Francisco skyline.

On Howard Street, a double height recess on the 6th level creates a distinct building base that smooths the transition between the scale of the neighboring buildings and the tower. On the west side of this elevation, a four-story setback acknowledges the Salesforce Transit Center Bridge and shelters a sculptural passageway that connects to Natoma Street. The west end of Parcel F site also provides access to the bridge maintenance driveway easement and to four loading docks tucked away from pedestrian view. On Natoma Street, a one-story high retail volume provides human scale and acts as a balanced counterpart to the undulating metal screens of the STC façade. The double loaded retail frontages on Natoma Street will offer a very lively pedestrian experience to visitors of the STC.

In addition, a glass elevator cab will provide public vertical connection to the STC rooftop park. Both the atrium and the public elevator will be highly visible to the pedestrians on Natoma Street and the STC Park. In addition, at Level 5, the base of the tower at Natoma Street features a setback terrace, additional retail spaces and a pedestrian bridge that connects to the urban oasis of the Salesforce Transit Center Park.

URBAN CONTEXT AND SITE

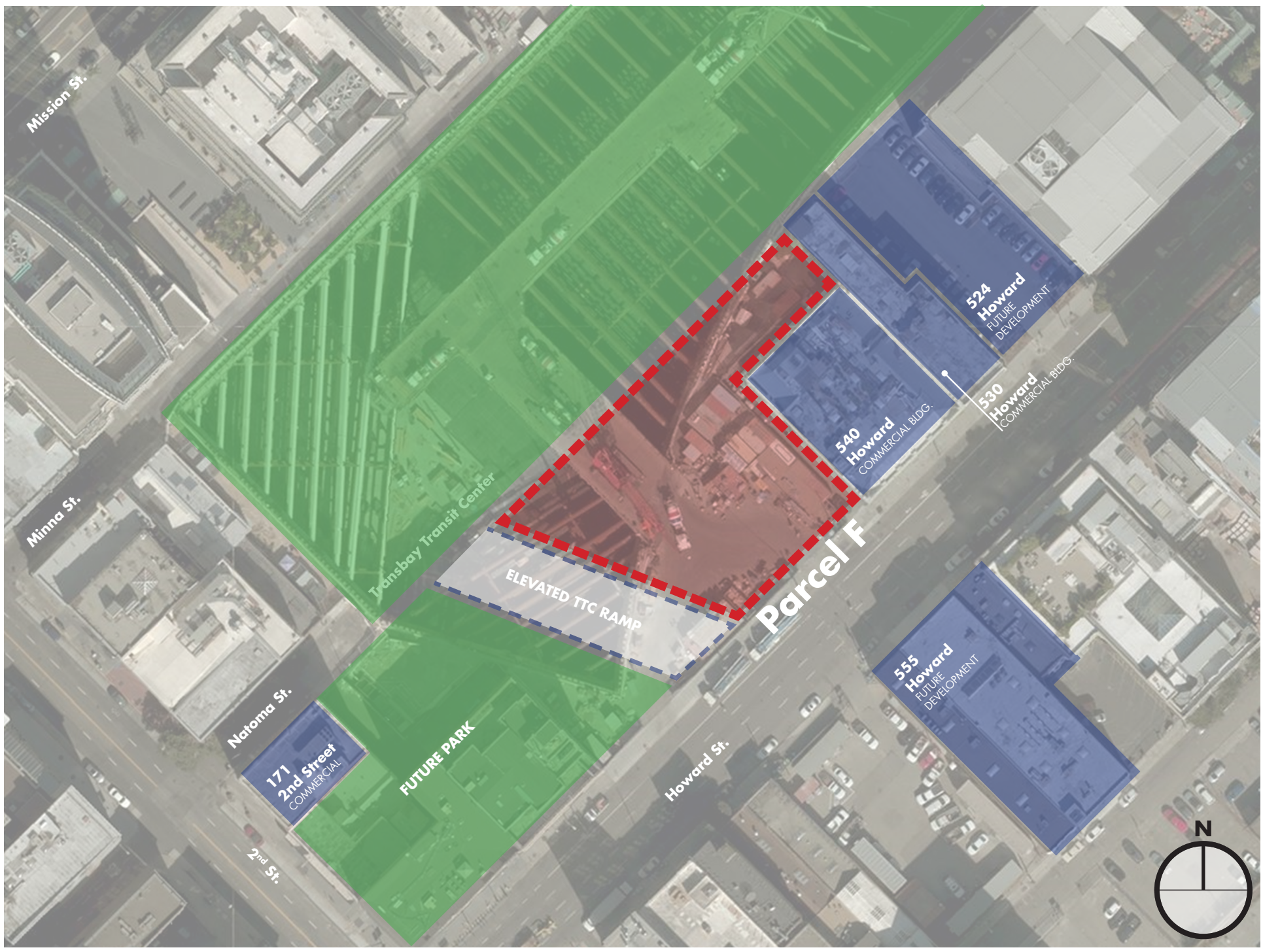
FROM DOLORES PARK

FROM MISSION BAY

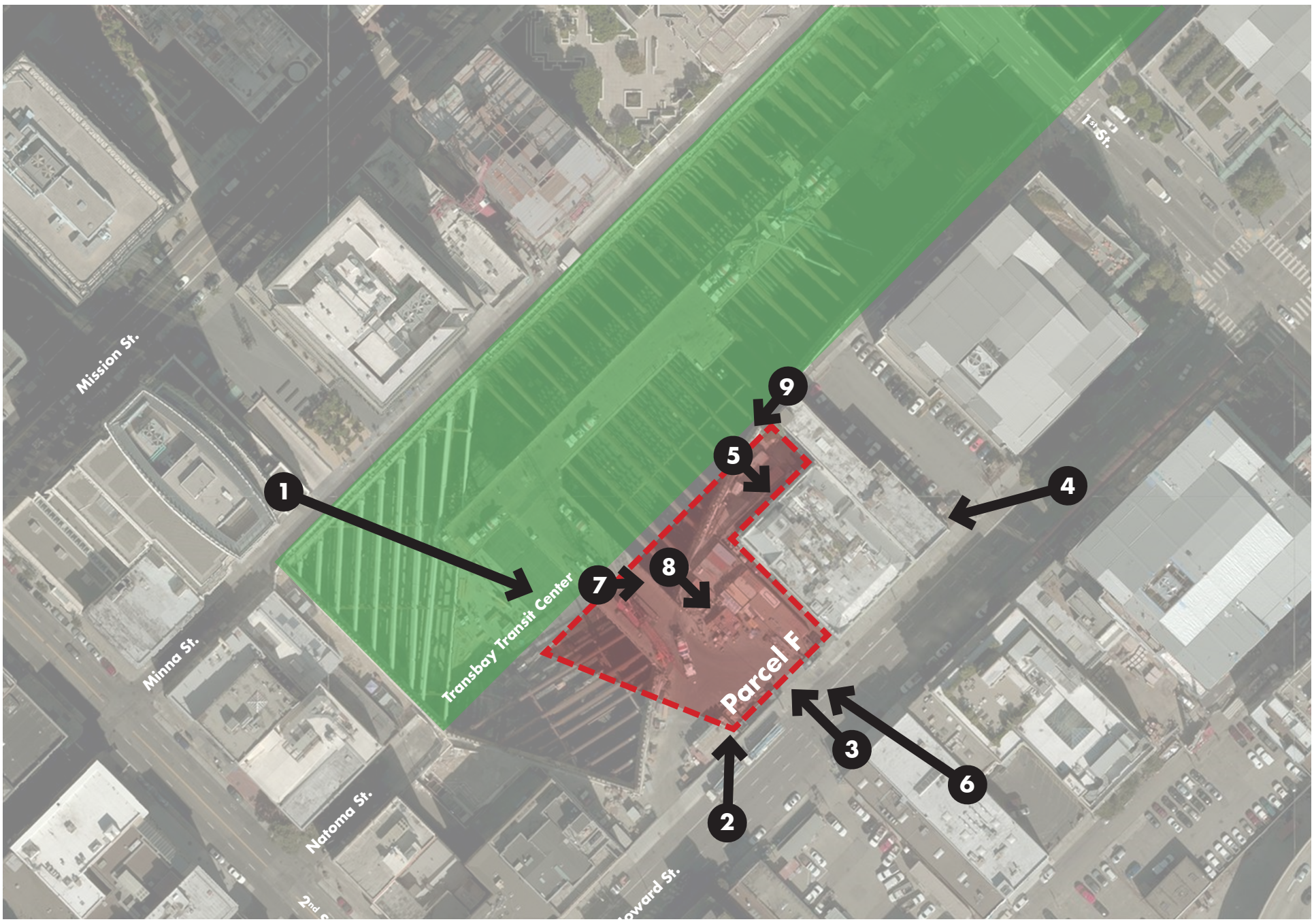
AERIAL VIEW OF DOWNTOWN - FACING WEST

FROM TREASURE ISLAND

TRANSBAY OVERVIEW



SITE CONTEXT



SITE PLAN

VIEW 1
TAKEN: 2016.12.02

VIEW 2
TAKEN: 2017.12.12

VIEW 3
TAKEN: 2016.12.12

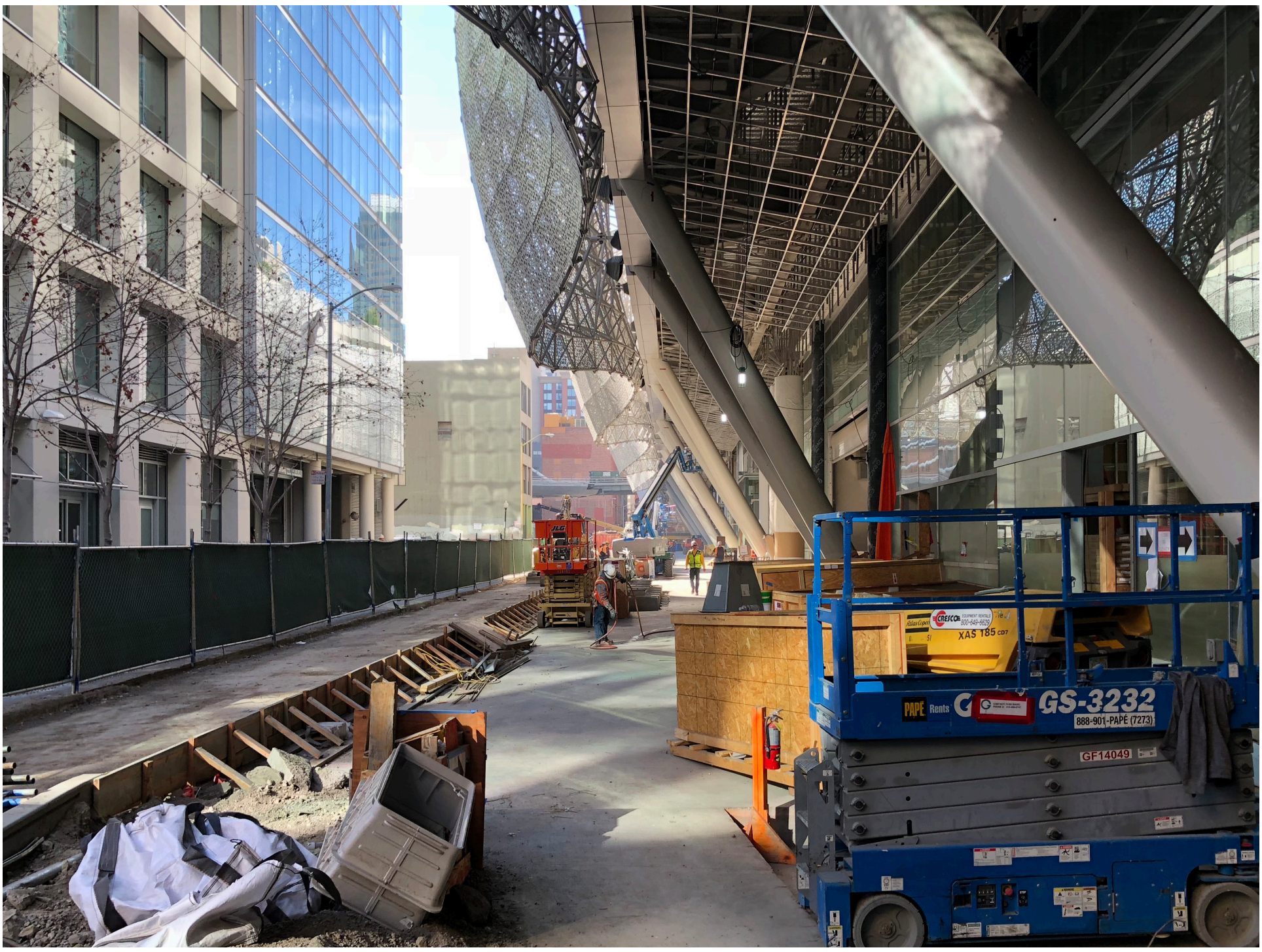
VIEW 4
TAKEN: 2016.12.12

VIEW 5
TAKEN: 2017.10.31

VIEW 6
TAKEN: 2016.12.02

VIEW 7
TAKEN: 2017.12.12

VIEW 8
TAKEN: 2016.12.12



VIEW 9
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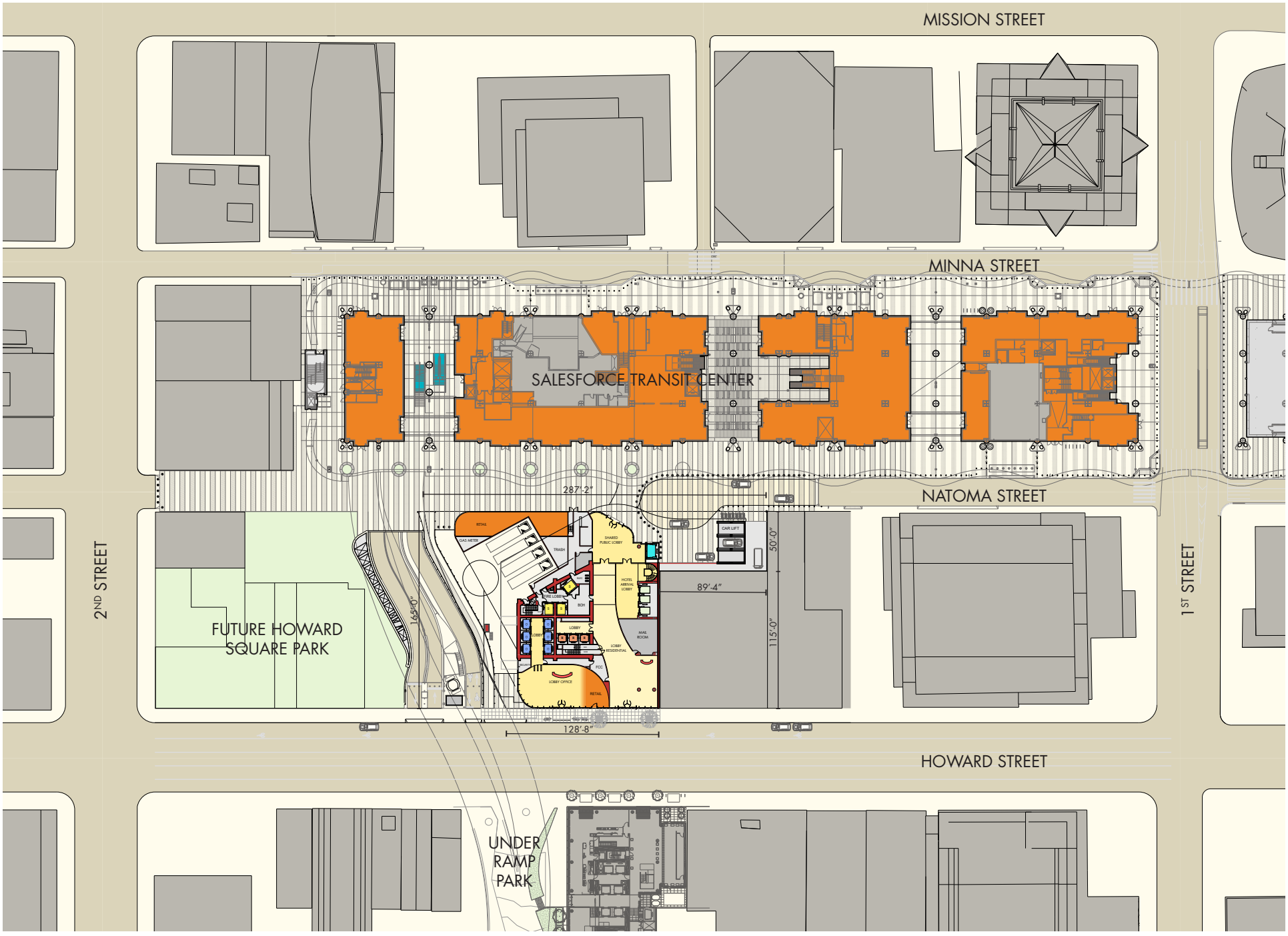
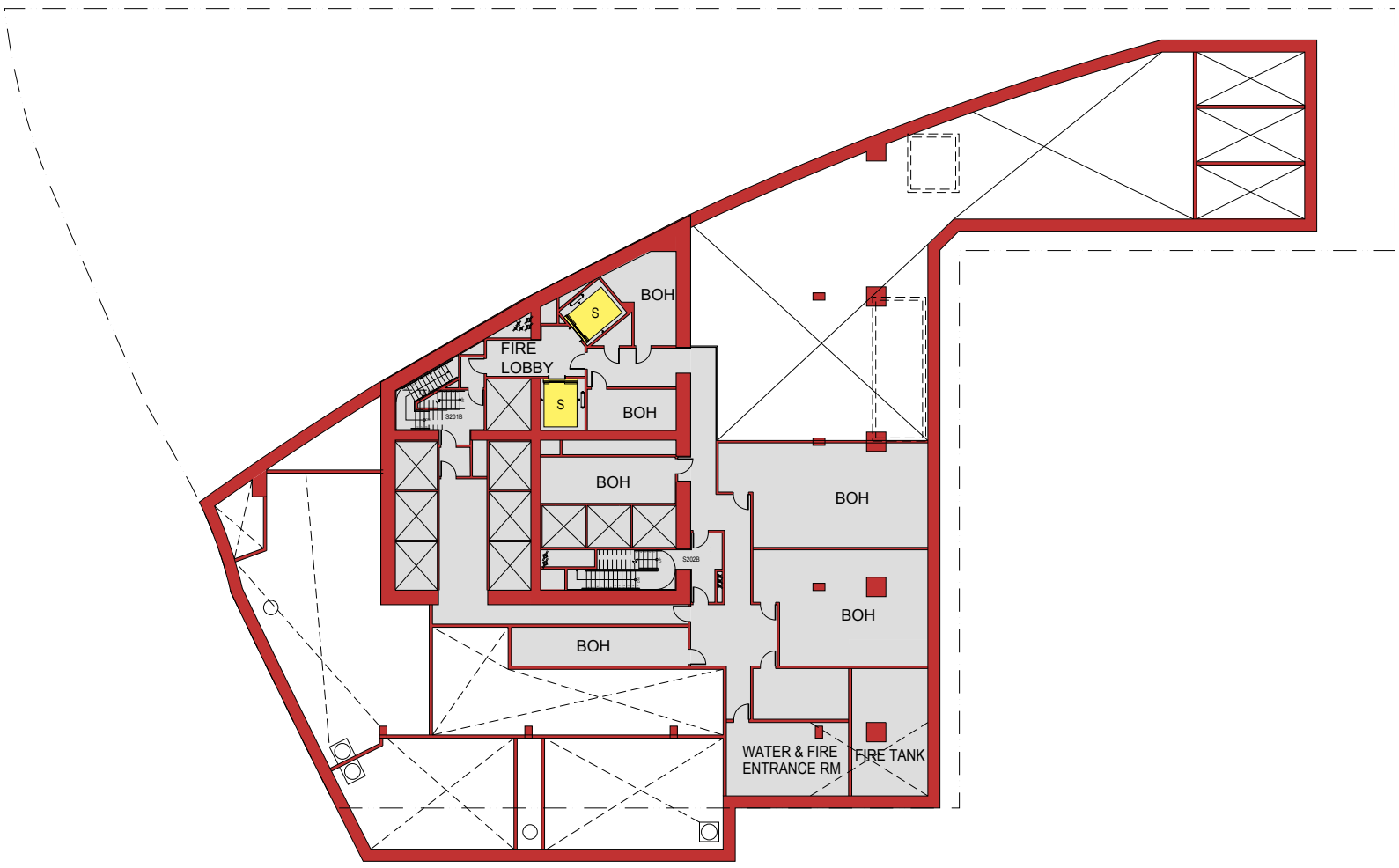
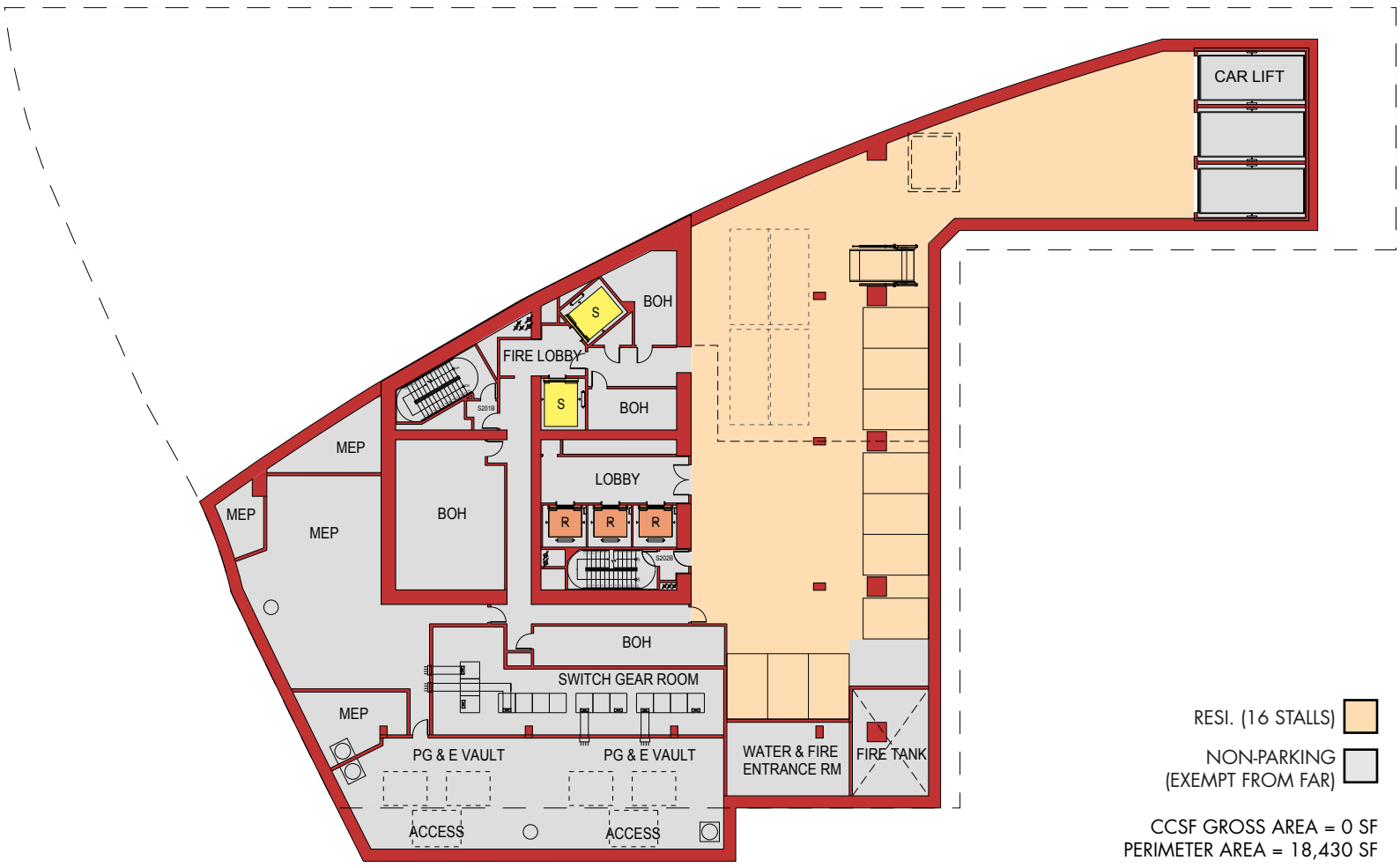
ARCHITECTURAL DESIGN



SITE PLAN



LEVEL B1MEZZANINNE



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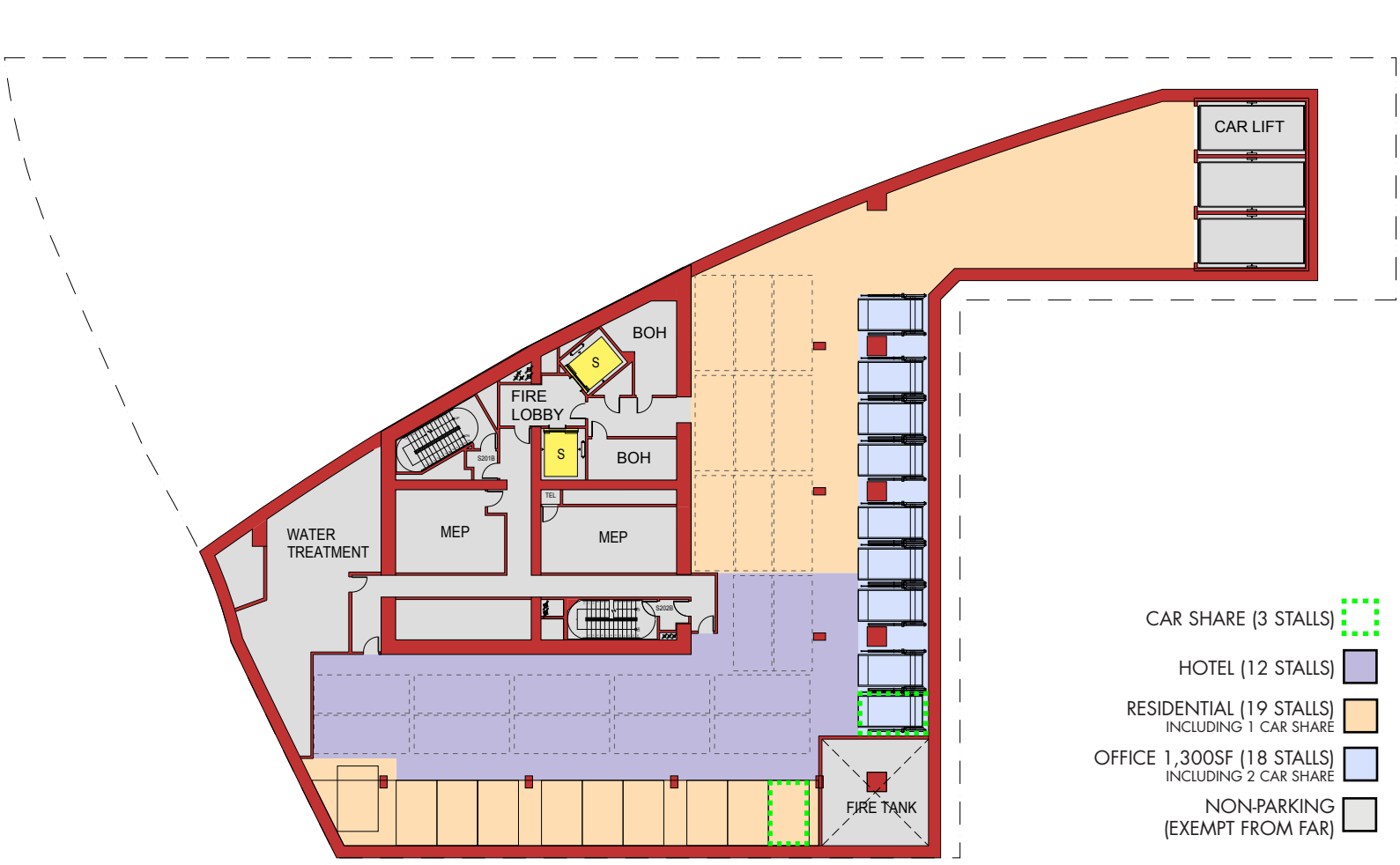

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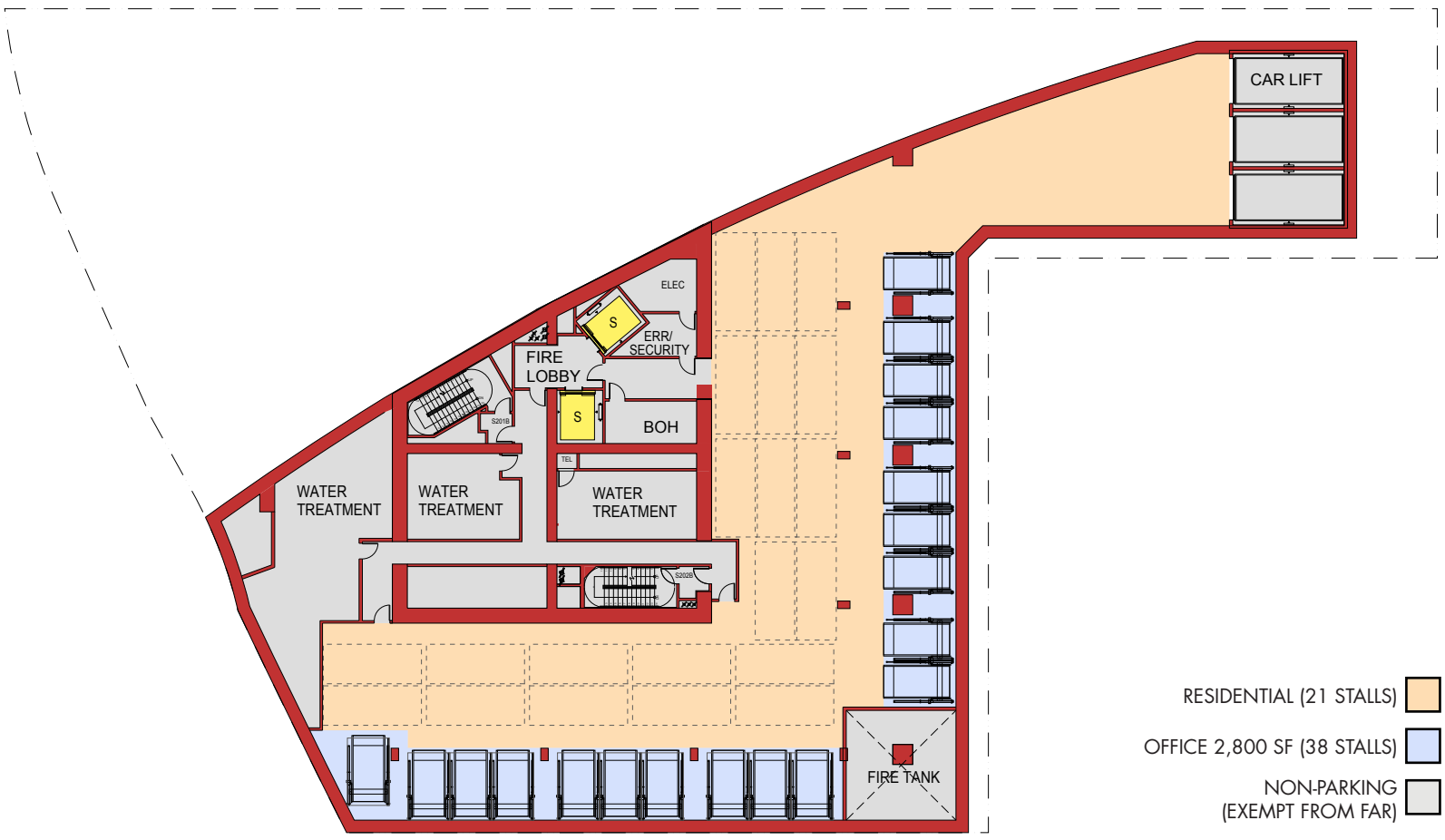

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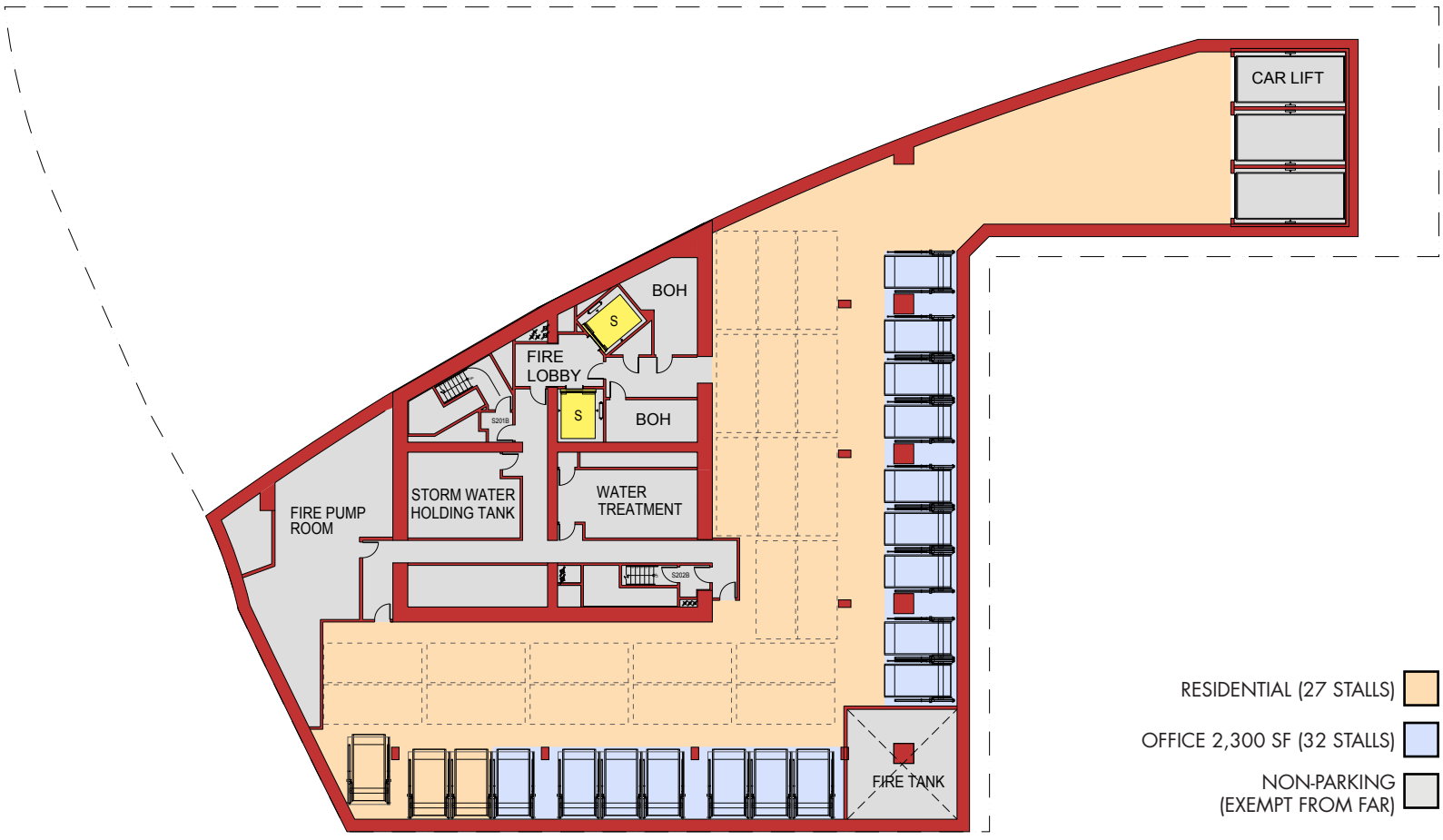

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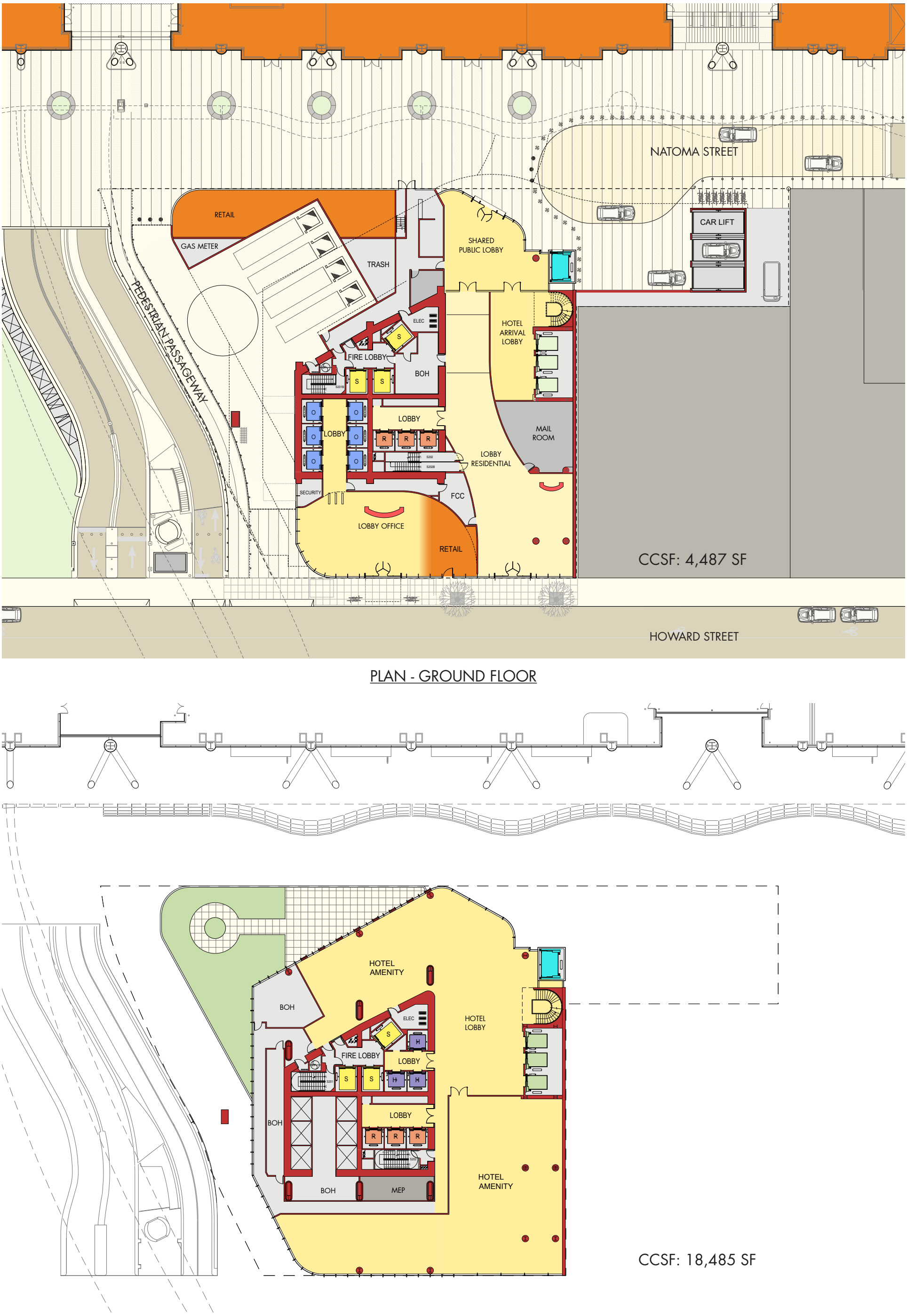
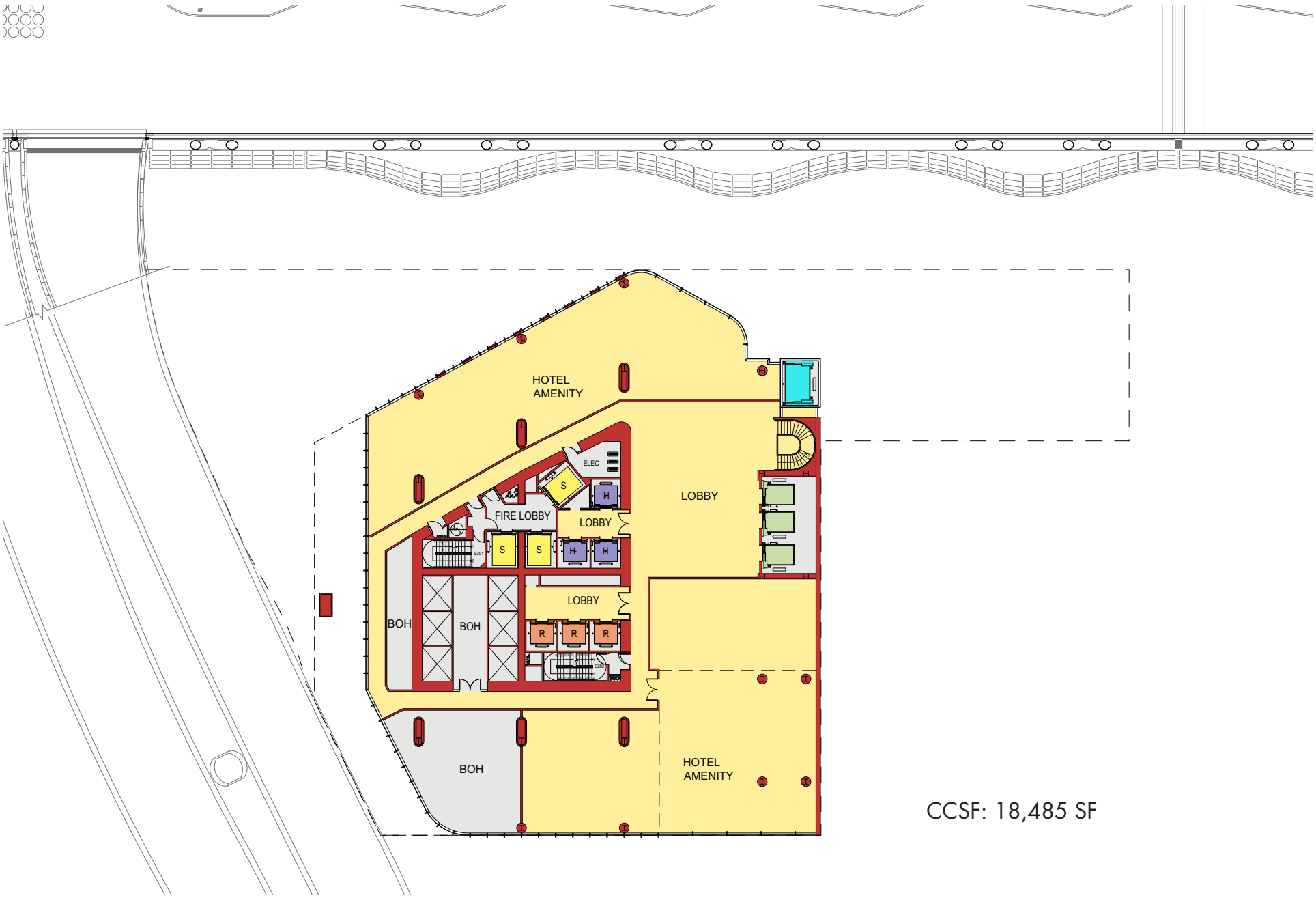


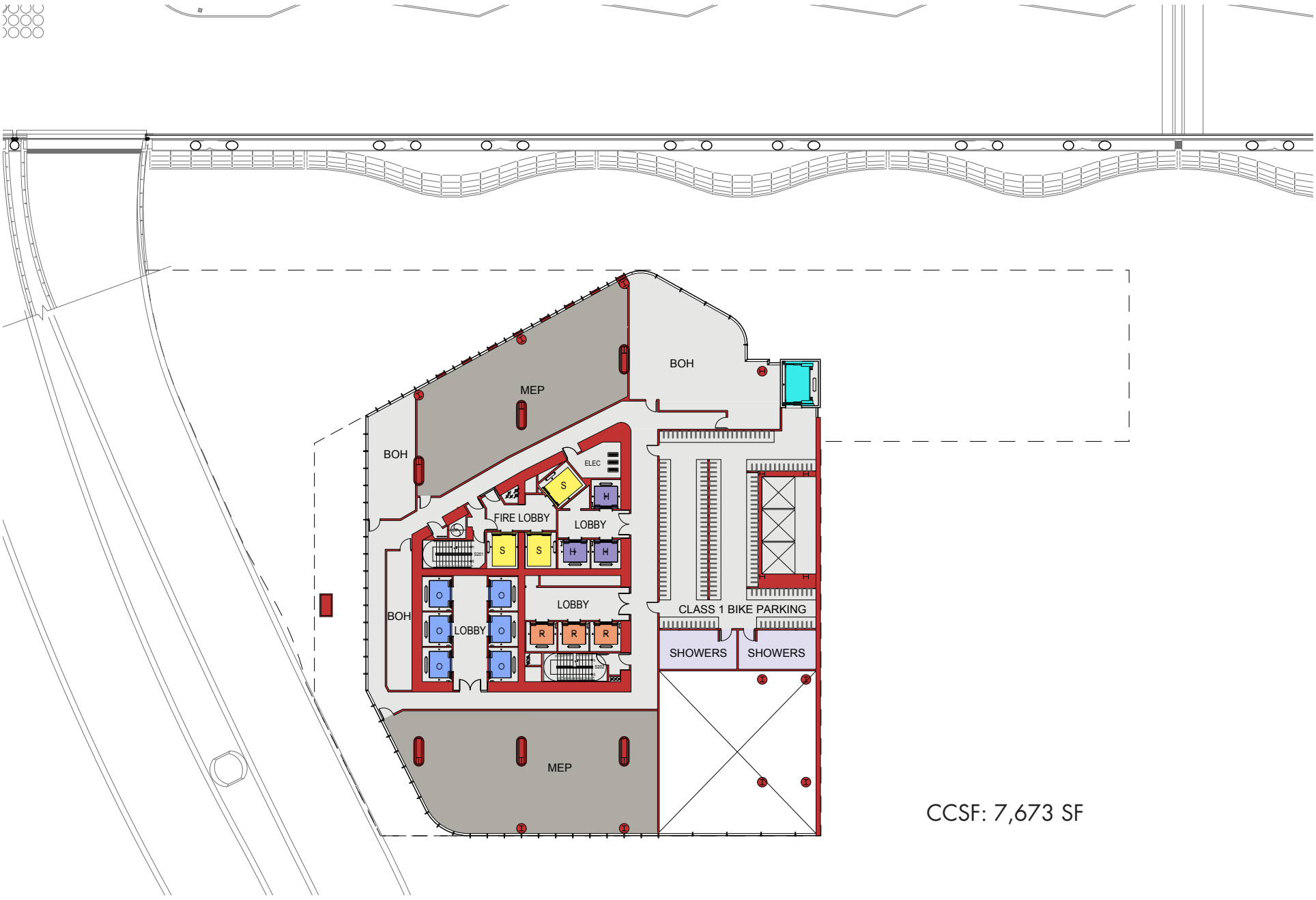
PLAN - GROUND FLOOR

PLAN - LEVEL 2



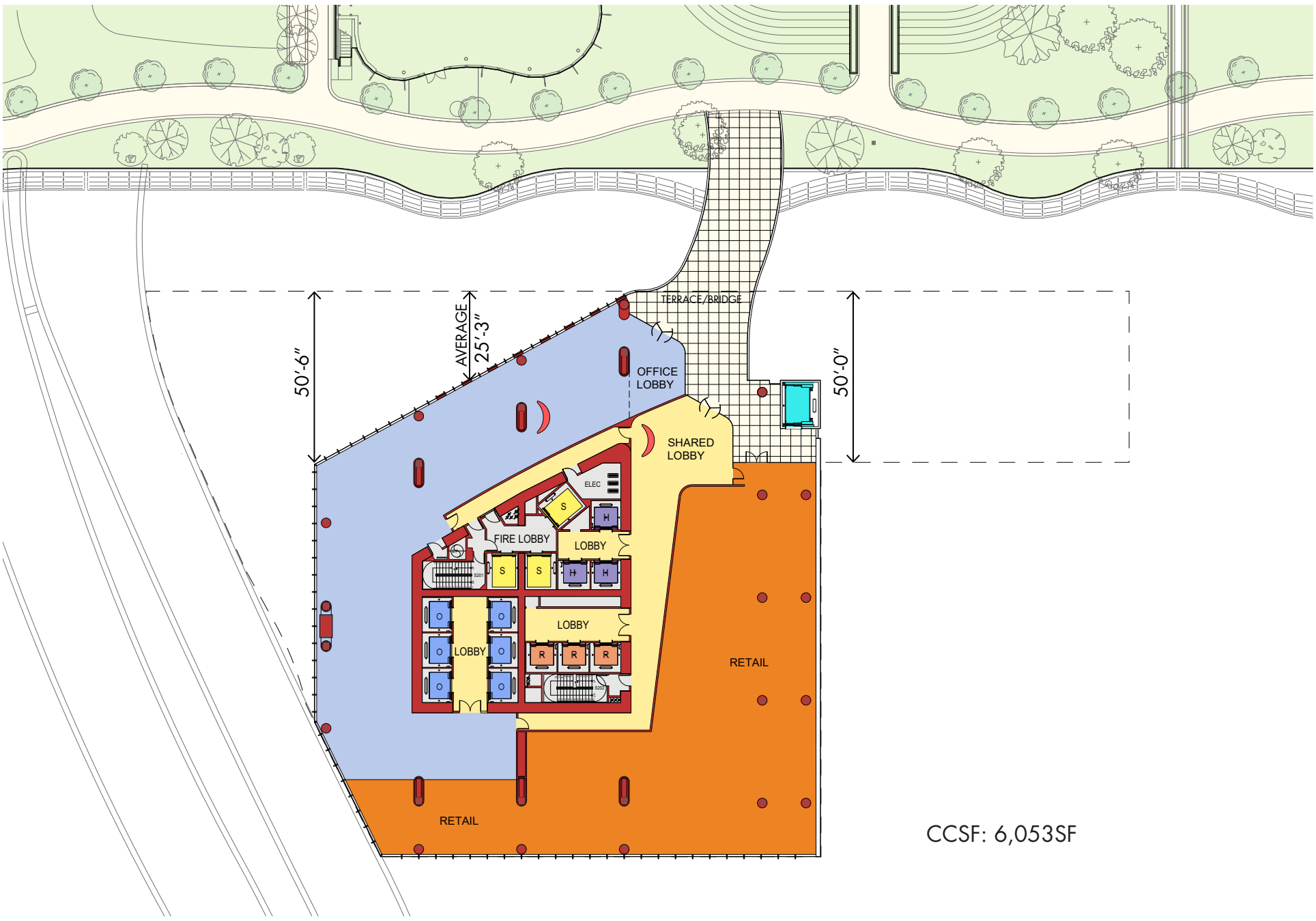
CCSF: 18,485 SF

PLAN - LEVEL 3



CCSF: 7,673 SF

PLAN - LEVEL 4



CCSF: 6,053SF

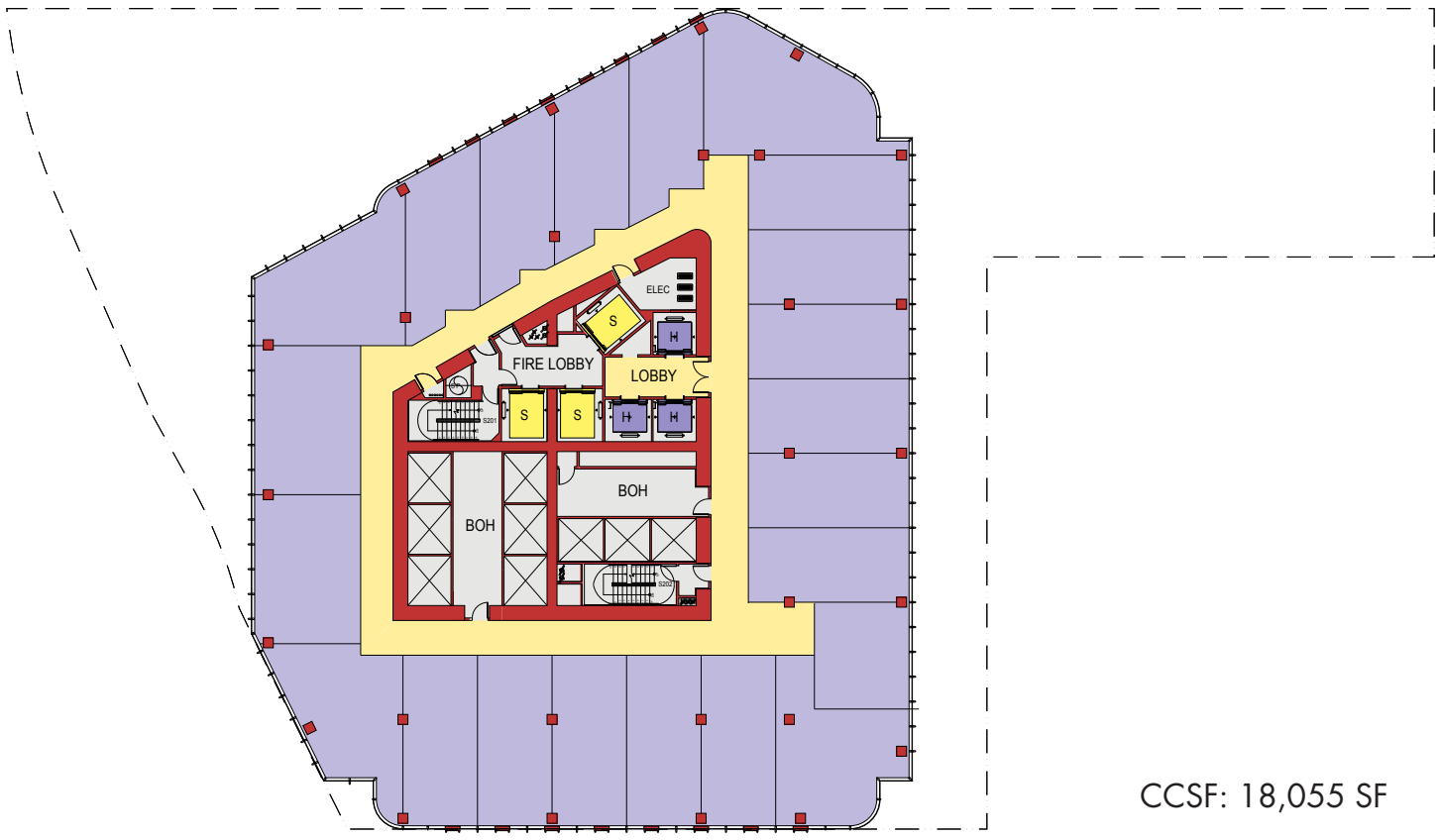
PLAN - LEVEL 5 - RETAIL/PARK ACCESS

CCSF: 16,745 SF

PLAN - LEVEL 6

CCSF: 10,719 SF

PLAN - LEVEL 7

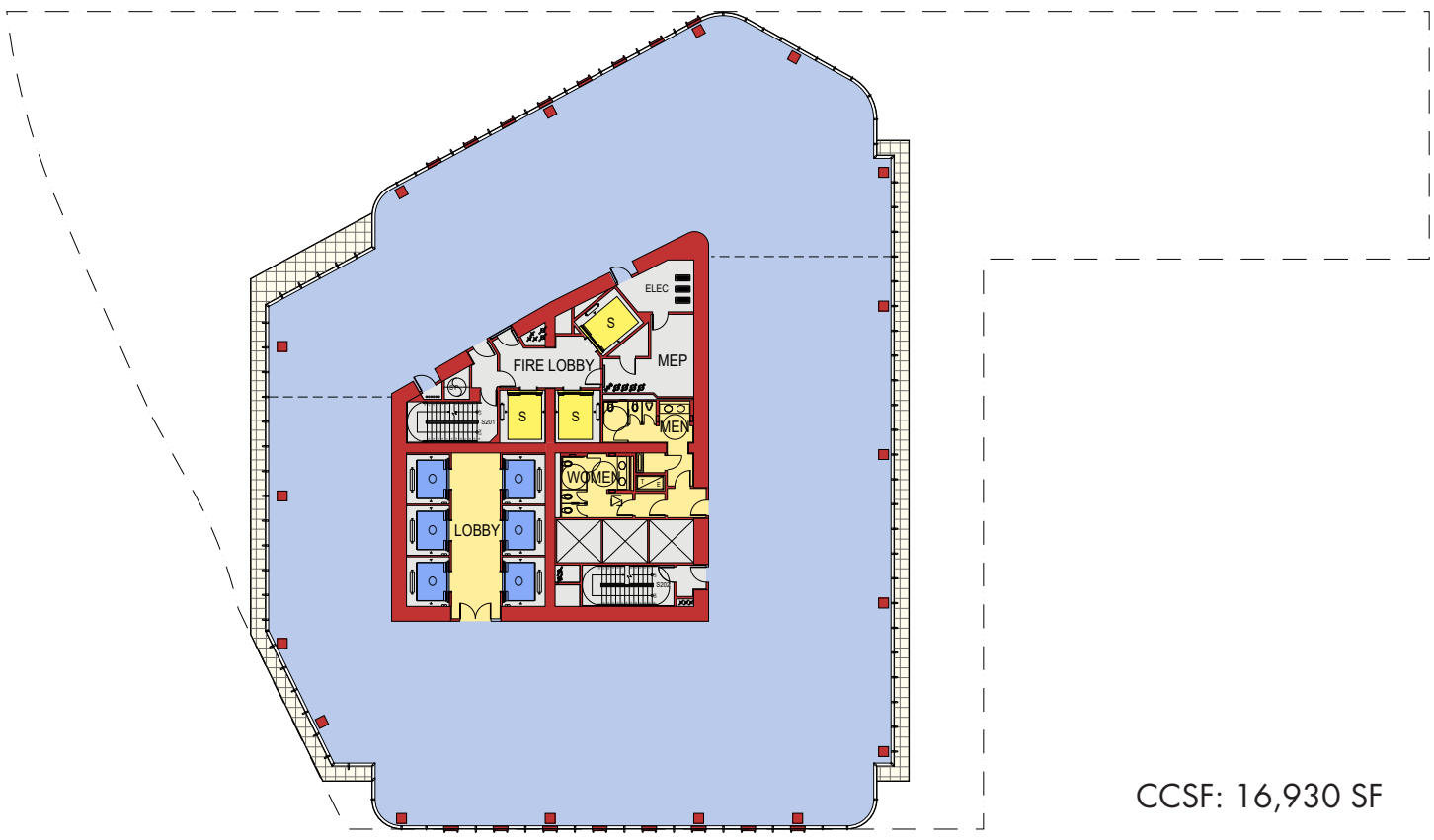


CCSF: 18,055 SF

PLAN - LEVEL 8 TO16 - TYPICAL HOTEL FLOOR

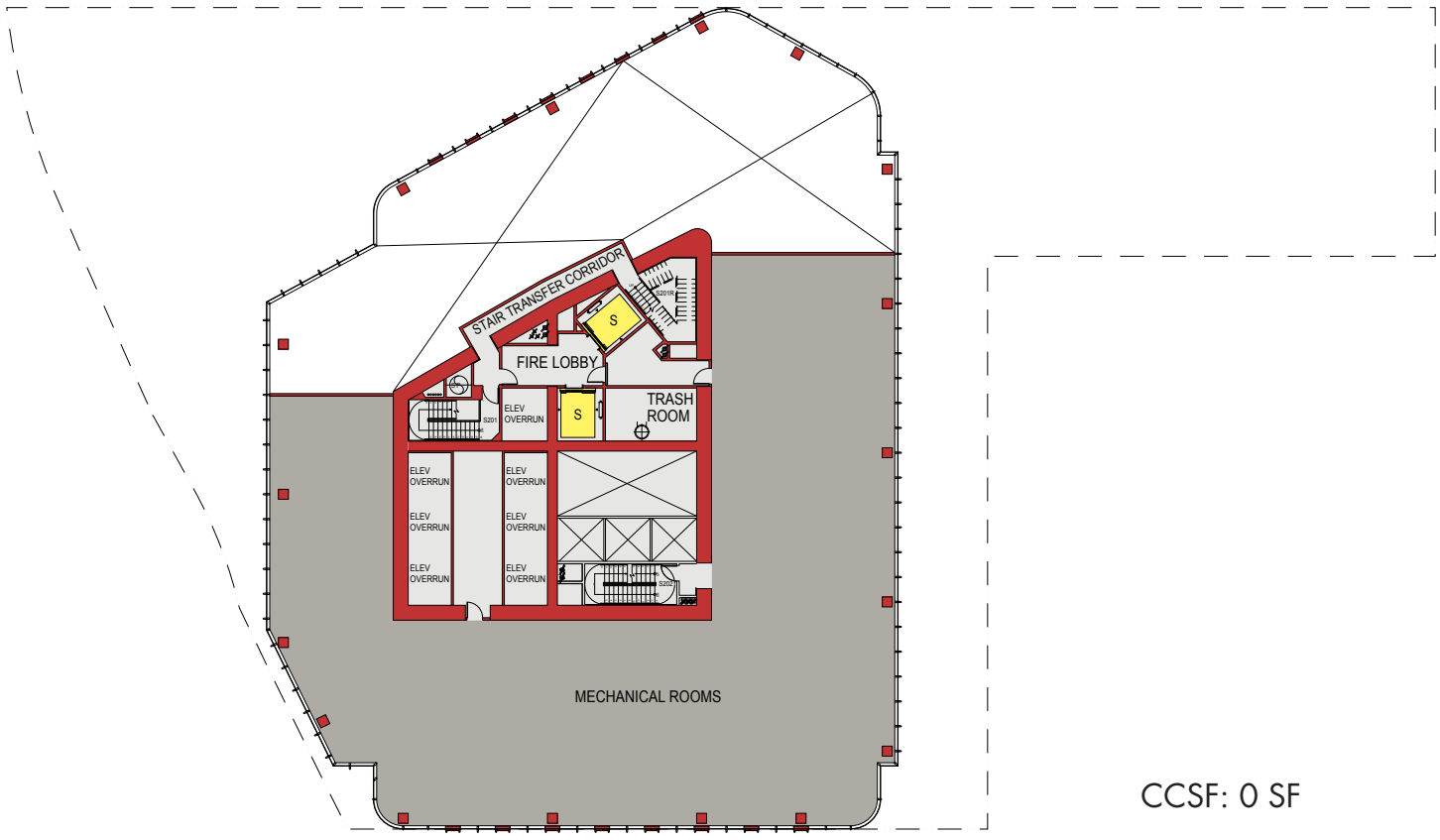
CCSF: 17,830 SF

PLAN - LEVEL 17 TO 30 - TYPICAL OFFICE FLOOR



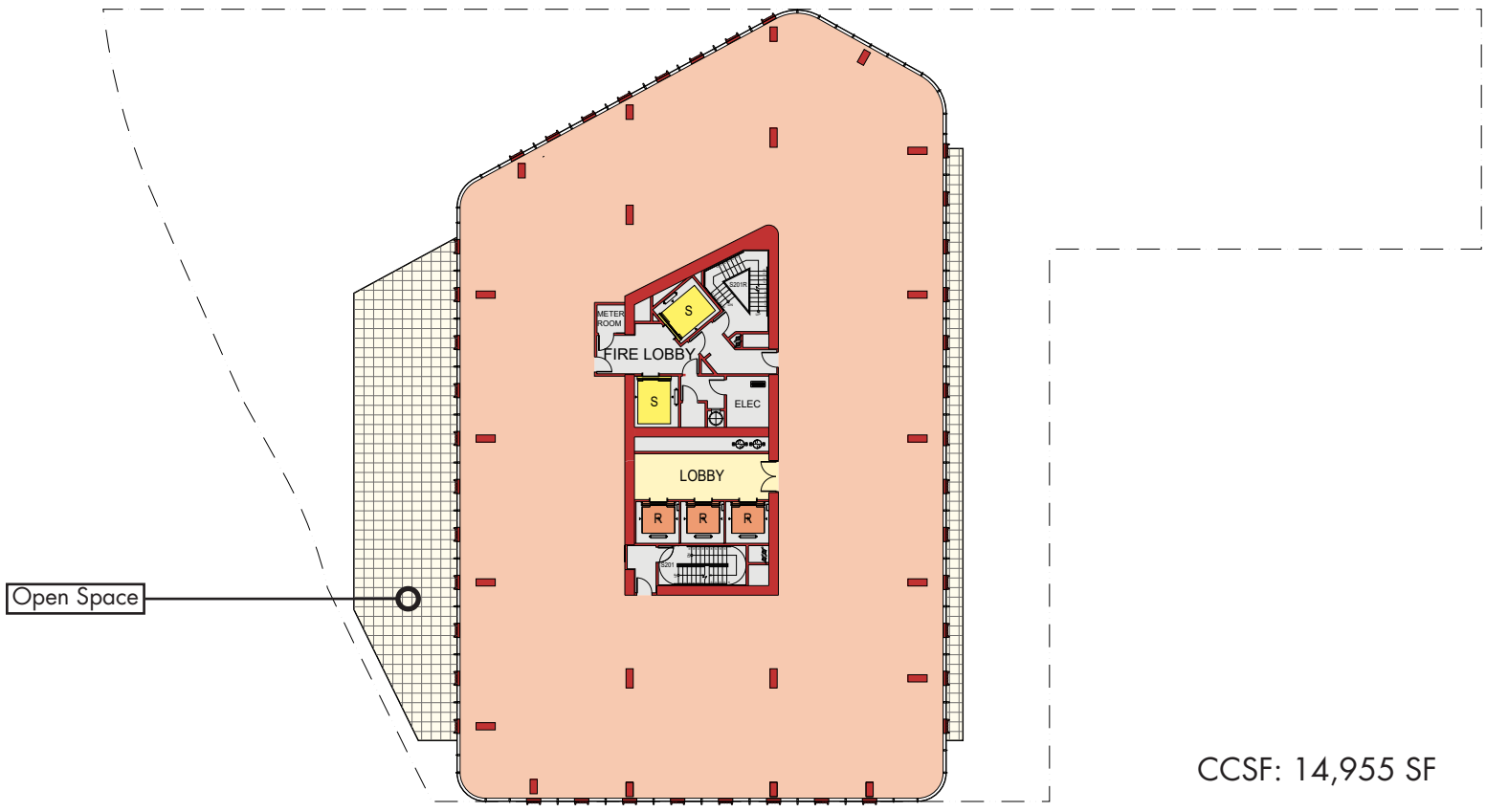
CCSF: 16,930 SF

PLAN - LEVEL 31 - OFFICE FLOOR



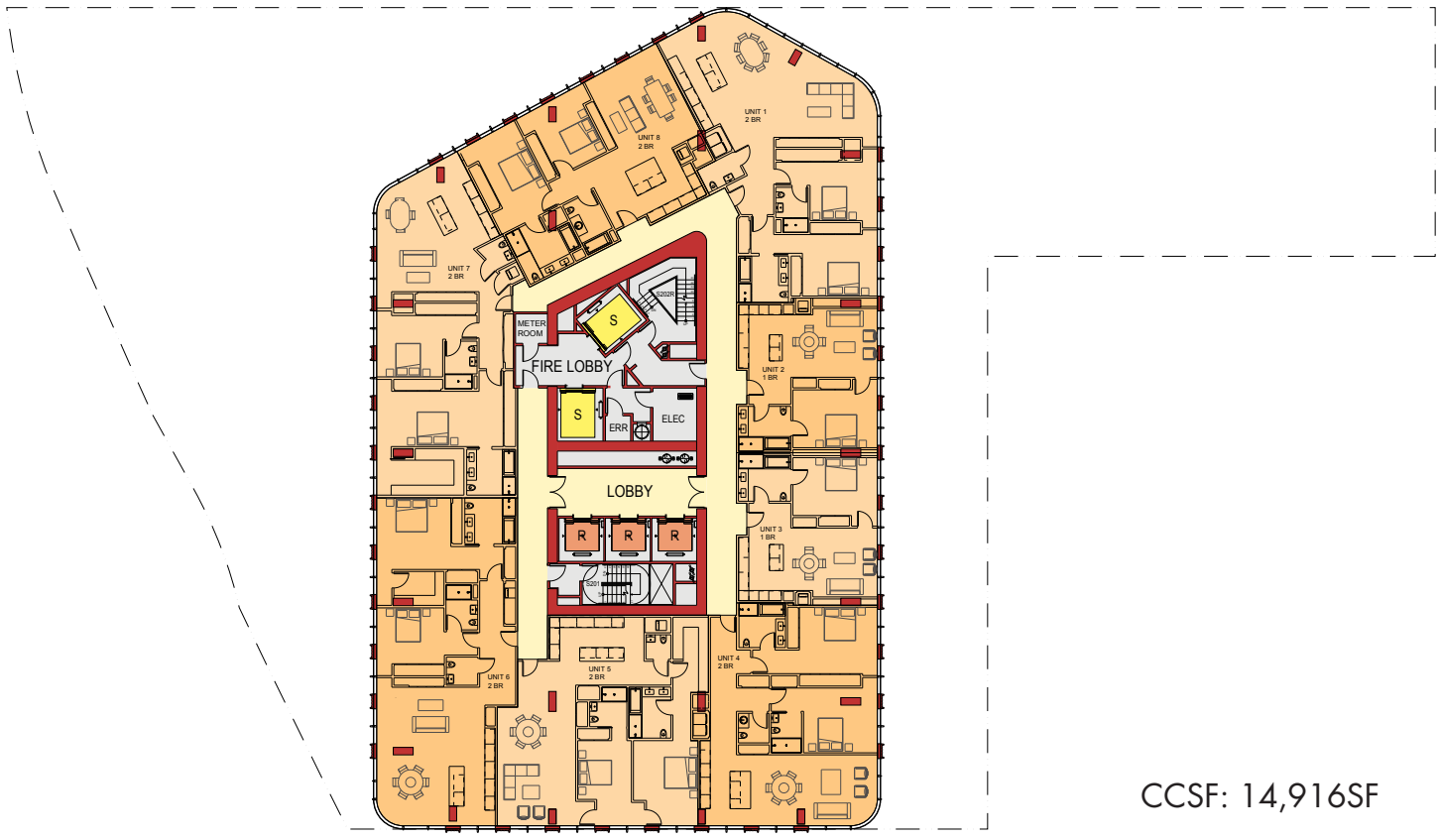
CCSF: 0 SF

PLAN - LEVEL 32 (MECHANICAL)



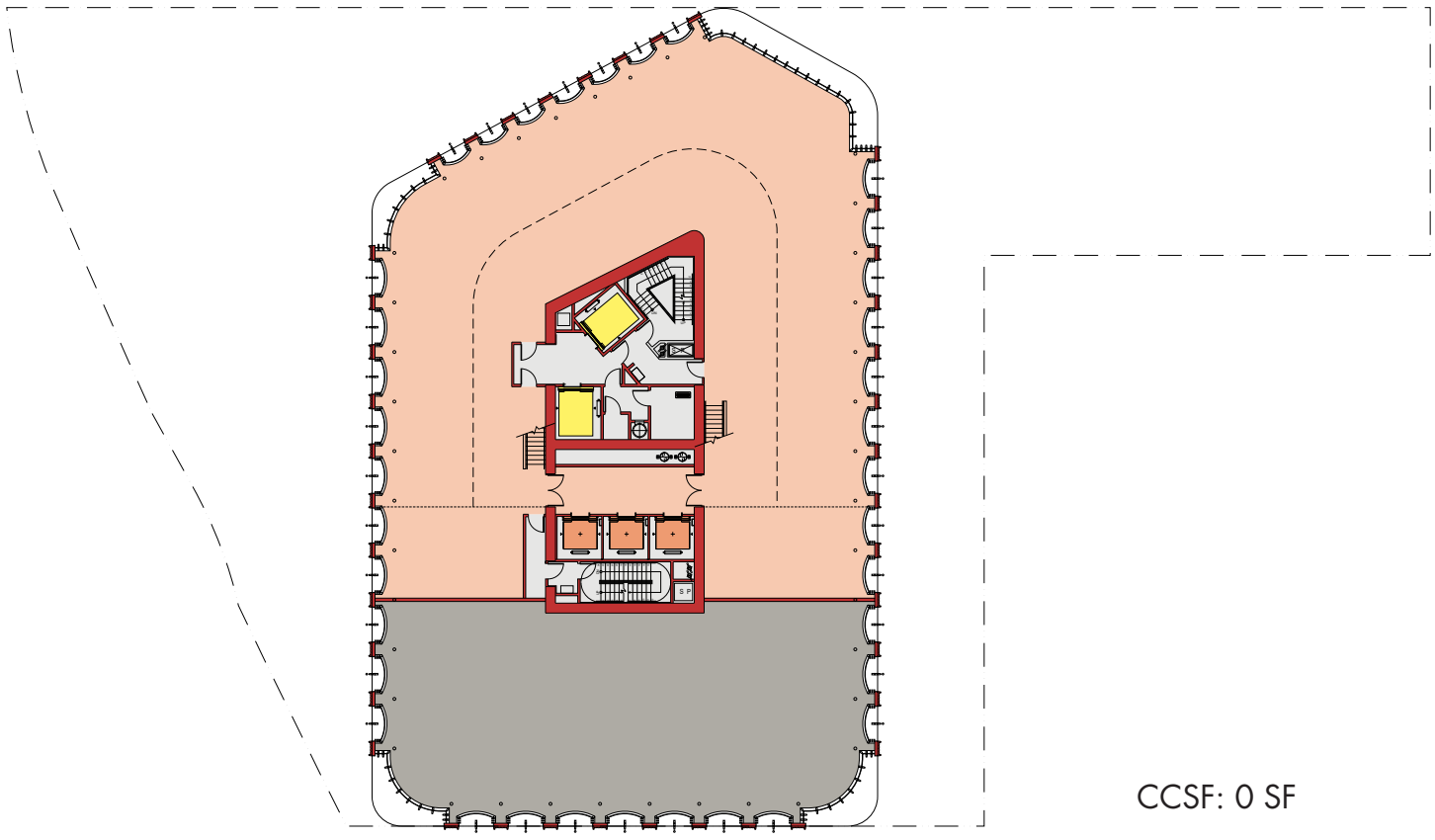
CCSF: 14,955 SF

PLAN - LEVEL 33 - RESIDENTIAL AMENITY FLOOR



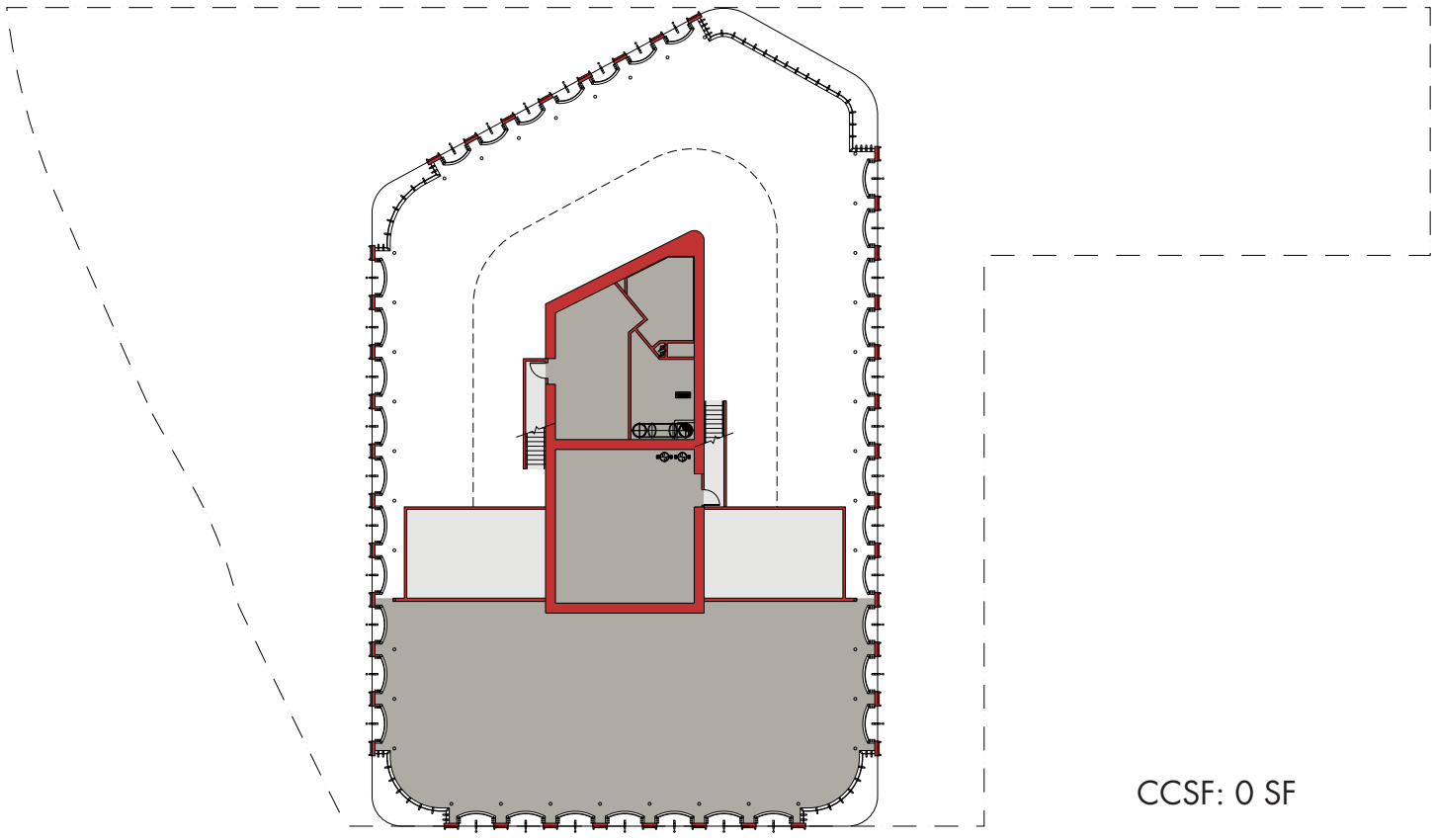
CCSF: 14,916SF

PLAN - LEVEL 34 TO 61 - TYPICAL RESIDENTIAL FLOOR



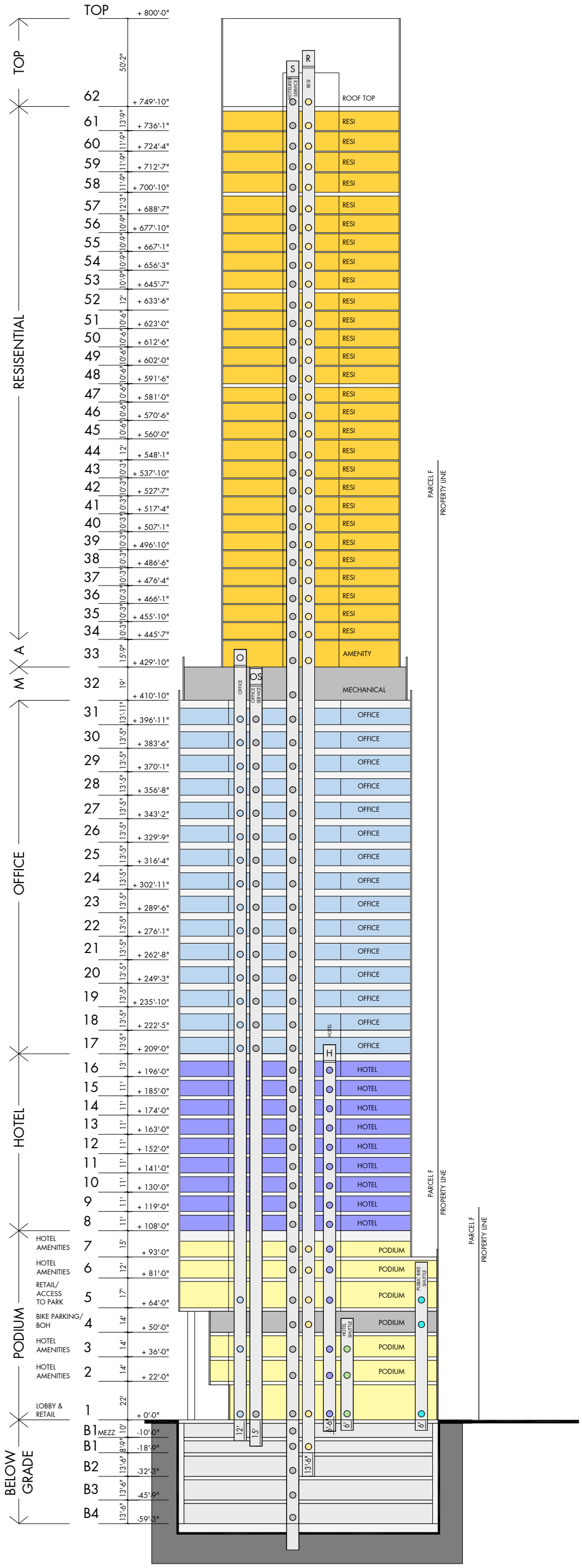
CCSF: 0 SF

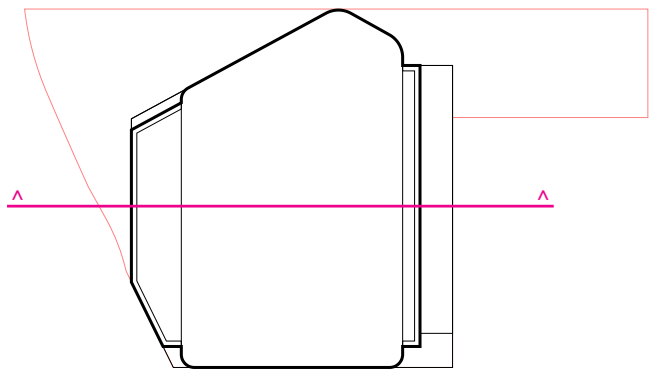
PLAN - LEVEL 62 - ROOF



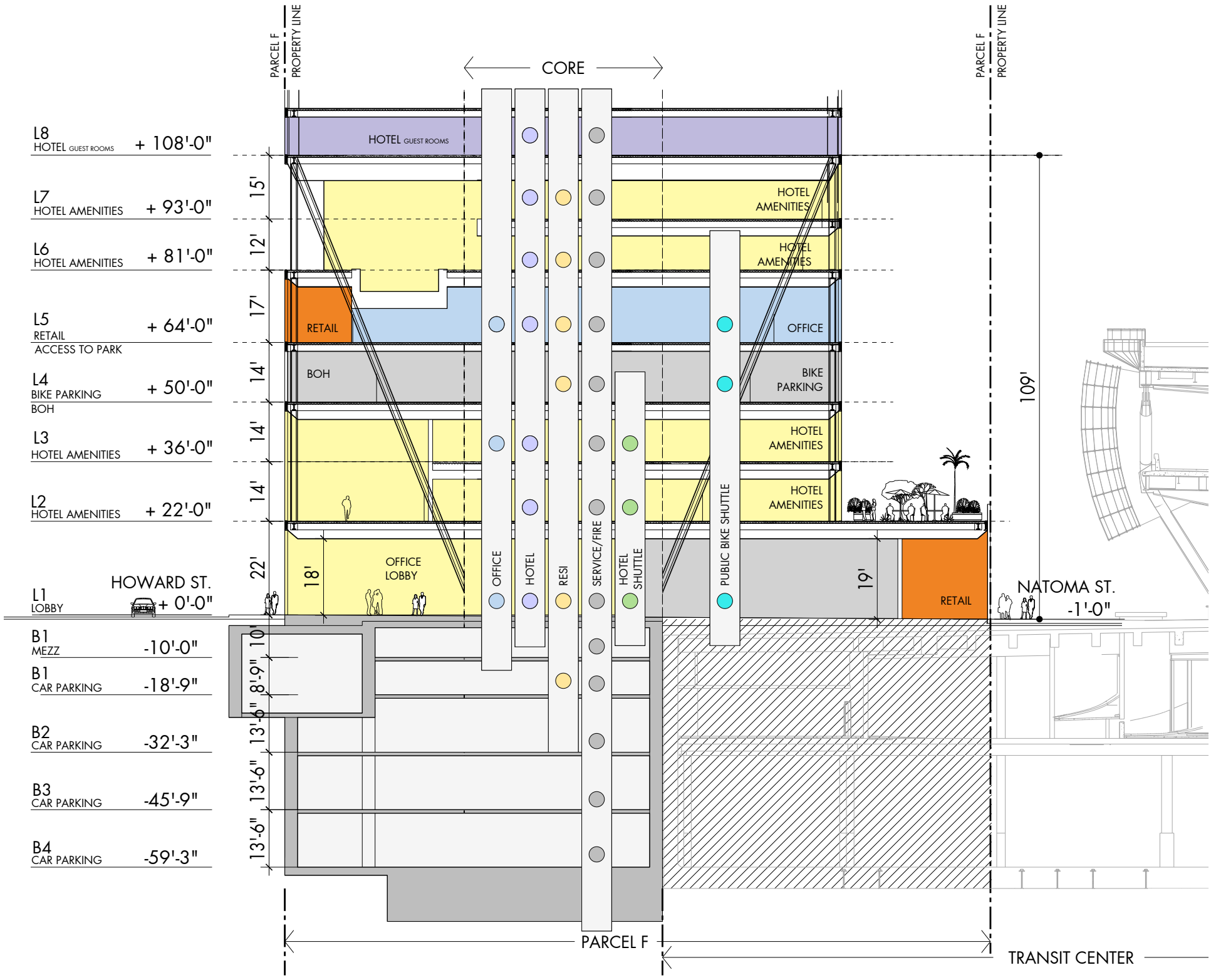
CCSF: 0 SF

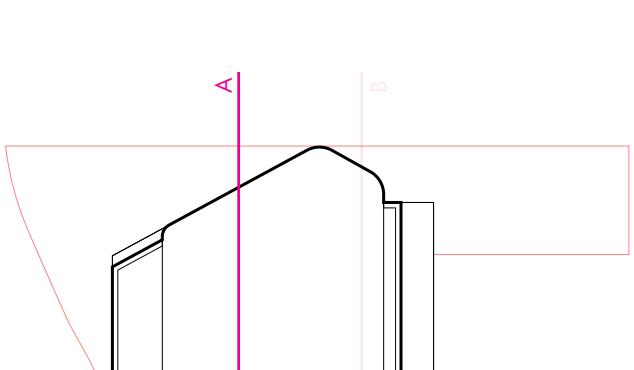
PLAN - LEVEL 62 MECHANICAL MEZZANINE



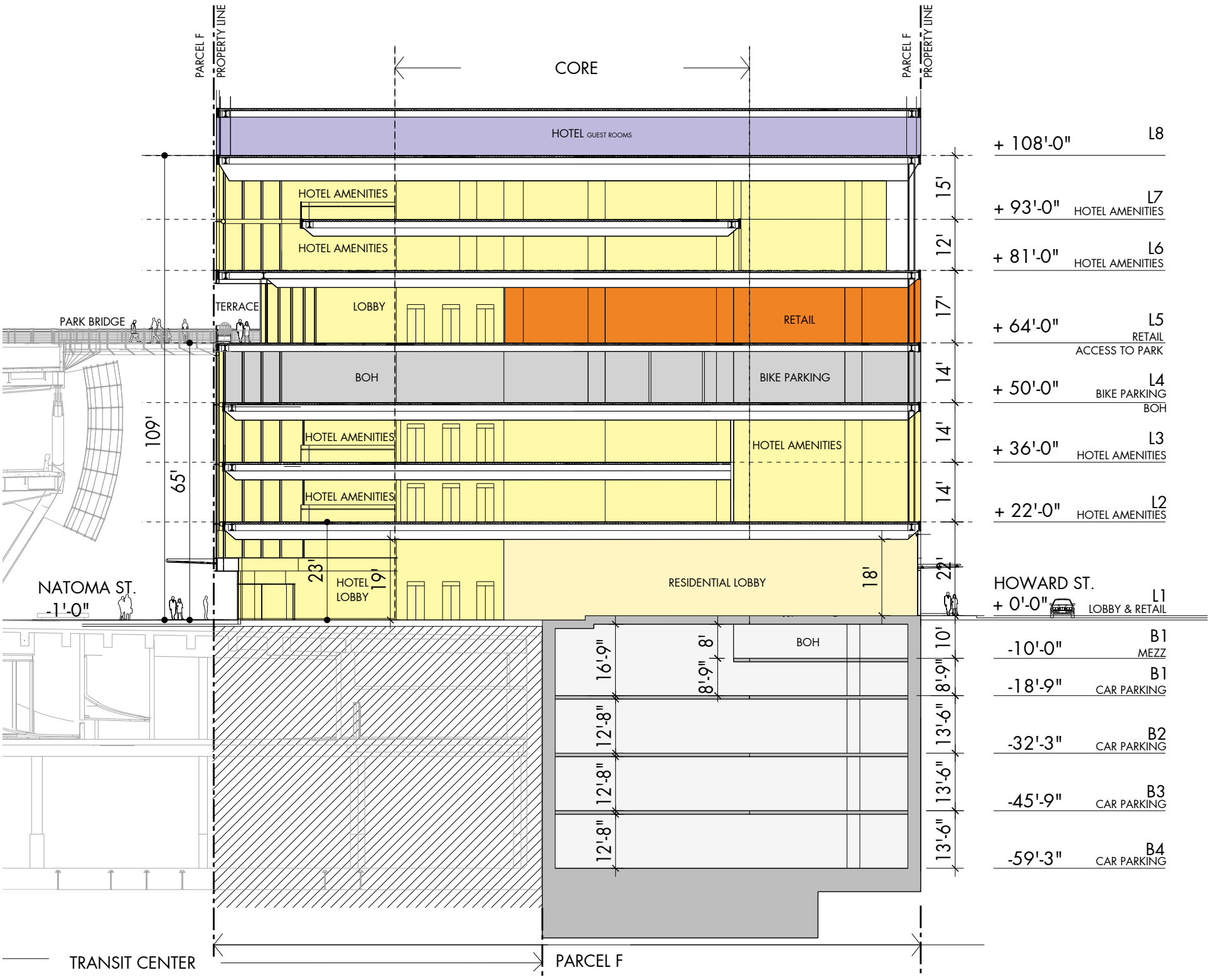


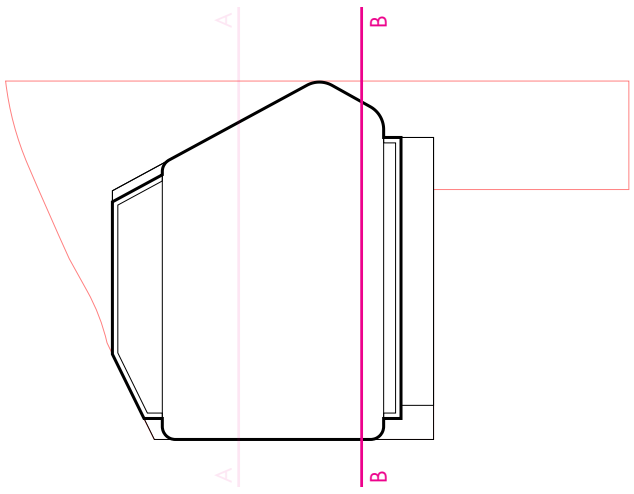
TOWER SECTION - EAST/WEST





PODIUM SECTION A-A



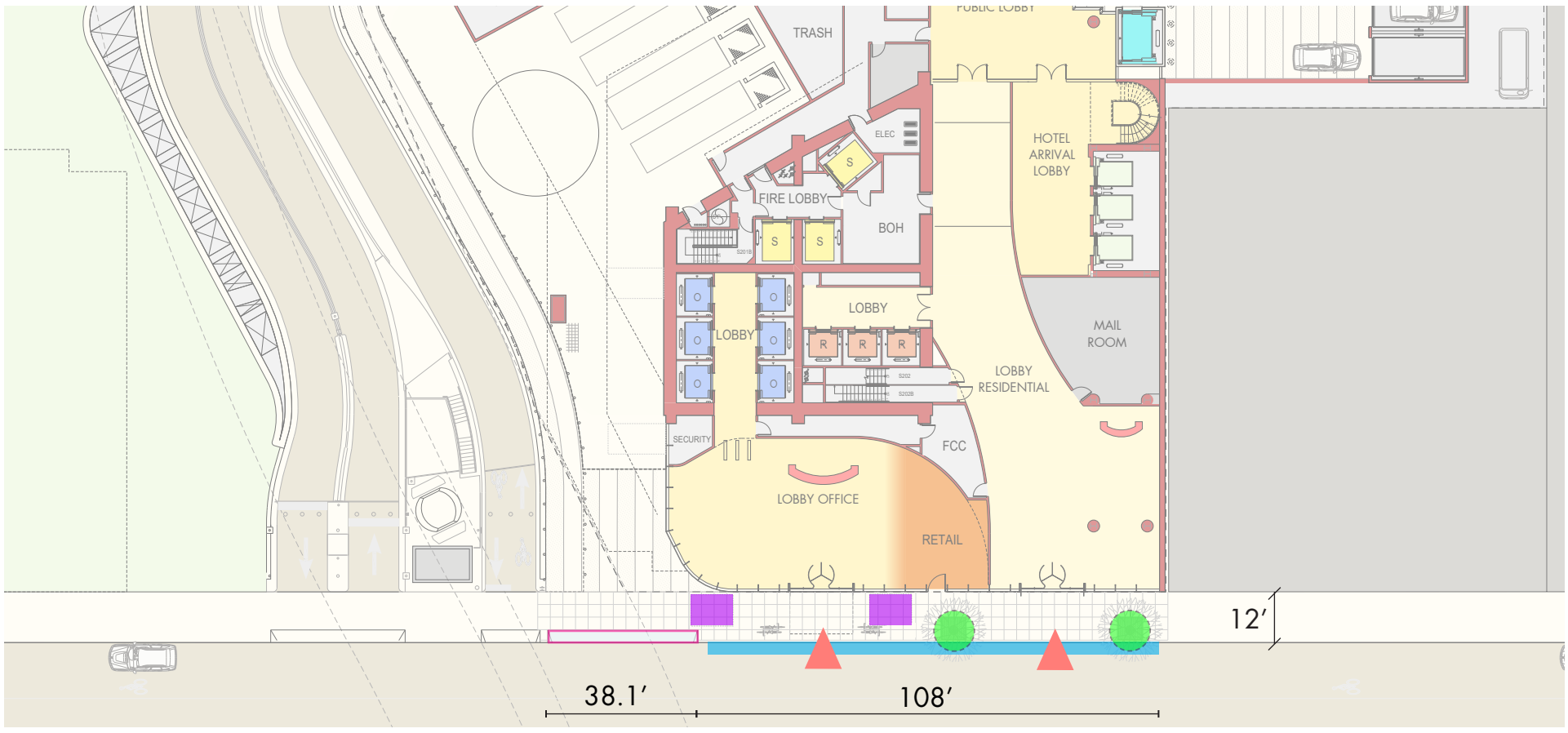


PODIUM SECTION B-B

TOWER ELEVATION - SOUTH

TOWER ELEVATION - NORTH (FACING NATOMA STREET)

HOWARD STREET - ELEVATION



PARCEL F CURB CUT
- TRUCKS ENTER & EXIT HEAD FIRST WITH NO BACKING UP ACROSS SIDEWALK, BIKE LANES OR TRAFFIC LANES

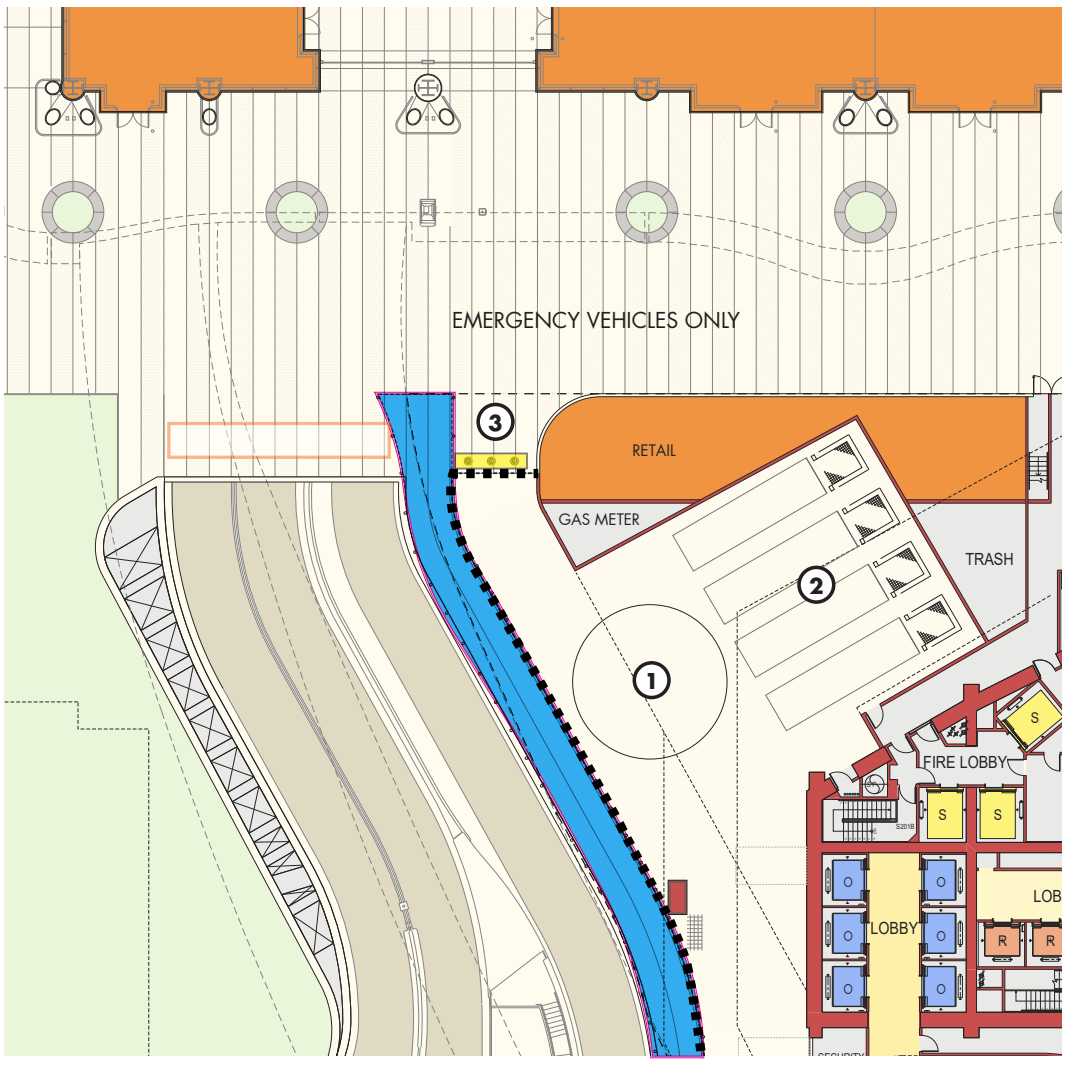
PASSENGER DROP-OFF

PG & E ACCESS

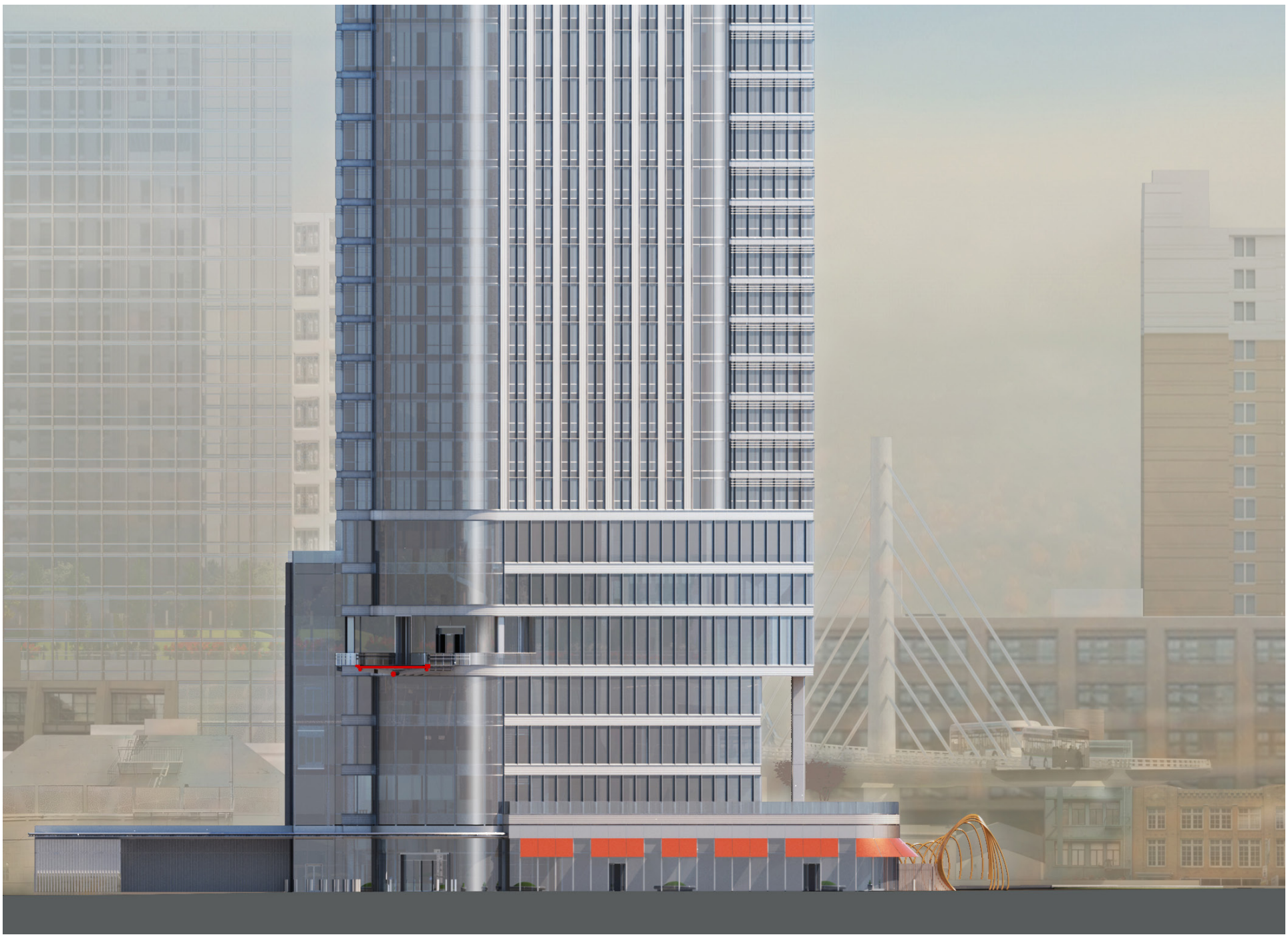
POTENTIAL TREE LOCATION SUBJECT TO COORDINATION WITH SF PUBLIC WORKS, TJPA AND UTILITY COMPANIES

HOWARD STREET - PLAN

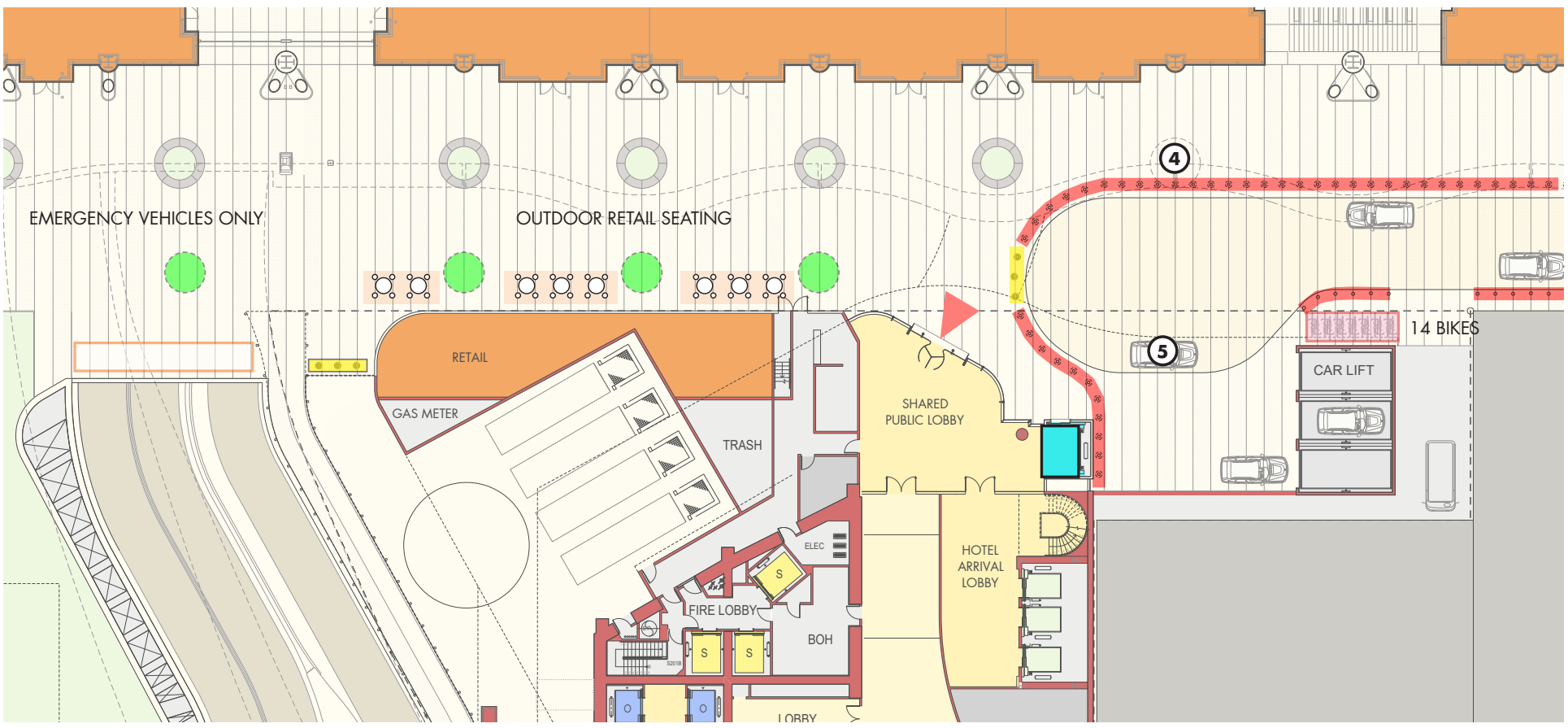
LOADING DOCK - ELEVATION



LOADING DOCK - PLAN



NATOMA STREET - ELEVATION



POTENTIAL LOCATION FOR RETAIL TABLES & CHAIRS

④ PLANTER PROPOSED TO BE REMOVED
- PARCEL F IS PROPOSING TO ELIMINATE STC PLANTERS (NOT BLAST RATED) & REPLACE THEM WITH FIXED BOLLARDS.

⑤ DROP-OFF AREA WITH SIMILAR DESIGN TO STC STREETSCAPE BUT WITH DIFFERENT TEXTURE AND NO CURB CUT

POTENTIAL TREE LOCATION SUBJECT TO COORDINATION WITH SF PUBLIC WORKS, TJPA

PARCEL F PROPOSED BIKE PARKING

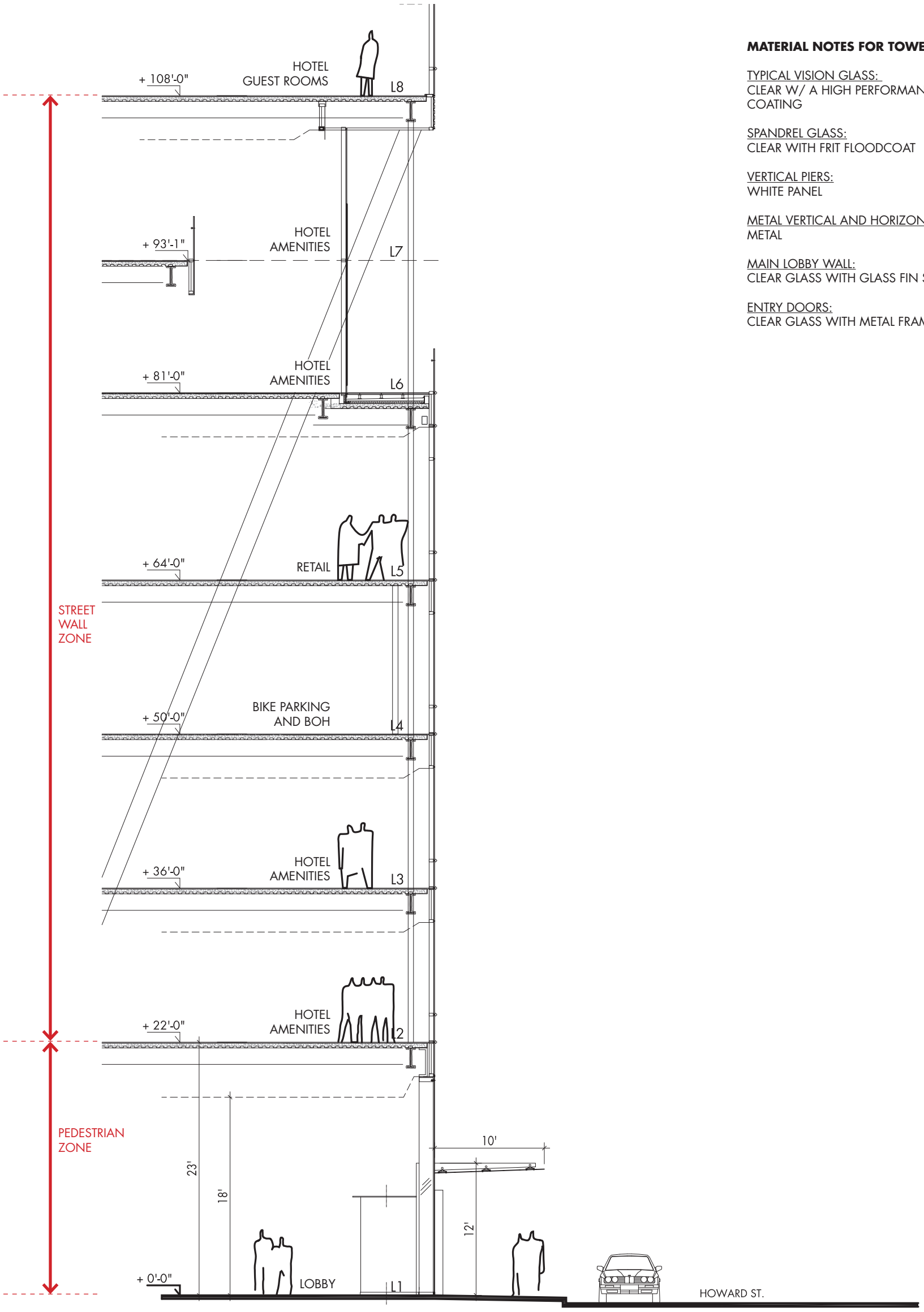
TJPA / STC BIKE PARKING

FIXED BOLLARDS

OPERABLE BOLLARDS

PUBLIC ELEVATOR

NOTES:
PARCEL F NATOMA ST. FRONTAGE TO MATCH STC STREETSCAPE DESIGN; LOCATION OF PLANTERS, TREES, BIKE PARKING AND BOLLARDS ALSO TO BE COORDINATED WITH TJPA.



MATERIAL NOTES FOR TOWER BASE:

TYPICAL VISION GLASS:
CLEAR W/ A HIGH PERFORMANCE LIGHTLY REFLECTIVE COATING

SPANDREL GLASS:
CLEAR WITH FRIT FLOODCOAT

VERTICAL PIERS:
WHITE PANEL

METAL VERTICAL AND HORIZONTAL SUNSHADES & FINS:
METAL

MAIN LOBBY WALL:
CLEAR GLASS WITH GLASS FIN STRUCTURES.

ENTRY DOORS:
CLEAR GLASS WITH METAL FRAMES AND HARDWARES

PEDESTRIAN ZONE ON HOWARD ST.

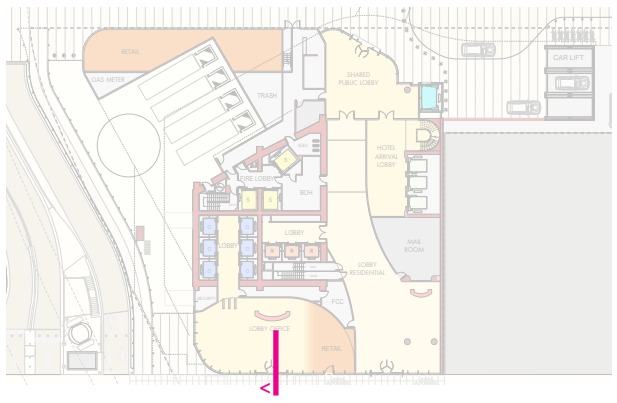
The pedestrian zone is defined by several architectural strategies.

- *First,* two of the three lobbies were placed on Howard Street with a ceiling height of 18 feet; with an intent of creating a grand atmosphere from Howard Street.
- *Second,* glass fins were placed to support the lobbies' curtain wall system; in order to extend the narrow street of Howard and to maximize the transparency of the lobbies.
- *Third,* a retail space was provided to activate the facade.

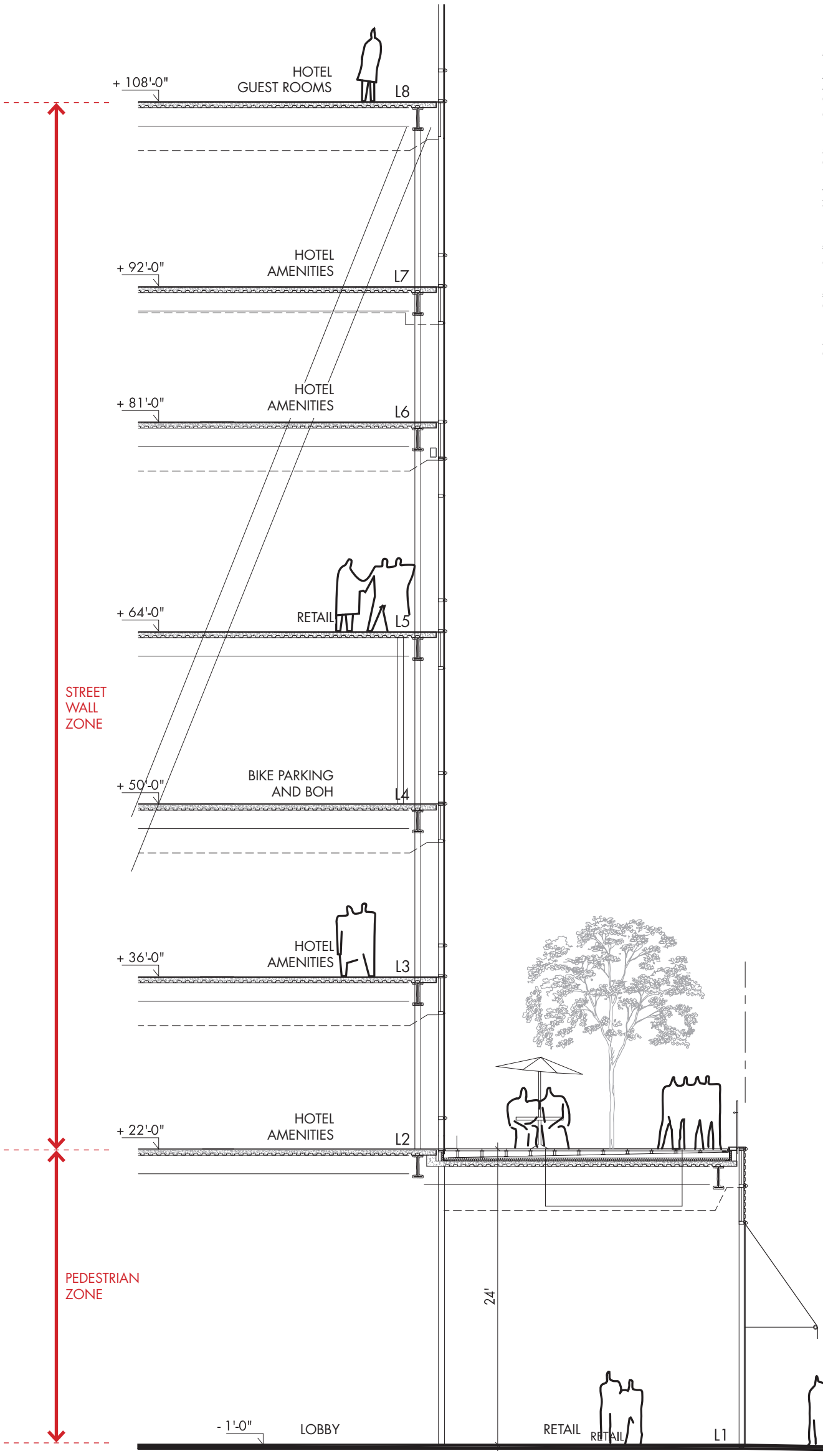
STREETWALL ON HOWARD ST.

The streetwall is defined by several architectural strategies.

- *First,* A comfortable pedestrian experience at ground level.
- *Second,* a five-story high volume, with a very distinct wall articulation smooths the transition between the scale of the neighboring buildings and the tower. This volume also shelters the entrance to the public passageway that connects to Natoma Street.
- *Last,* a four-story cutback at the base welcomes the Salesforce Transit Center Bridge as part of the architectural composition of this unique urban condition, and shelters the sculptural passageway that connects to Natoma Street.



HOWARD STREET - TYPICAL WALL SECTION



MATERIAL NOTES FOR TOWER BASE:

TYPICAL VISION GLASS:
CLEAR W/ A HIGH PERFORMANCE LIGHTLY REFLECTIVE COATING

SPANDREL GLASS:
CLEAR WITH FRIT FLOODCOAT

VERTICAL PIERS:
WHITE PANEL

METAL VERTICAL AND HORIZONTAL SUNSHADES & FINS:
METAL

MAIN LOBBY WALL:
CLEAR GLASS WITH GLASS FIN STRUCTURES.

ENTRY DOORS:
CLEAR GLASS WITH METAL FRAMES AND HARDWARES

PEDESTRIAN ZONE ON NATOMA ST.

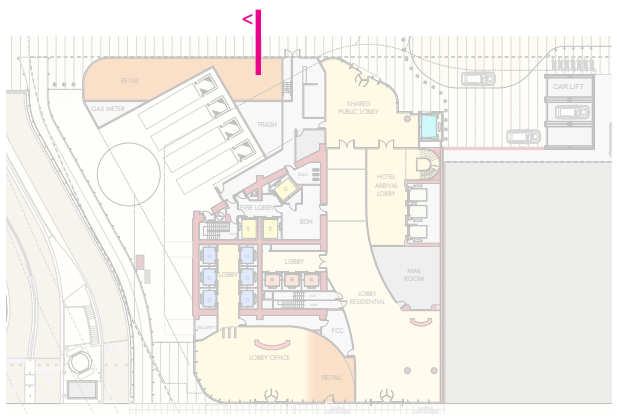
The pedestrian zone is defined by several architectural strategies.

- First, retail spaces along with outdoor seating were designated at the perimeter of the property to encourage an active atmosphere in the lower levels of the tower.
- Second, an open terrace space was provided on the second level of the tower to ensure an active and green life among the street of Natoma.
- Third, a public elevator was provided to access Salesforce Transit Center roof park.

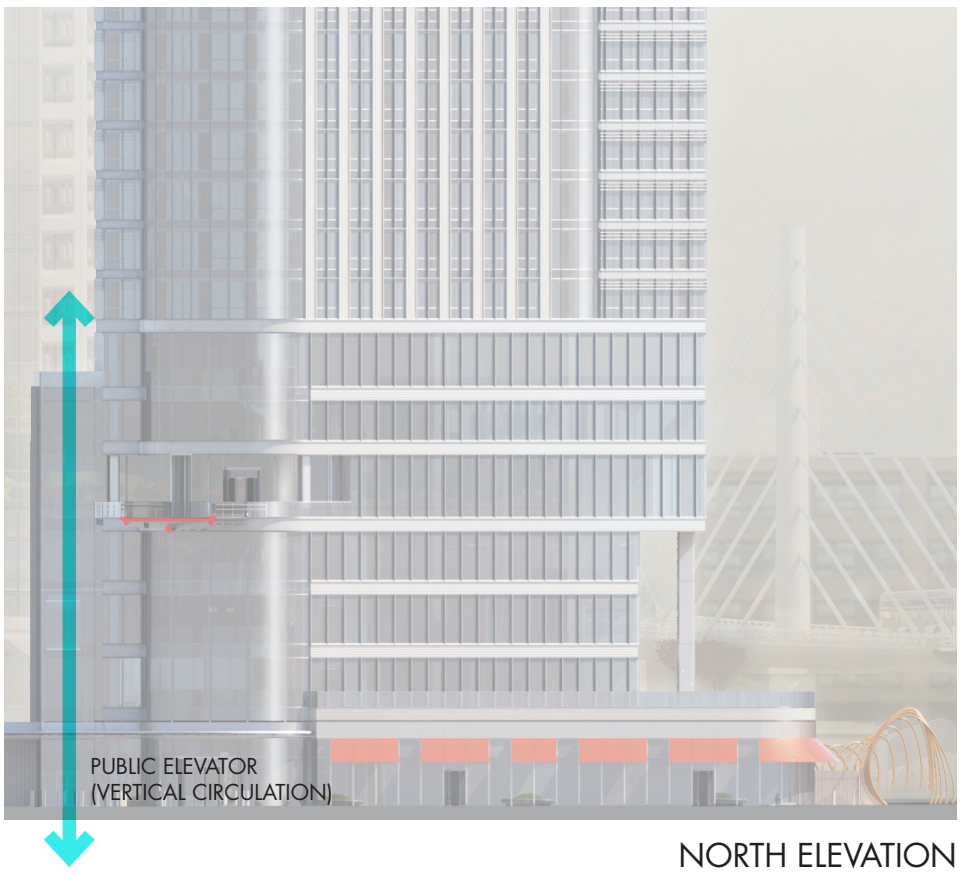
STREETWALL ON NATOMA ST.

Several architectural articulations help define the Streetwall on Natoma Street.

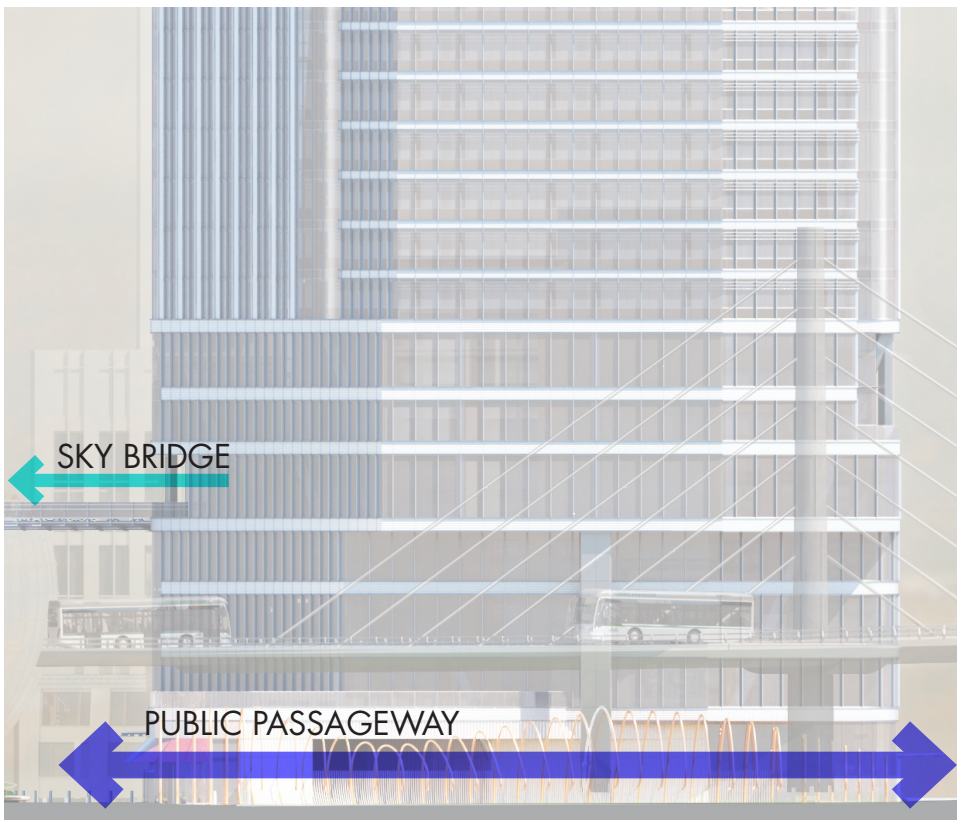
- First, the one-story high retail volume provides human scale and acts as a balanced counterpart to the undulating metal screens of Transbay Transit Center façade.
- Second, the base on Natoma St. features a setback terrace and a bridge that connects to the Salesforce Transit Center Park.



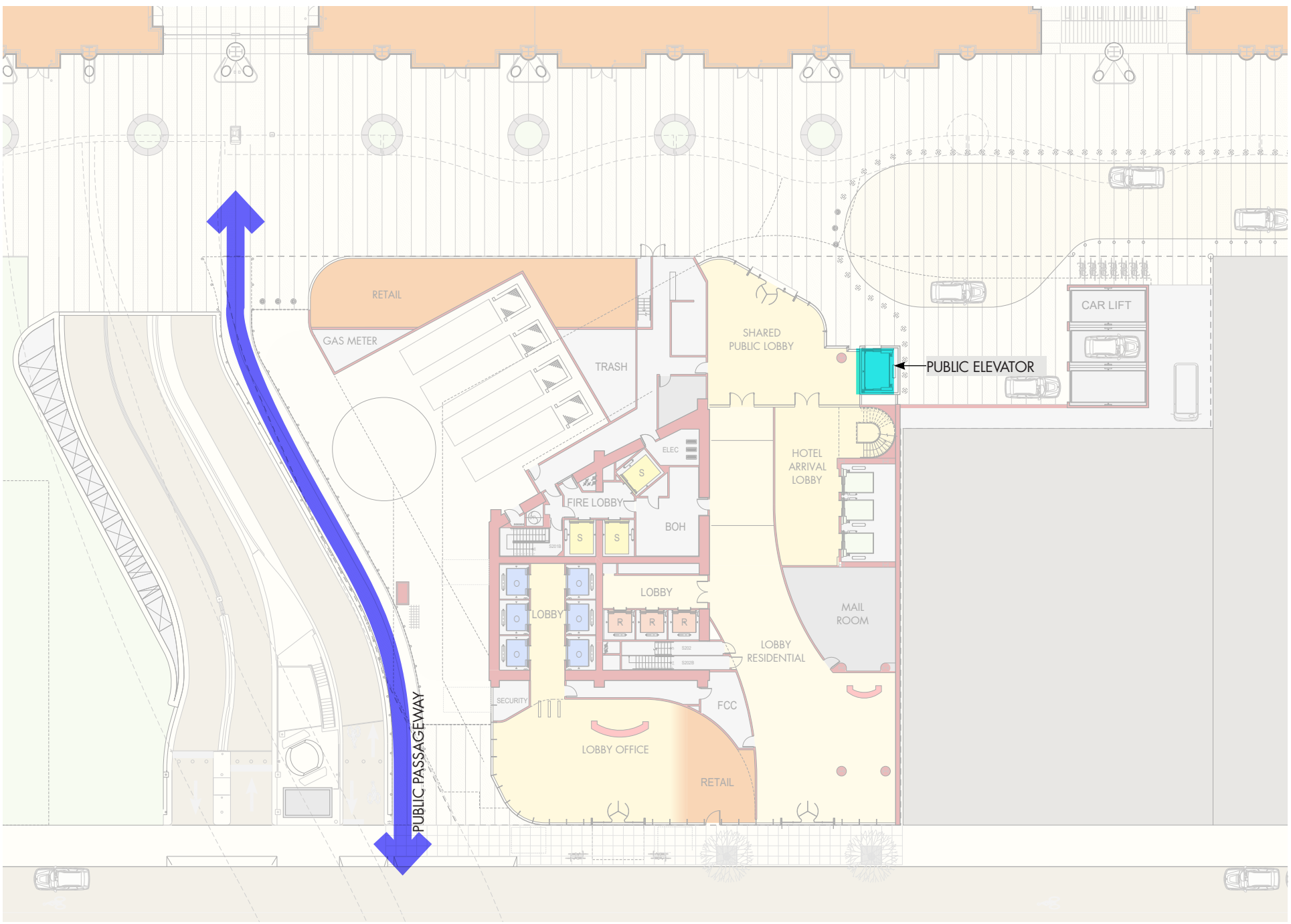
NATOMA STREET - TYPICAL WALL SECTION

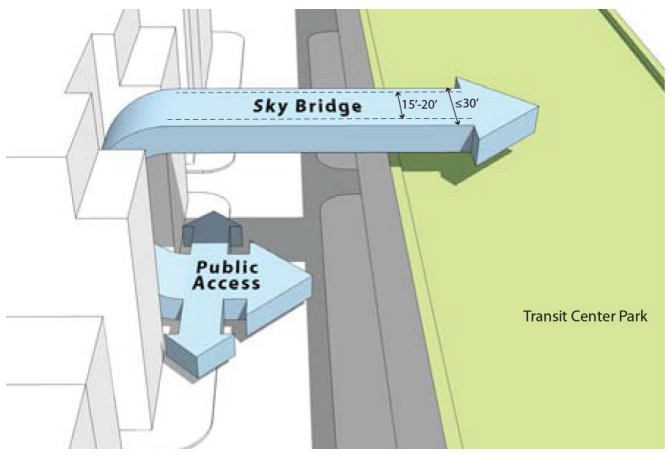


NORTH ELEVATION



WEST ELEVATION





CONNECTIVITY TO TRANSBAY TRANSIT CENTER PARK :

POLICY 3.17

Permit buildings to satisfy open space requirements through direct connections to the Transit Center Park.

To satisfy the intent of section 138, these connections must meet minimum standards for public accessibility and functionality in the following manner

- Be publicly accessible and connected appropriately to vertical circulation;
- Provide clear signage from a public way, indicating public access to the park.

-Transit Center District Plan-

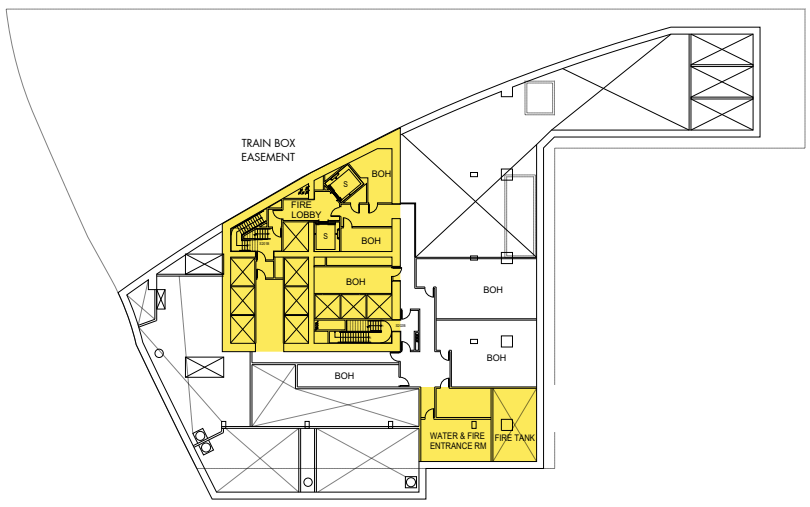
PUBLIC PASSAGE WAY / CONNECTIVITY

PLANNING CODE COMPLIANCE

Level	Perimeter Area	MEP Deductions per SF Planning Code	Other Deductions per SF Planning Code	Residential GSF	Office GSF	Hotel GSF	CCSF Gross Area Above/Below Grade
62	15,305	5,000	10,305	0	0	0	0
61	15,305	131	258	14,916	0	0	14,916
60	15,305	131	258	14,916	0	0	14,916
59	15,305	131	258	14,916	0	0	14,916
58	15,305	131	258	14,916	0	0	14,916
57	15,305	131	258	14,916	0	0	14,916
56	15,305	131	258	14,916	0	0	14,916
55	15,305	131	258	14,916	0	0	14,916
54	15,305	131	258	14,916	0	0	14,916
53	15,305	131	258	14,916	0	0	14,916
52	15,305	131	258	14,916	0	0	14,916
51	15,305	131	258	14,916	0	0	14,916
50	15,305	131	258	14,916	0	0	14,916
49	15,305	131	258	14,916	0	0	14,916
48	15,305	131	258	14,916	0	0	14,916
47	15,305	131	258	14,916	0	0	14,916
46	15,305	131	258	14,916	0	0	14,916
45	15,305	131	258	14,916	0	0	14,916
44	15,305	131	258	14,916	0	0	14,916
43	15,305	131	258	14,916	0	0	14,916
42	15,305	131	258	14,916	0	0	14,916
41	15,305	131	258	14,916	0	0	14,916
40	15,305	131	258	14,916	0	0	14,916
39	15,305	131	258	14,916	0	0	14,916
38	15,305	131	258	14,916	0	0	14,916
37	15,305	131	258	14,916	0	0	14,916
36	15,305	131	258	14,916	0	0	14,916
35	15,305	131	258	14,916	0	0	14,916
34	15,305	131	258	14,916	0	0	14,916
33	15,305	674	219	14,412	0	0	14,412
32	17,690	8,744	8,946	0	0	0	0
31	17,690	374	386	0	16,930	0	16,930
30	18,590	374	386	0	17,830	0	17,830
29	18,590	374	386	0	17,830	0	17,830
28	18,590	374	386	0	17,830	0	17,830
27	18,590	374	386	0	17,830	0	17,830
26	18,590	374	386	0	17,830	0	17,830
25	18,590	374	386	0	17,830	0	17,830
24	18,590	374	386	0	17,830	0	17,830
23	18,590	374	386	0	17,830	0	17,830
22	18,590	374	386	0	17,830	0	17,830
21	18,590	374	386	0	17,830	0	17,830
20	18,590	374	386	0	17,830	0	17,830
19	18,590	374	386	0	17,830	0	17,830
18	18,590	374	386	0	17,830	0	17,830
17	18,590	643	369	0	17,578	0	17,578
16	18,590	0	370	0	0	18,220	18,220
15	18,590	0	370	0	0	18,220	18,220
14	18,590	0	370	0	0	18,220	18,220
13	18,590	0	370	0	0	18,220	18,220
12	18,590	0	370	0	0	18,220	18,220
11	18,590	0	370	0	0	18,220	18,220
10	18,590	0	370	0	0	18,220	18,220
9	18,590	0	370	0	0	18,220	18,220
8	18,590	0	370	0	0	18,220	18,220
7	18,158	0	4,820	0	0	13,338	13,338
6	18,719	1,236	738	0	0	16,745	16,745
5	19,626	165	13,408	0	6,053	0	6,053
4	19,022	165	6,260	0	0	12,597	12,597
3	19,022	165	372	0	0	18,485	18,485
2	19,022	100	437	0	0	18,485	18,485
1	22,300	0	15,986	1,496	3,323	1,496	6,314
B1 Mezz.	7,900		5,260	0	0	2,640	2,640
B1	19,300		19,300	0	0	0	0
B2	18,430		18,430	0	0	0	0
B3	18,430		18,430	0	0	0	0
B4	18,430		18,430	0	0	0	0
Total	**1,140,458**	25,796	157,668	**433,556**	**275,674**	**247,765**	**956,995**

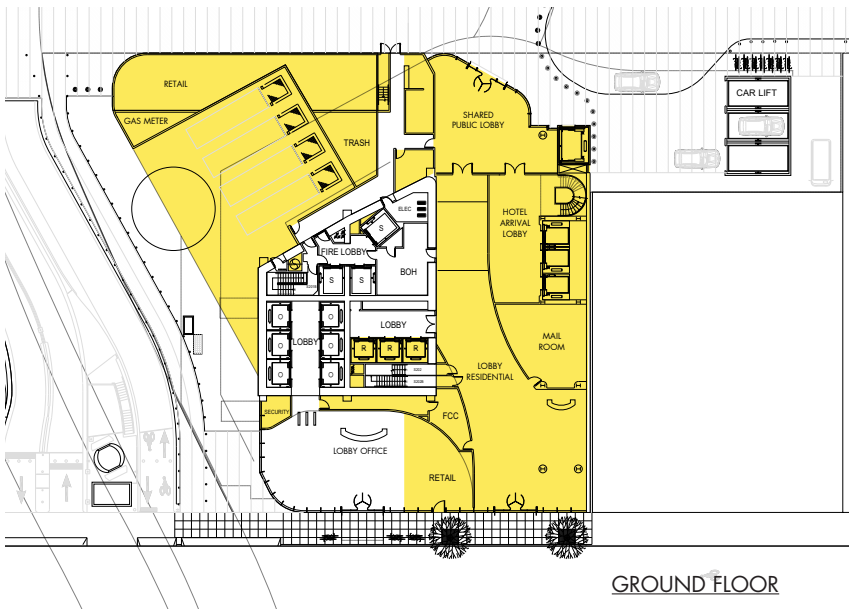
NOTES: CCSF gross area is per San Francisco Planning Code Article 1, Sec. 102.9 - Gross area:
Perimeter area is measured at 4' above finished floor
The above calculations for deducted area assumes the following understanding of CCSF code:
1: Floor space used for off-street parking or loading.
2: Basement space used for storage or services necessary to the operation or maintenance of the building
3: Elevator or stair penthouses, etc at the top of the building used for operation or maintenance of the building
4: Mechanical equipment areas necessary to the operation of the building
(MEP, Elec, Tel rooms/shafts, Restroom shafts/risers)
5: Retail area less than 5,000 SF per use on ground and park level
(L1 retail on Natoma St.= 1,605 SF, L1 retail on Howard St.= 714 SF, and retail at park level= 5,000 SF)
6: Ground floor lobby circulation space (3,480 SF)

AREA SCHEDULE {2019.12.18}



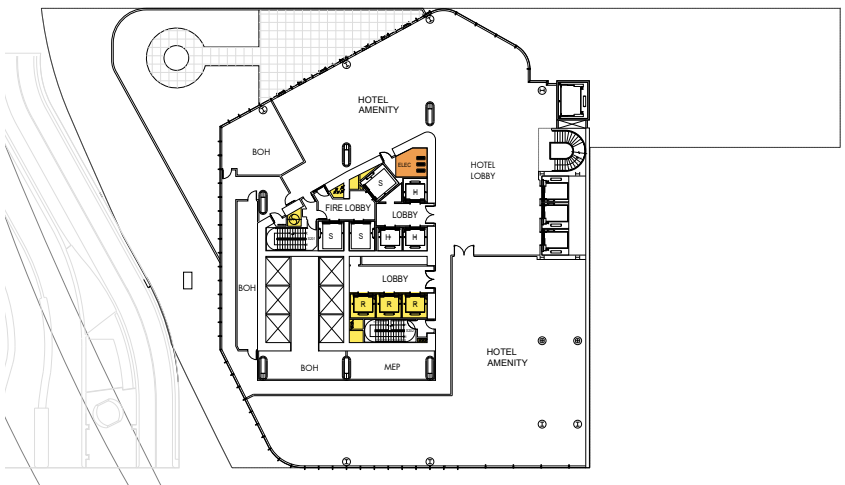
B1 MEZZ.

PERIMETER AREA:	7,900 SF
DEDUCTS PER SF PLANNING CODE:	5,260 SF
CCSF GROSS AREA ABOVE / BELOW GRADE:	2,640 SF



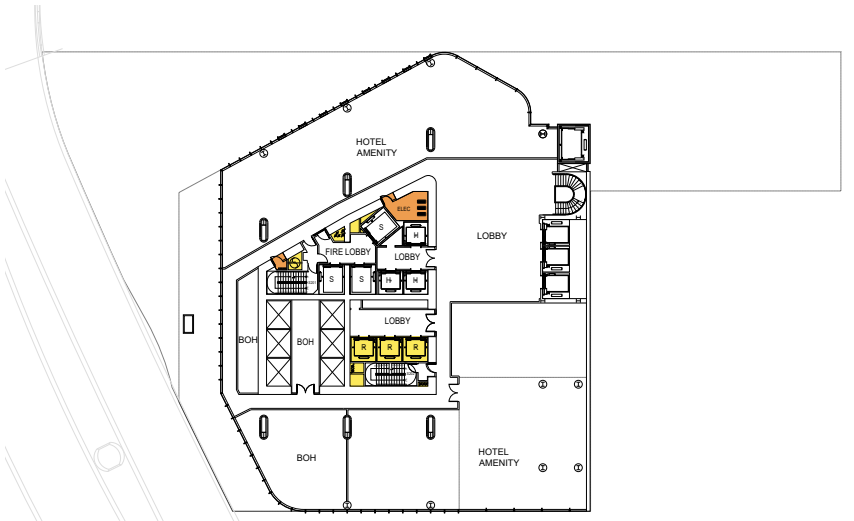
GROUND FLOOR

PERIMETER AREA:	23,300 SF
DEDUCTS PER SF PLANNING CODE:	15,986 SF
CCSF GROSS AREA ABOVE / BELOW GRADE:	6,314 SF



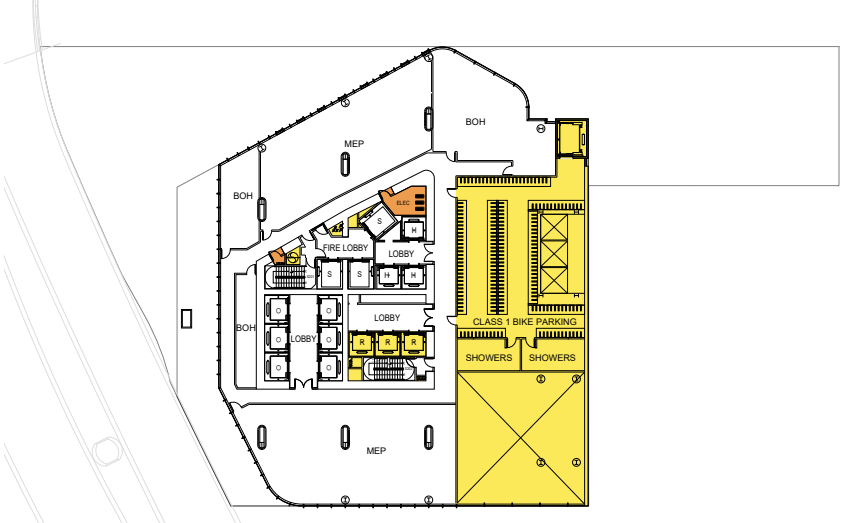
PODIUM - LEVEL 2

PERIMETER AREA:	19,022 SF
DEDUCTS PER SF PLANNING CODE:	437 SF
MEP DEDUCTS PER SF PLANNING CODE:	100 SF
CCSF GROSS AREA ABOVE / BELOW GRADE:	18,485 SF



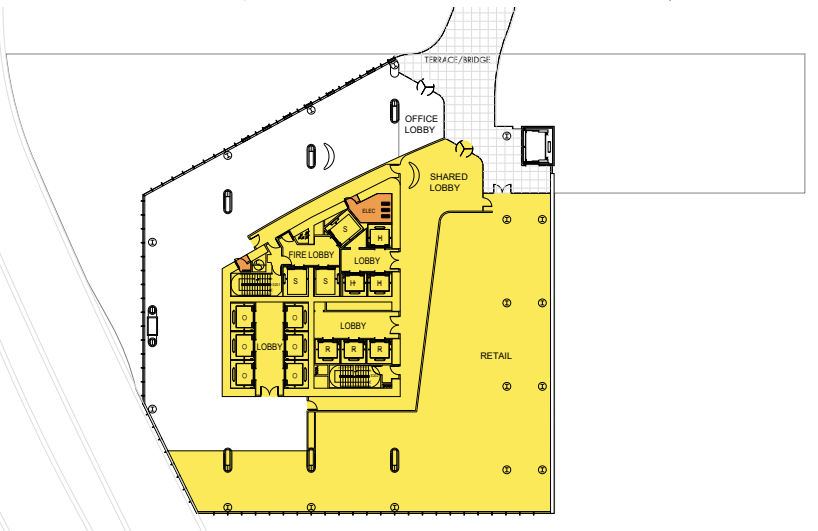
PODIUM - LEVEL 3

PERIMETER AREA:	19,022 SF
DEDUCTS PER SF PLANNING CODE:	372 SF
MEP DEDUCTS PER SF PLANNING CODE:	165 SF
CCSF GROSS AREA ABOVE / BELOW GRADE:	18,485 SF



PODIUM - LEVEL 4

PERIMETER AREA:	19,022 SF
DEDUCTS PER SF PLANNING CODE:	6,260 SF
MEP DEDUCTS PER SF PLANNING CODE:	165 SF
CCSF GROSS AREA ABOVE / BELOW GRADE:	12,507 SF

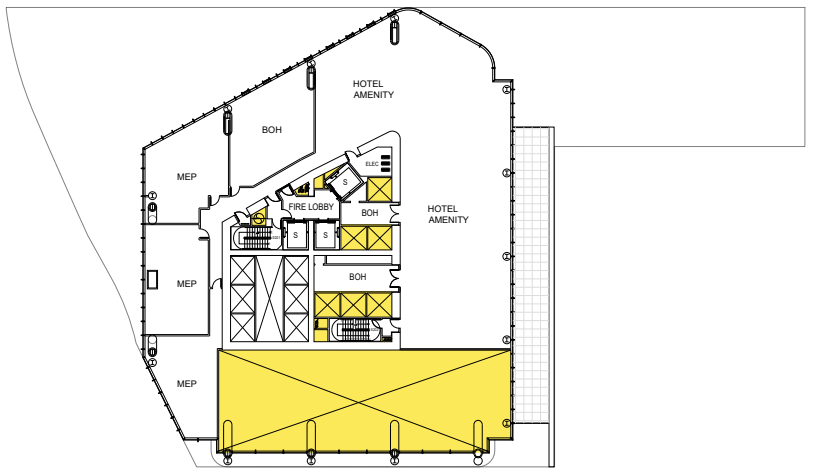


PODIUM - LEVEL 5

PERIMETER AREA:	19,626 SF
DEDUCTS PER SF PLANNING CODE:	13,408 SF
MEP DEDUCTS PER SF PLANNING CODE:	165 SF
CCSF GROSS AREA ABOVE / BELOW GRADE:	6,053 SF

PODIUM - LEVEL 6

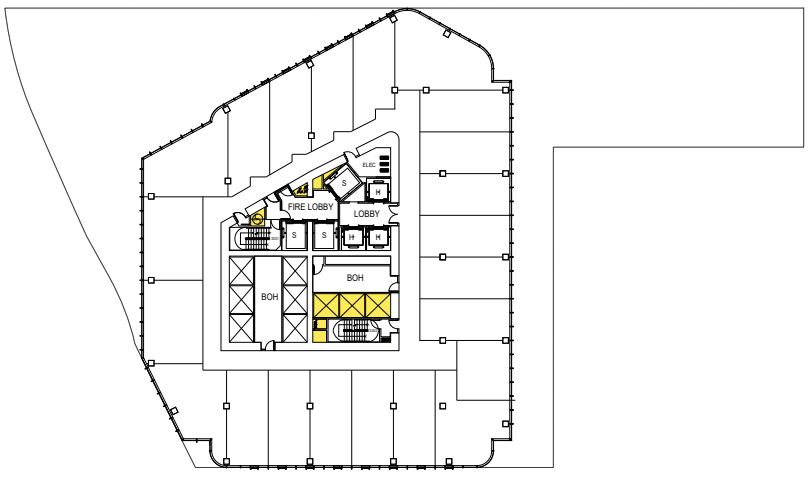
PERIMETER AREA:	18,719 SF
DEDUCTS PER SF PLANNING CODE:	738 SF
MEP DEDUCTS PER SF PLANNING CODE:	1,236 SF
CCSF GROSS AREA ABOVE / BELOW GRADE:	16,745 SF



PODIUM - LEVEL 7

PERIMETER AREA:	18,158 SF
DEDUCTS PER SF PLANNING CODE:	4,820 SF
CCSF GROSS AREA ABOVE / BELOW GRADE:	13,338 SF

GROSS AREA SUMMARY

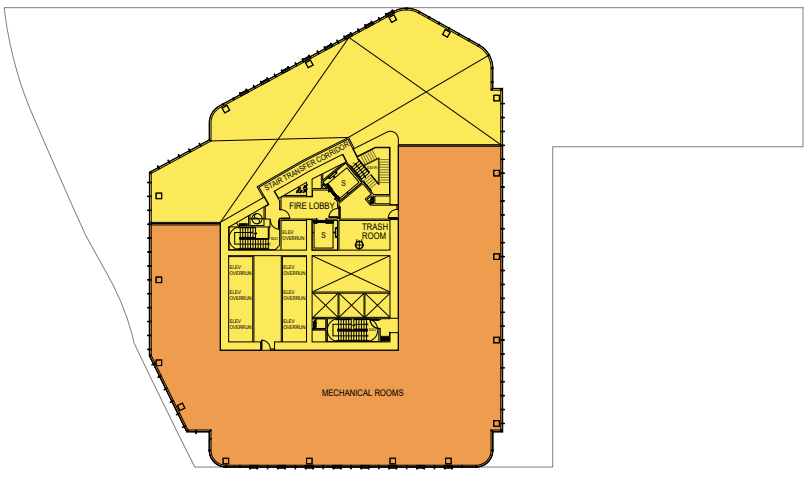


TYPICAL HOTEL (L8-16)	
PERIMETER AREA:	18,590 SF
DEDUCTS PER SF PLANNING CODE:	370 SF
CCSF GROSS AREA ABOVE / BELOW GRADE:	18,220 SF

OFFICE (L17)	
PERIMETER AREA:	18,590 SF
DEDUCTS PER SF PLANNING CODE:	369 SF
MEP DEDUCTS PER SF PLANNING CODE:	643 SF
CCSF GROSS AREA ABOVE / BELOW GRADE:	17,578 SF

TYPICAL OFFICE (L 18-30)	
PERIMETER AREA:	18,590 SF
DEDUCTS PER SF PLANNING CODE:	386 SF
MEP DEDUCTS PER SF PLANNING CODE:	374 SF
CCSF GROSS AREA ABOVE / BELOW GRADE:	17,830 SF

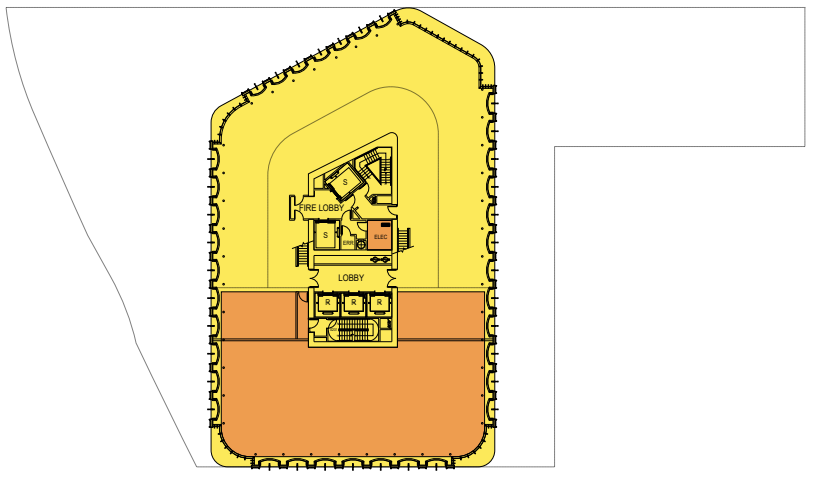
OFFICE (L31)	
PERIMETER AREA:	17,690 SF
DEDUCTS PER SF PLANNING CODE:	386 SF
MEP DEDUCTS PER SF PLANNING CODE:	374 SF
CCSF GROSS AREA ABOVE / BELOW GRADE:	16,930 SF



MECHANICAL (L32)	
PERIMETER AREA:	17,690 SF
DEDUCTS PER SF PLANNING CODE:	8,946 SF
MEP DEDUCTS PER SF PLANNING CODE:	8,744 SF
CCSF GROSS AREA ABOVE / BELOW GRADE:	0 SF

RESIDENTIAL (L33)	
PERIMETER AREA:	15,305 SF
DEDUCTS PER SF PLANNING CODE:	219 SF
MEP DEDUCTS PER SF PLANNING CODE:	674 SF
CCSF GROSS AREA ABOVE / BELOW GRADE:	14,412 SF

TYPICAL RESIDENTIAL (L34-61)	
PERIMETER AREA:	15,305 SF
DEDUCTS PER SF PLANNING CODE:	258 SF
MEP DEDUCTS PER SF PLANNING CODE:	131 SF
CCSF GROSS AREA ABOVE / BELOW GRADE:	14,916 SF



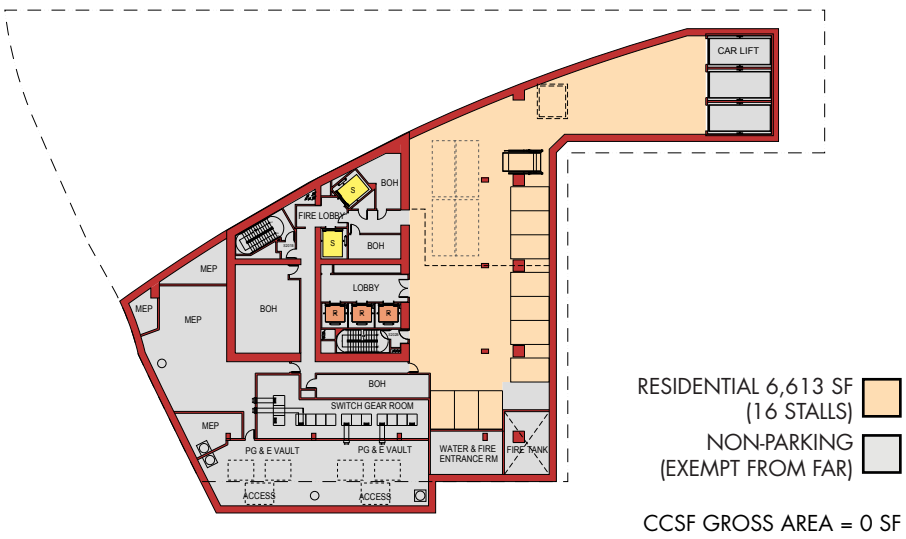
ROOF (L62)	
PERIMETER AREA:	15,305 SF
DEDUCTS PER SF PLANNING CODE:	10,305 SF
MEP DEDUCTS PER SF PLANNING CODE:	5,000 SF
CCSF GROSS AREA ABOVE / BELOW GRADE:	0 SF

GROSS AREA SUMMARY

PROGRAM	Allowable Parking	Provided Parking	Reference
NON-RESIDENTIAL	18,625 SF	100 STALLS / 9,700 SF	SF PLANNING CODE SEC 151.1 (c), (d), (f) 3.5% OF GROSS
RESIDENTIAL (165 UNITS)	83 STALLS	83 STALLS	SF PLANNING CODE SEC. 151.1 (f) 0.5 CAR PER 1 UNIT
TOTAL		**183 STALLS**	

NON-RESIDENTIAL ALLOWABLE PARKING CALCULATION	CCSF
OFFICE	275,674 SF
HOTEL	247,765 SF
RETAIL	8,700 SF
TOTAL NON-RESIDENTIAL CCSF	532,139 SF
NON-RESIDENTIAL ALLOWABLE PARKING: 3.5% OF GROSS	18,625 SF

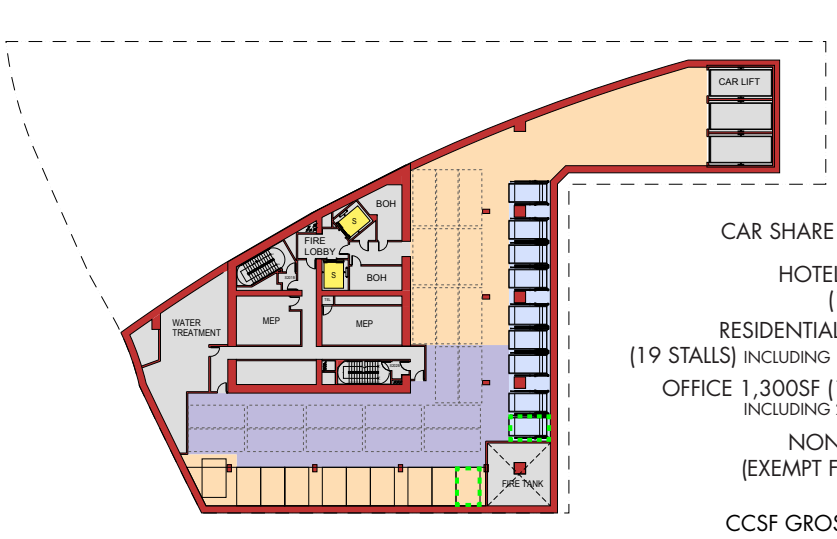
NUMBER OF CAR SHARE PARKING STALLS			Reference
NON-RESIDENTIAL	2		SF PLANNING CODE SEC 166
DWELLING	1		SF PLANNING CODE SEC. 166
TOTAL CAR SHARE	3		



RESIDENTIAL 6,613 SF (16 STALLS)
NON-PARKING (EXEMPT FROM FAR)

CCSF GROSS AREA = 0 SF
PERIMETER AREA = 19,300 SF

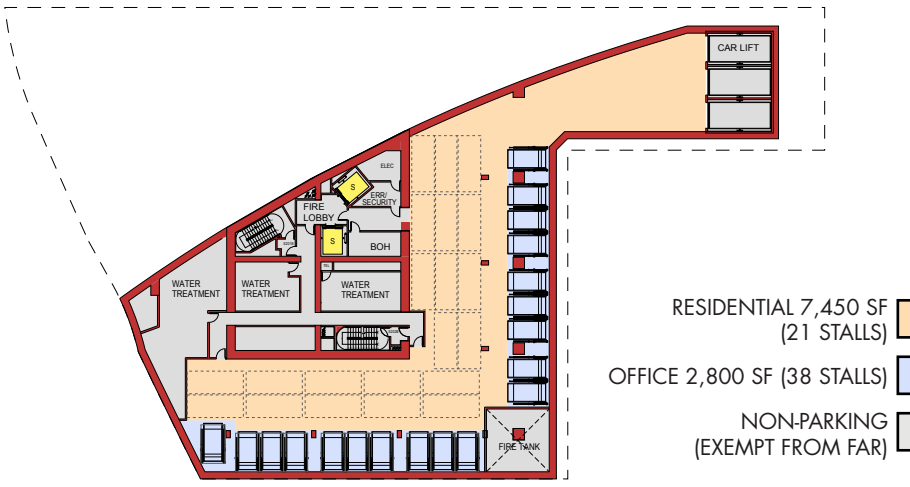
PARKING PLAN - LEVEL B1



CAR SHARE (3 STALLS)
HOTEL 2,300 SF (12 STALLS)
RESIDENTIAL 5,700 SF (19 STALLS) INCLUDING 1 CAR SHARE
OFFICE 1,300SF (18 STALLS) INCLUDING 2 CAR SHARE
NON-PARKING (EXEMPT FROM FAR)

CCSF GROSS AREA = 0 SF
PERIMETER AREA = 18,430 SF

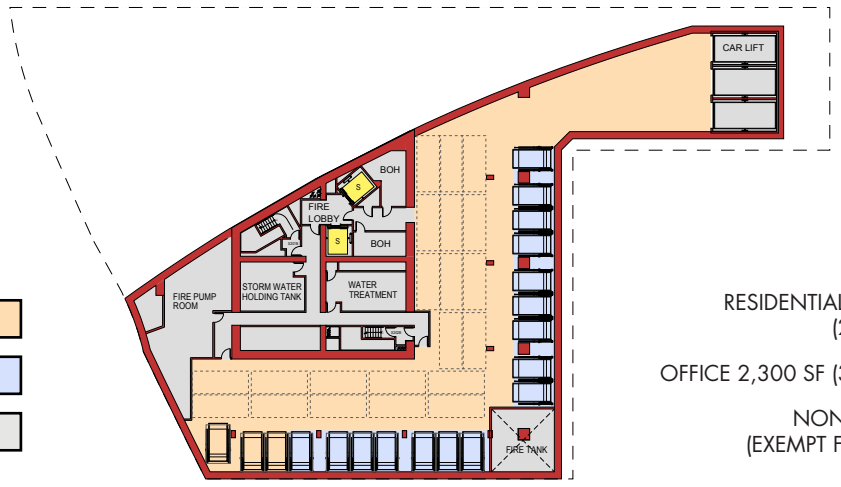
PARKING PLAN - LEVEL B2



RESIDENTIAL 7,450 SF (21 STALLS)
OFFICE 2,800 SF (38 STALLS)
NON-PARKING (EXEMPT FROM FAR)

CCSF GROSS AREA = 0 SF
PERIMETER AREA = 18,430 SF

PARKING PLAN - LEVEL B3



RESIDENTIAL 7,975 SF (27 STALLS)
OFFICE 2,300 SF (32 STALLS)
NON-PARKING (EXEMPT FROM FAR)

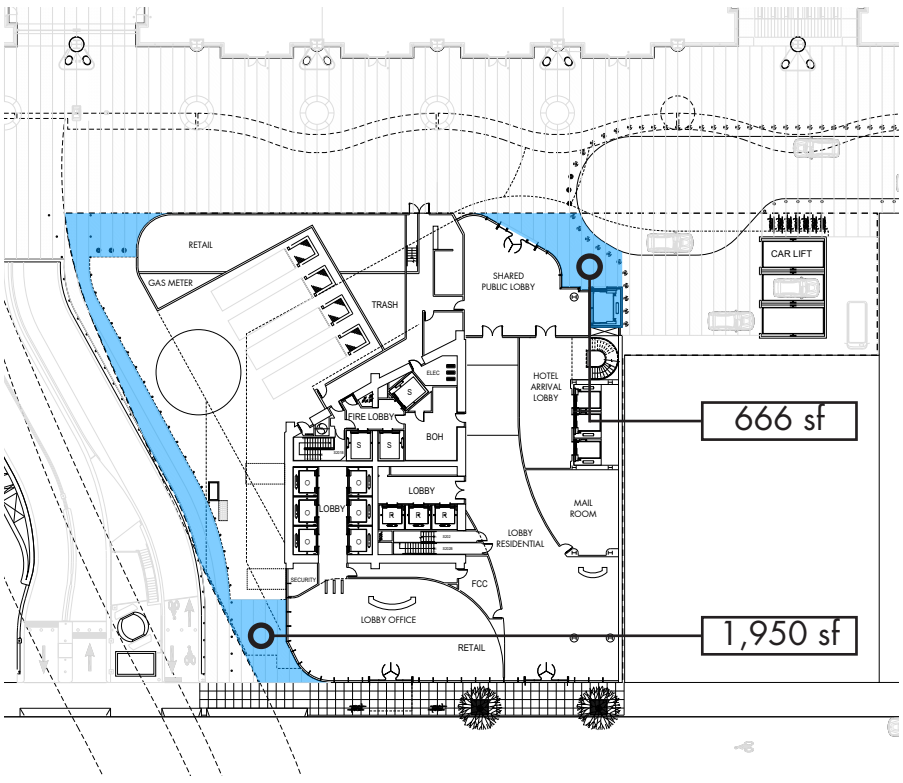
CCSF GROSS AREA = 0 SF
PERIMETER AREA = 18,430 SF

PARKING PLAN - LEVEL B4

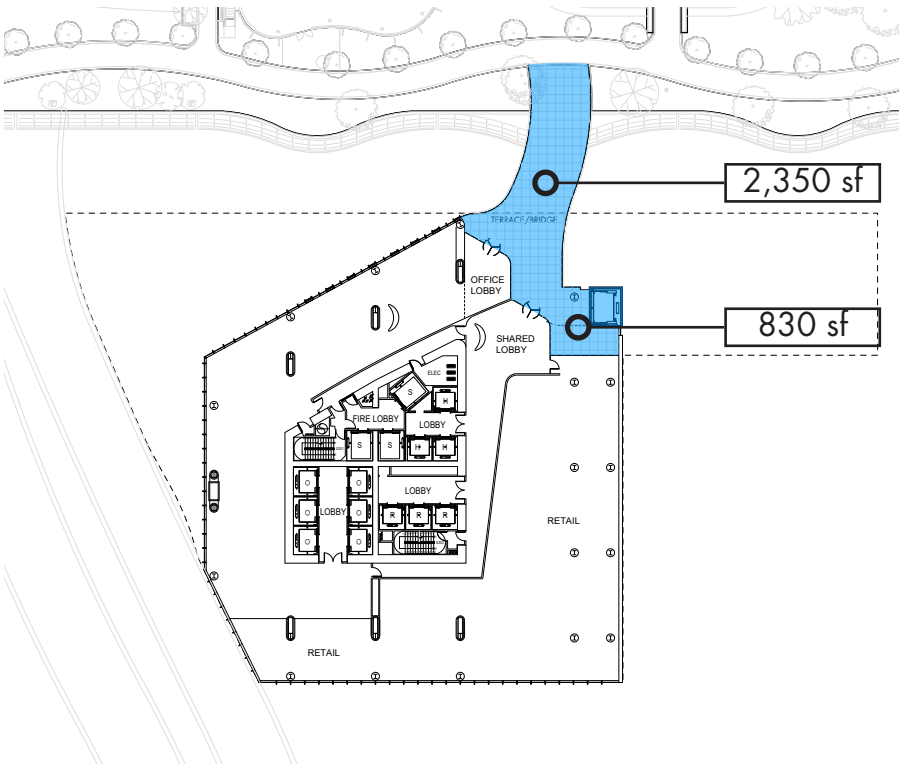
PARKING SUMMARY

Residential: 165 units	Required Open Space	Proposed Open Space	Notes
48 SF Common Open Space x 165 units	7,920	7,494	Roof Top Terrace
		1,948	Terrace at 33L
TOTAL RESIDENTIAL OPEN SPACE	**7,920**	**9,442**	Planning Code 138(g)

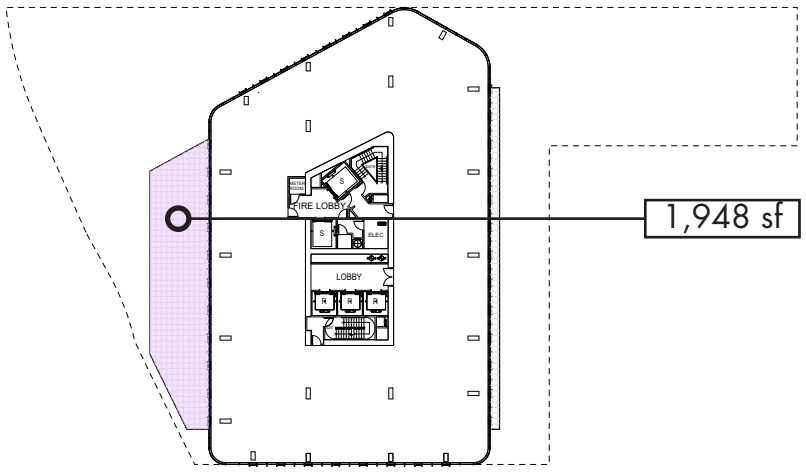
Commercial: 523,439 SF	Required Open Space	Proposed Open Space	Notes
1 SF of open space / 50 SF	10,469	5,000	Bonus (Section 138(j)(1)(F)(iv))
		1,950	Gr. Flr. Passage
		666	Access to Public elevator
		830	Public elevator to Park level (L1-L5)
		2,350	Bridge & Terrace at 5L
TOTAL COMMERCIAL OPEN SPACE	**10,469**	**10,796**	Planning Code 138(g)



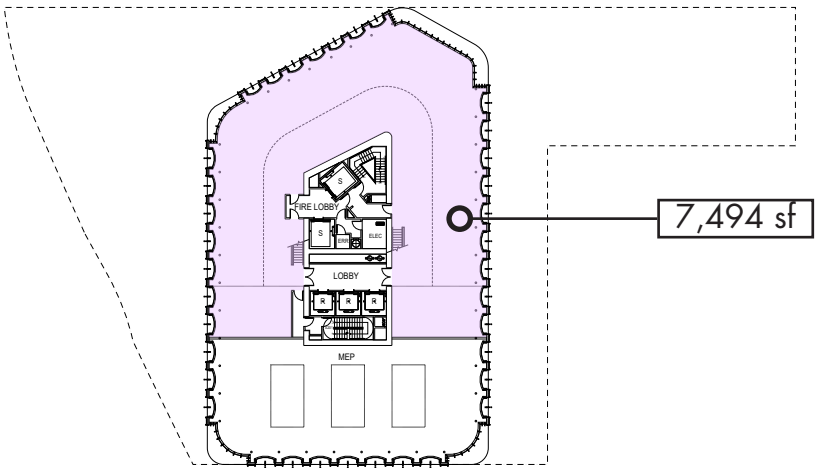
GROUND LEVEL



PODIUM - LEVEL 5



RESIDENTIAL AMENITY - L 33



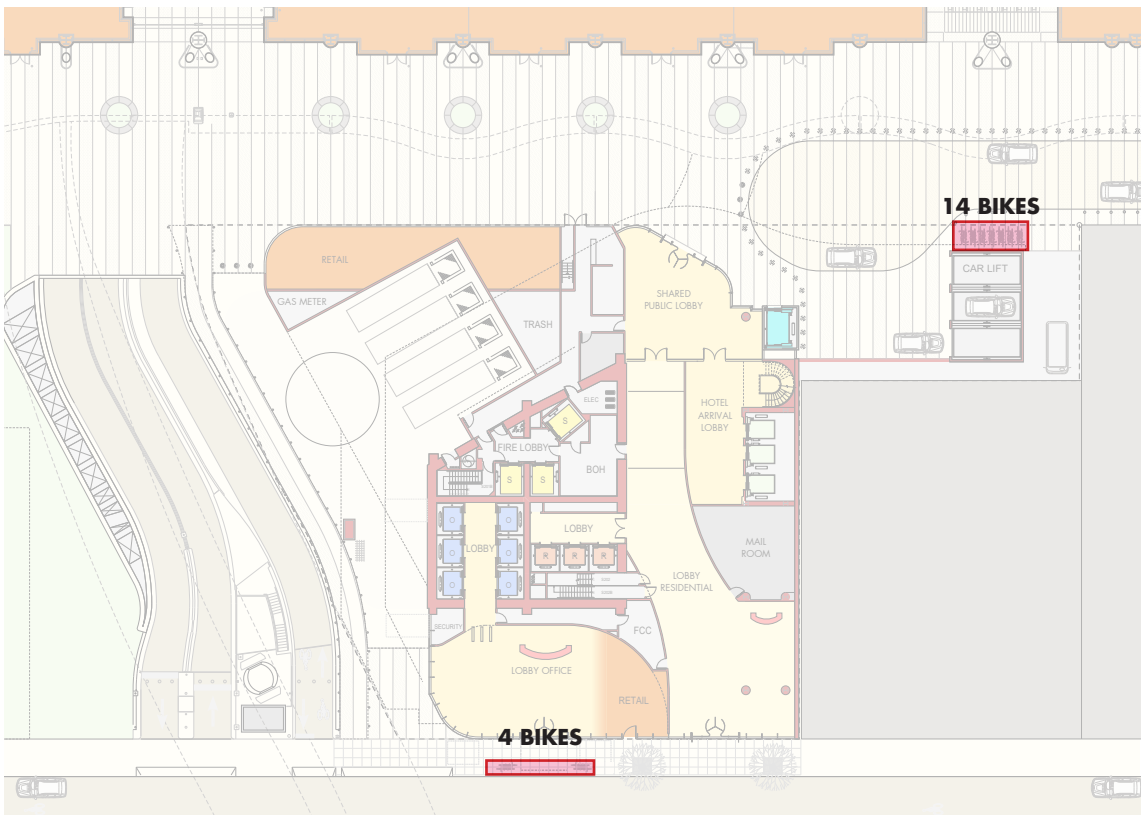
ROOF

RESIDENTIAL OPEN SPACE

COMMERCIAL OPEN SPACE

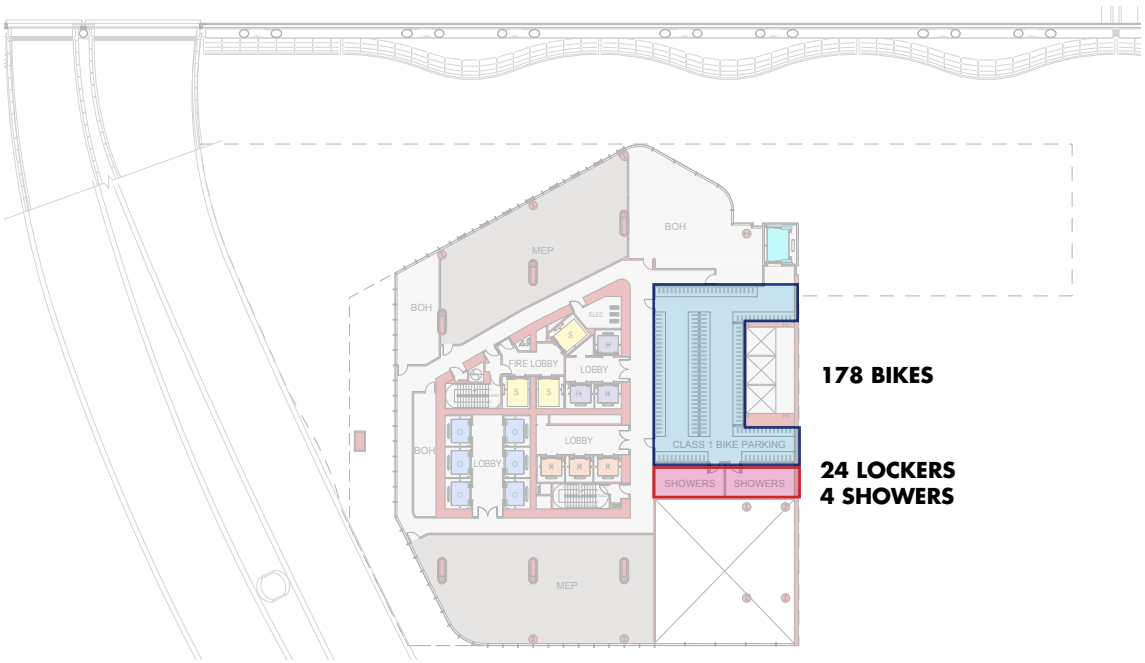
OPEN SPACE SUMMARY

	Residential	Hotel	Office	Total No. Required
GSF	-	-	275,674	
# of Units	165	189	-	
Class1 Code	100 Class1 spaces + 1 Class1 space/4units over 100 units	1 Class1 space/30 rooms	1 Class1 spaces/5,000sf	
CLASS1 TOTAL	116.3	6.3	55.1	178
Class2 Code	1 Class2 space/20units	1 Class2 space/30 rooms + 1 Class2 space/5,000 sf of Conf., Meeting Rooms	Min. 2 Spaces for office greater than 5,000SF + 1 Class2 space / add. 50,000 SF	
CLASS2 TOTAL	8.3	18.3	7.4	34



CLASS 2 BIKE PARKING

CLASS 2 BIKE PARKING - LEVEL 1
PAY IN LIEU FEE FOR 50% OF CLASS 2 REQUIREMENT (17 SPACES)



CLASS 1 BIKE PARKING

SHOWERS AND LOCKERS

PODIUM PLAN - LEVEL 4

BIKE PARKING SUMMARY

CODE ITEM	Required/Permitted	Proposed	Action Requested
'P' ZONING CLEAN UP	LOTS 3721-135 AND 3721-138 ZONED C-3-0 (SD) AND 'P'	CHANGE TO C-3-0 (SD) ONLY	ZONING MAP AMENDMENT
RESIDENTIAL FLOOR PLATES [15K SF]	IN THE TCDP, RESITENTIAL FLOOR PLATES FOR SITES >15,000 SF IN AREA ARE LIMITED TO A FOOTPRINT OF 15,000 SF	ALLOW RESIDENTIAL 'FOOTPRINT' OF 15,270 SF (Please refer to pp. 14-16 of the Supplemental Diagrams)	LEGISLATIVE AMENDMENT-UNCODIFIED
HEIGHT LIMIT AND BULK DISTRICT	LOT 16 & 136 (portion) = 450-S LOT 135, 136 (portion) & 138 = 750-S 2 7.5% ADDITION MAY EXTEND ABOVE THE PERMITTED HEIGHT	HEIGHT MAP AMENDMENT TO RECLASSIFY WESTERN PORTION OF LOT 16 (1,310 SF, AS DEPICTED IN SUPPLEMENTAL DIAGRAMS) TO 750-S-2; INCREASE THE 750-S-2 ZONE ON PORTION OF LOT 136 AT NORTHEASTEARN EDGE OF TOWER (245 SF, AS DEPICTED IN SUPPLEMENTAL DIAGRAMS); RECLASSIFY NORTHWEST PORTION OF SITE TO 450-S (4,576 SF, AS DEPICTED IN SUPPLEMENTAL DIAGRAMS). (Please refer to pg. 2 of the Supplemental Diagrams).	ZONING MAP AMENDMENT
GENERAL PLAN CONSISTENCY WITH ZONING	STATE LAW REQUIRES THE GENERAL PLAN (DOWNTOWN PLAN AND TRANSIT CENTER DISTRICT PLAN ("TCDP") TO BE CONSISTENT WITH ZONING.	REVISE DOWNTOWN PLAN LAND USE MAP (MAP 1) TO CONFORM TO TCDP AND CURRENT C-3-0(SD) ZONING; REVISE DOWNTOWN PLAN HEIGHT MAP (MAP 5) AND TRANSIT CENTER DISTRICT PLAN HEIGHT MAP (FIGURE 1) TO CONFORM TO ZONING HEIGHT MAP AMENDMENT DESCRIBED BELOW	GENERAL PLAN AMENDMENT
SETBACKS (§132.1)	ESTABLISH A DISTINCTIVE STREETWALL AT A HEIGHT BETWEEN 50' TO 110' FOR NOT LESS THAN 40% OF THE LINEAR FRONTAGE AT ALL STREET FRONTAGE	FAÇADE PROVIDES GREATER DEGREE OF ARTICULATION UP TO 110' TO KEEP IN CHARACTER WITH THE STREETWALL CONCEPT BUT DOES NOT COMPLY WITH THE 10' SETBACK REQUIREMENT FOR 40% OF THE FRONTAGE ON HOWARD STREET	309 EXCEPTION (§ 309(a)(1))
	SEPARATION OF TOWERS FROM AN INTERIOR PROPERTY LINE	15' SEPARATION OF TOWER FROM INTERIOR PROPERTY LINE UP TO A HEIGHT OF 411' AND 18' SEPARATION FROM 430' UPWARDS (Please refer to pg.17 of the Supplemental Diagrams)	309 EXCEPTION (§ 309(a)(1))
	SEPARATION OF TOWERS AT PUBLIC STREETS	ENCROACHMENT INTO SETBACK LINE AT HOWARDS ST AT 640' HIGH AND UPWARDS (Please refer to pg.18 of the Supplemental Diagrams)	309 EXCEPTION (§ 309(a)(1))
REAR YARD (§134)	25% OF LOT DEPTH IS REQUIRED AT THE LOWEST STORY CONTAINING A DWELLING UNIT AND EACH SUCCEEDING STORY ABOVE	NONE PROVIDED (Please refer to pg.19 of the Supplemental Diagrams)	309 EXCEPTION (§ 309(a)(1))
UNIT EXPOSURE (§140)	AT LEAST ONE ROOM THAT MEETS THE 120-SQUARE-FOOT MINIMUM FLOOR AREA SHALL FACE DIRECTLY ON AN OPEN SPACE	TWO UNITS PER FLOOR LESS THAN 25 FEET FROM EAST PROPERTY ON SIX FLOORS. (Please refer to pg.8 of the Supplemental Diagrams)	309 EXCEPTION (§ 309(a)(14))
OFF STREET LOADING (§152.1)	6 LOADING SPACES REQUIRED	4 PROVIDED (Please refer to pg.9 of the Supplemental Diagrams)	309 EXCEPTION (§ 161(e))
RATIO OF COMMERCIAL TO RESIDENTIAL USAGE (§248(c))	RATIO OF COMMERCIAL TO RESIDENTIAL FOR PARCELS LARGER THAN 15,000 SF GREATER OR EQUAL TO 2:1.	EXCEPTION TO 2:1 COMMERCIAL TO RESIDENTIAL REQUIREMENT EXCEPTION PERMITTED PER ZA LETTER OF DETERMINATION DATED 12/2/2015	309 EXCEPTION (§ 309(a)(8))
TOUR BUS LOADING (§162(b))	ONE OFF-STREET TOUR BUS LOADING SPACE REQUIRED FOR HOTELS WITH 201-350 ROOMS	ZERO OFF-STREET TOUR BUS LOADING SPACES	309 EXCEPTION (§ 309(a)(7))
BULK AREA REDUCTION (§272)	AVERAGE SIZE OF UPPER 1/3 OF TOWER IS TO BE REDUCED TO 75% OF AVERAGE FLOOR AREA OF THE LOWER TOWER	AVERAGE FLOOR PLATE OF TOP 1/3 REDUCED TO 82% OF LOWER 2/3 AVERAGE FLOOR PLATE (Please refer to pp. 4-7 of the Supplemental Diagrams)	309 EXCEPTION (§ 309(a)(13))
	AVERAGE DIAGONAL DIMENSION OF UPPER 1/3 OF TOWER IS TO BE REDUCED TO 87% OF DIAGONAL DIMENSION OF THE LOWER TOWER	AVERAGE UPPER DIAGONAL REDUCED TO 95 % OF LOWER 2/3 AVERAGE DIAGONAL (Please refer to pp. 4-7 of the Supplemental Diagrams)	309 EXCEPTION (§ 309(a)(13))
GARAGE AND LOADING ACCESS (§155(r))	CURB CUTS ARE NOT ALLOWED ON HOWARD WHICH IS IDENTIFIED AS AN OFFICIAL CITY BICYCLE ROUTE	INTERRUPT BICYCLE LANE WITH CURB CUT FOR LOADING ACCESS (Please refer to pg. 9 of the Supplemental Diagrams)	VARIANCE
	NEW ENTRIES ARE NOT ALLOWED ON NATOMA FROM 300 FEET WEST OF FIRST STREET.	PROVIDE VEHICULAR ACCESS THROUGH NATOMA (Please refer to pg. 9 of the Supplemental Diagrams)	309 EXCEPTION
PARKING & LOADING ENTRANCES (§145(c))	NO MORE THAN 1/3 OF THE WIDTH OR 20 FEET, WHICHEVER IS LESS, OF ANY GIVEN STREET FRONTAGE SHALL BE DEVOTED TO PARKING AND LOADING INGRESS AND EGRESS	ON HOWARD ST., 35'-8" AND ON NATOMA ST. 64'-6" (Please refer to pg. 9 of the Supplemental Diagrams)	VARIANCE
STREET FRONTAGES (§145.1)	ACTIVE USES SHALL BE PROVIDED WITHIN 25 FEET OF THE BUILDING DEPTH ON THE GROUND FLOOR. BUILDING LOBBIES ARE CONSIDERED ACTIVE USES SO LONG AS THEY DON'T EXCEED 40 FEET OR 25% OF THE BUILDING FRONTAGE	EXCEED LOBBY MAXIMUM FRONTAGE WIDTH ON HOWARD (Please refer to pg. 10 of the Supplemental Diagrams)	VARIANCE
GARAGE AND LOADING ACCESS (§155(r))	ALL OFF-STREET FREIGHT LOADING AND SERVICE VEHICLE SPACES IN THE C-3 DISTRICTS SHALL BE COMPLETELY ENCLOSED	LOADING IS COVERED AND SCREENED FROM PUBLIC VIEW, BUT NOT ENCLOSED DUE TO ANGLE OF ENTRY AND TURNTABLE	VARIANCE

PLANNING CODE EXCEPTIONS

ADDITIONAL DESIGN

STRUCTURAL SYSTEM

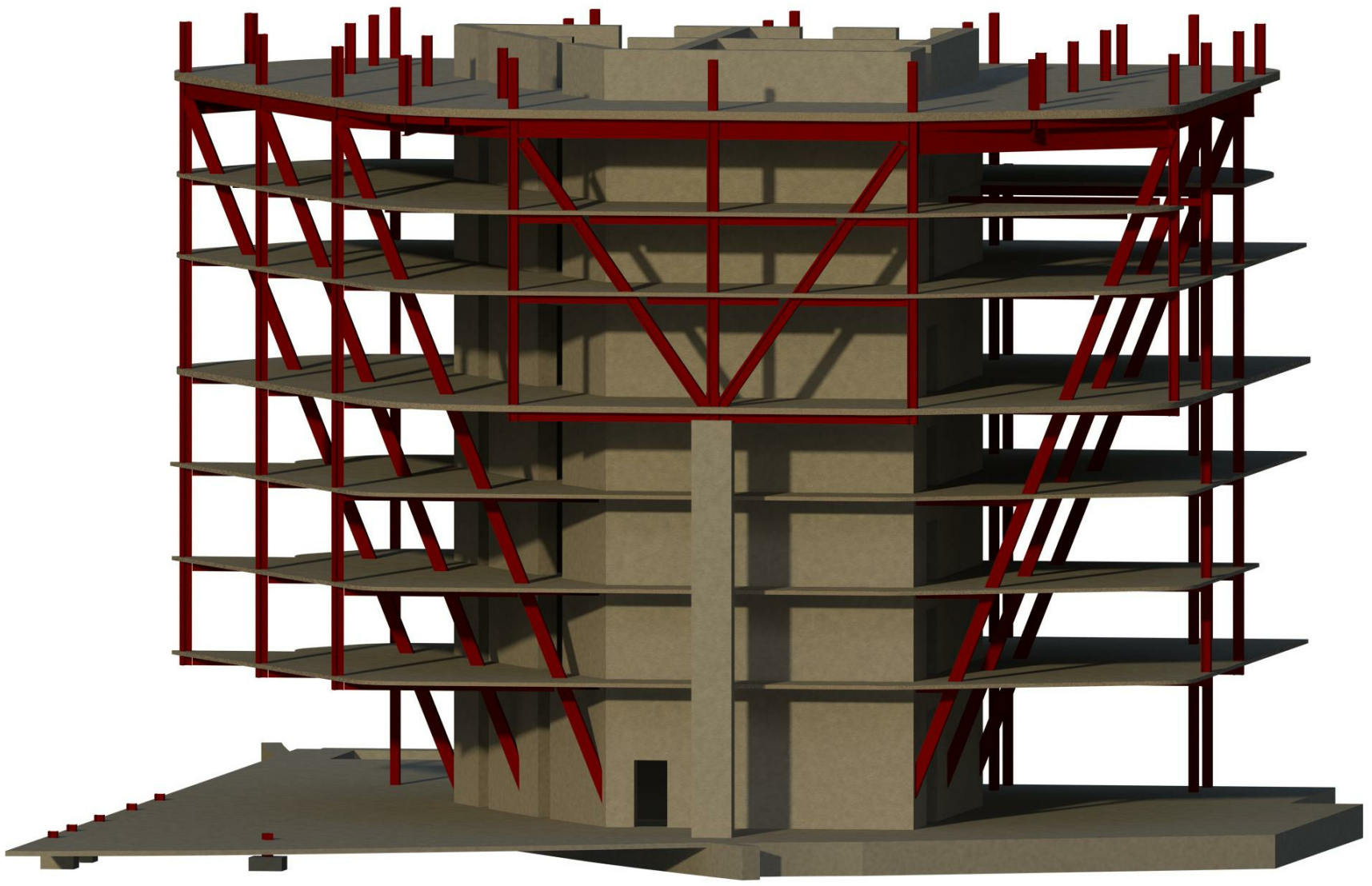
MAGNUSSON KLEMENCIC ASSOCIATES

Transbay Parcel F will be approximately 800 feet tall, with a vertical mixed stack of public amenity, retail, hotel, office, and residential programs. The structural design will be performed in accordance with the 2013 San Francisco Building Code, including the San Francisco Department of Building Inspection Administrative Bulletin AB083, utilizing a non-prescriptive seismic design with a ductile shear wall core.

The tower columns and core walls will be founded on large diameter drilled shafts into the Franciscan Bedrock. Beneath the core, a thick mat foundation will distribute the wall loads to the drilled shafts and minimize differential settlement. Beyond the core, a thinner mat will resist hydrostatic uplift forces.

The below grade structure will consist of concrete flat plate slabs and concrete walls and columns. Through the podium, hotel and office levels, the structural floor framing system will consist of structural steel beams and columns with concrete on metal deck. In the residential levels, the structural system will consist of concrete post-tensioned flat slabs and concrete columns.

The most unique aspect of the structure is the column transfer condition at the base of the tower. With the northern and western portions of the tower being over the TJPA easements at and below grade, the structural columns will be sloped back to the core over 8 levels equally on opposing sides of the building. This equal and opposite column sloping with allow for balance of the structure minimizing the horizontal force on the core.



BUILDING INFORMATION MODEL OF BASE TRANSFER

SUSTAINABILITY

HKS ARCHITECTS

TRANSIT ORIENTED DEVELOPMENT

The project is a Transit Oriented Development (TOD) in downtown San Francisco, adjacent to the Salesforce Transit Center, a multi-model transportation hub. The site is very walkable and bikable as well.

HIGH PERFORMANCE FACADE

The project will optimize energy performance through a high performance facade with integrated solar shading.

STORMWATER AND RAINWATER HARVESTING

The project will utilize alternate sources of water from stormwater and rainwater for flushing and landscape irrigation to reduce the water use in the building.

CONSTRUCTION WASTE MANAGEMENT

The project will divert more than 75% of the construction waste from landfills through recycling or reuse.

SUSTAINABLE MATERIALS

The project will utilize sustainable building materials such as responsibly sourced building materials, materials with recycled content and low (VOC) contents.

DAYLIGHT AND VIEWS

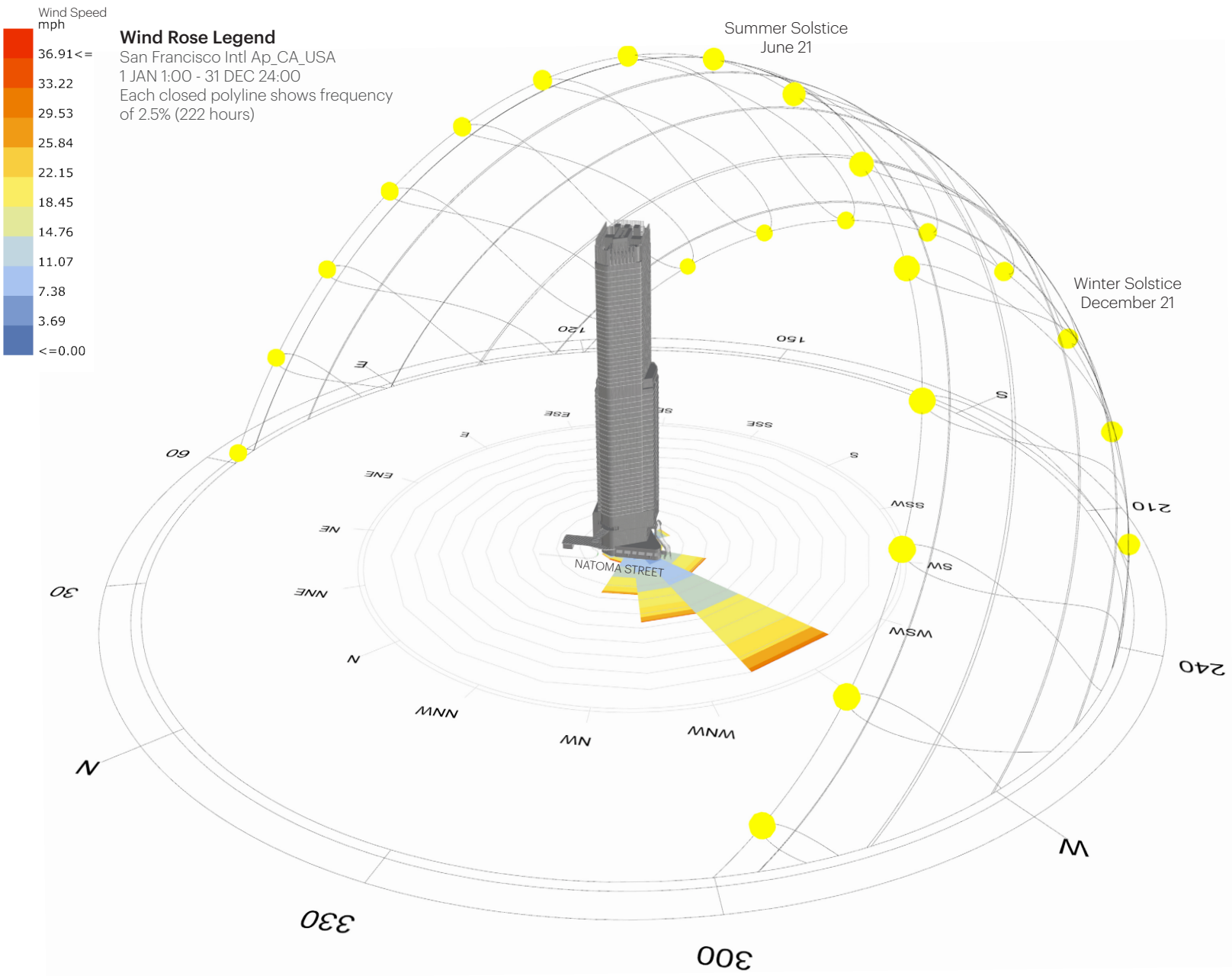
The building will provide natural daylight and quality views to its occupants.

ELECTRIC VEHICLE CHARGING AND PARKING

The project will be equipped with electric vehicle charging stations and preferred parking spaces for clean air/van pool/ electric vehicles.

INNOVATION

The project will include unique and innovative approaches to sustainability catered to respond to the local environment where it is located.



SOLAR PATH & WIND ROSE DIAGRAM

FROM DOLORES PARK

FROM MISSION BAY

AERIAL VIEW OF DOWNTOWN - FACING WEST

FROM TREASURE ISLAND

542-550 Howard Street, San Francisco, CA.

AERIAL VIEW - LOOKING NORTH

AERIAL VIEW FROM TRANSBAY PARK LOOKING SOUTH WEST

VIEW FROM HOWARD AND 2ND STREET - LOOKING EAST

HOWARD STREET LOOKING WEST

HOWARD STREET LOOKING EAST

HOWARD STREET LOOKING NORTH

HOWARD STREET LOOKING EAST

NATOMA STREET LOOKING SOUTH/EAST

NATOMA STREET LOOKING SOUTH/EAST

NATOMA STREET LOOKING SOUTH/EAST

NATOMA STREET LOOKING SOUTH

NATOMA STREET LOOKING WEST

VIEW OF BRIDGE CONNECTION AT PARK LEVEL


TOWER TOP

TOWER

THE BODY OF THE TOWER WILL BE CLADDED ON A HIGH PERFORMANCE CLEAR GLASS WITH SLIGHTLY REFLECTIVE COATING

VERTICAL PIERS WITH WARM WHITE MAT FINISH PANELS

GRAY METAL TRIMS & SUNSHADES WITH A SATIN METALLIC FINISH.

NOTE:
THE MATERIAL SELECTION MAY DEVELOP TO REFLECT BEST PRACTICES AND COST.

A COMFORTABLE PEDESTRIAN EXPERIENCE AT GROUND LEVEL IS PROVIDED BY A HIGH PERFORMANCE CLEAR GLASS.

VERTICAL PIERS AND HORIZONTAL BANDS WITH WARM WHITE MAT FINISH PANELS.

GRAY METAL TRIMS & SUNSHADES WITH A SATIN METALLIC FINISH.

SIDEWALK TO FOLLOW GUIDANCE ESTABLISHED BY CITY STANDARDS.

NOTE:
THE MATERIAL SELECTION MAY DEVELOP TO REFLECT BEST PRACTICES AND COST.

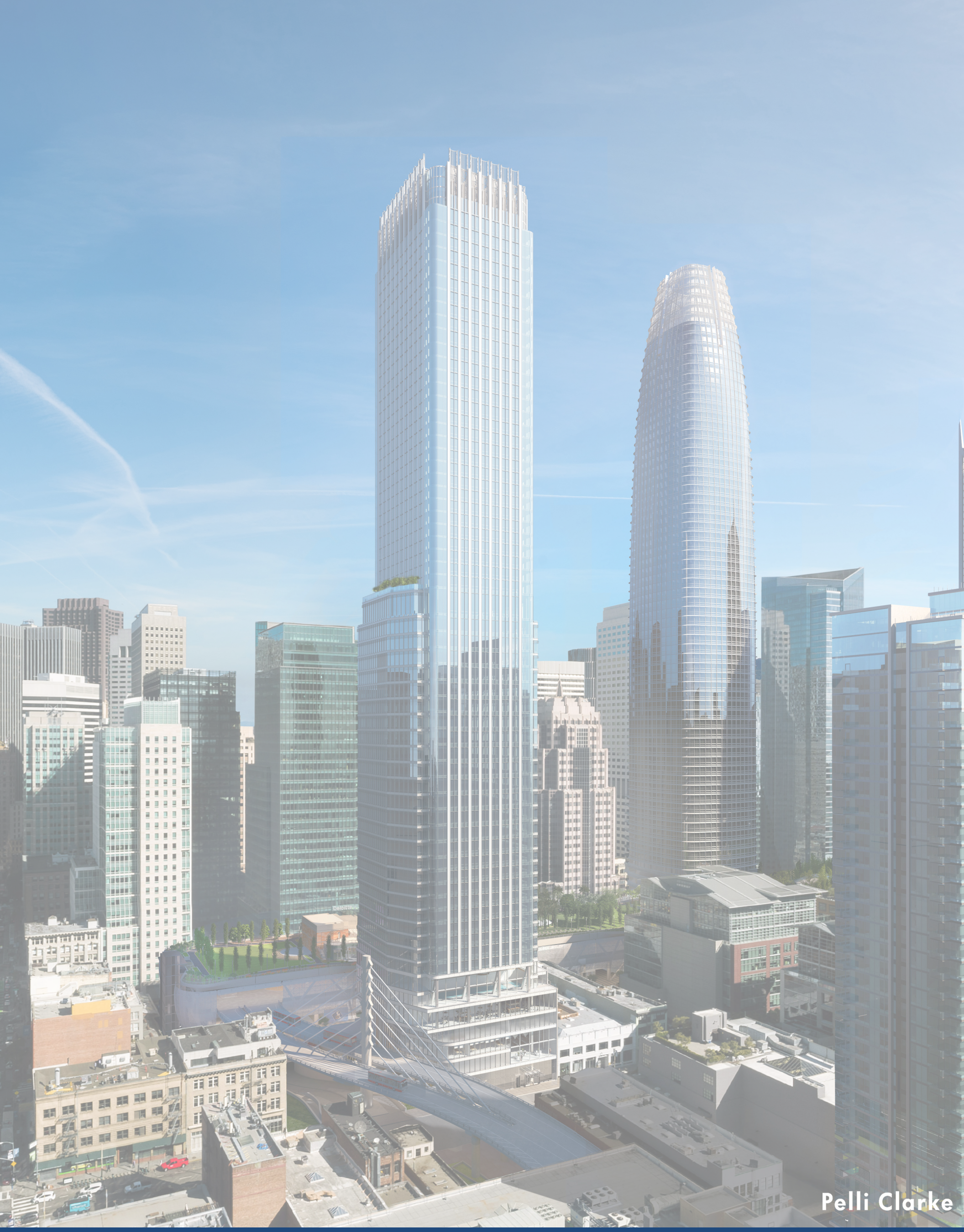
A COMFORTABLE PEDESTRIAN EXPERIENCE AT GROUND LEVEL IS PROVIDED BY A HIGH PERFORMANCE CLEAR GLASS.

VERTICAL PIERS AND HORIZONTAL BANDS WITH WARM WHITE MATTE FINISH PANELS.

METAL TRIMS & SUNSHADES ON GRAY SATIN FINISH METAL.

SIDEWALK TO FOLLOW GUIDANCE ESTABLISHED BY TJPA, WITH SANDBLASTED CONCRETE BANDING.

NOTE:
THE MATERIAL SELECTION MAY DEVELOP TO REFLECT BEST PRACTICES AND COST.



Parcel F Tower

542-550 Howard Street, San Francisco, CA.
Project Update (12/20/19

Hines & Urban Pacific

Pelli Clarke Pelli Architects pcparch.com

NEW HAVEN NEW YORK SAN FRANCISCO SHANGHAI TOKYO

Parcel F Tower

542-550 Howard Street, San Francisco, CA

Supplemental Diagrams for 309 Application (12/20/19)

Hines & Urban Pacific

Pelli Clarke Pelli Architects pcparch.com

NEW HAVEN NEW YORK SAN FRANCISCO SHANGHAI TOKYO

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SETBACKS	PAGE 17-18
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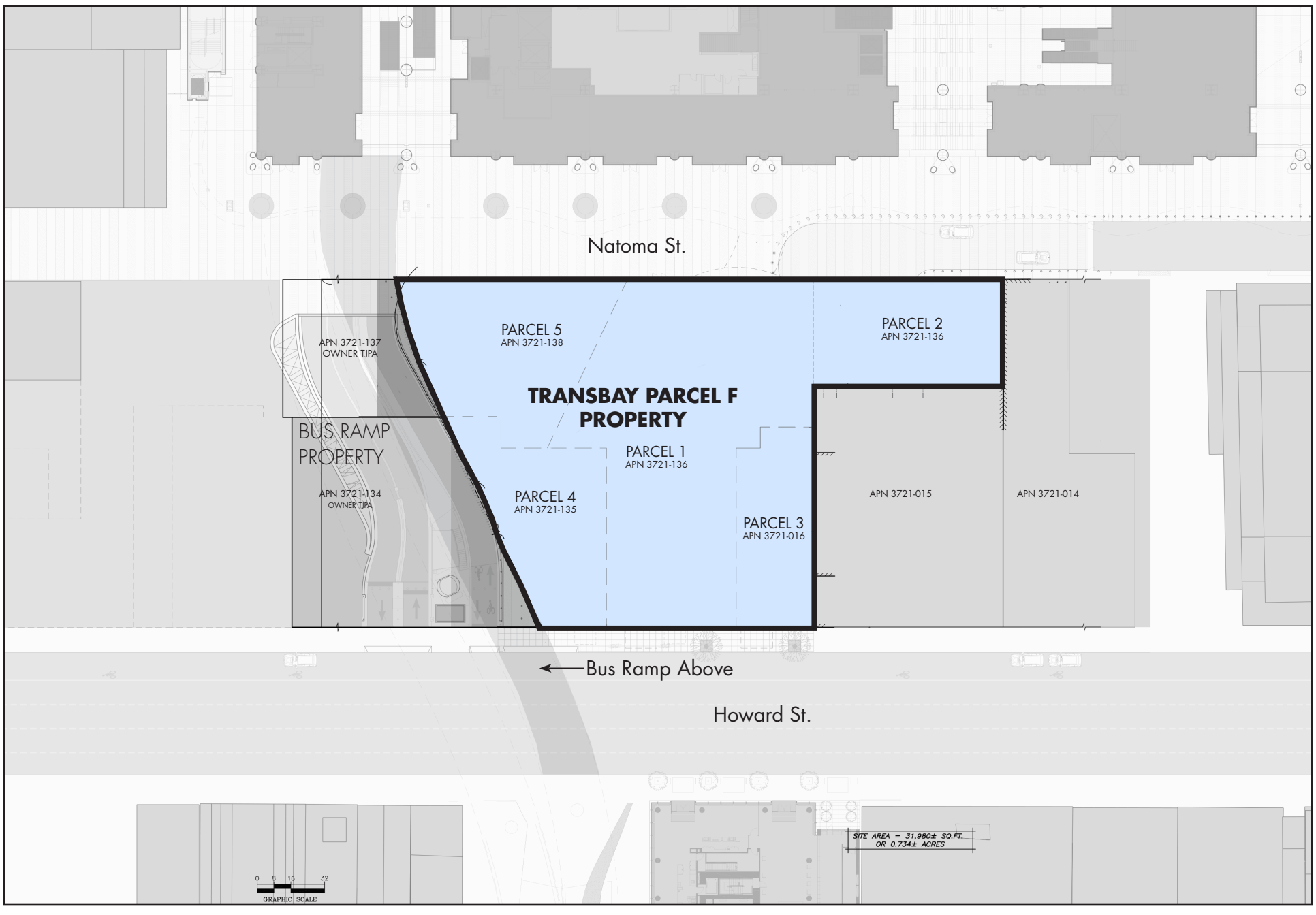
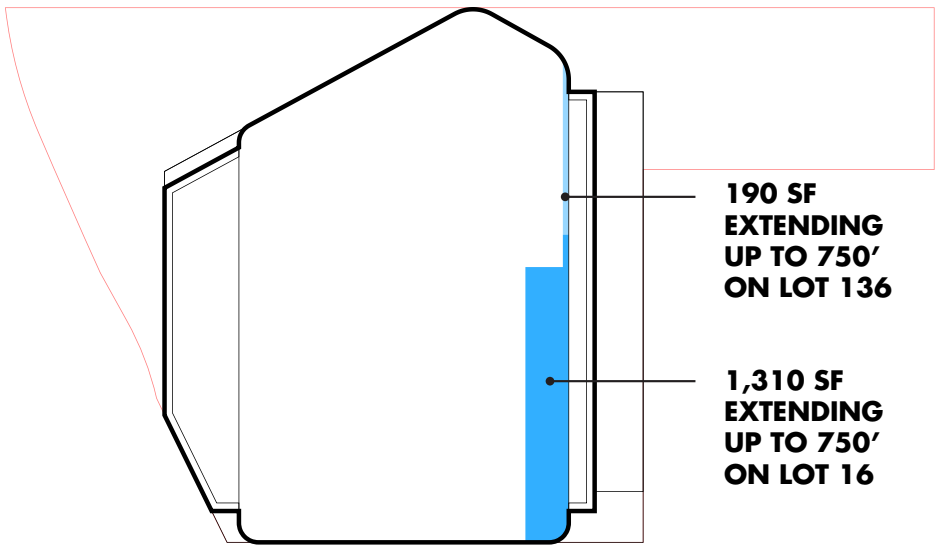
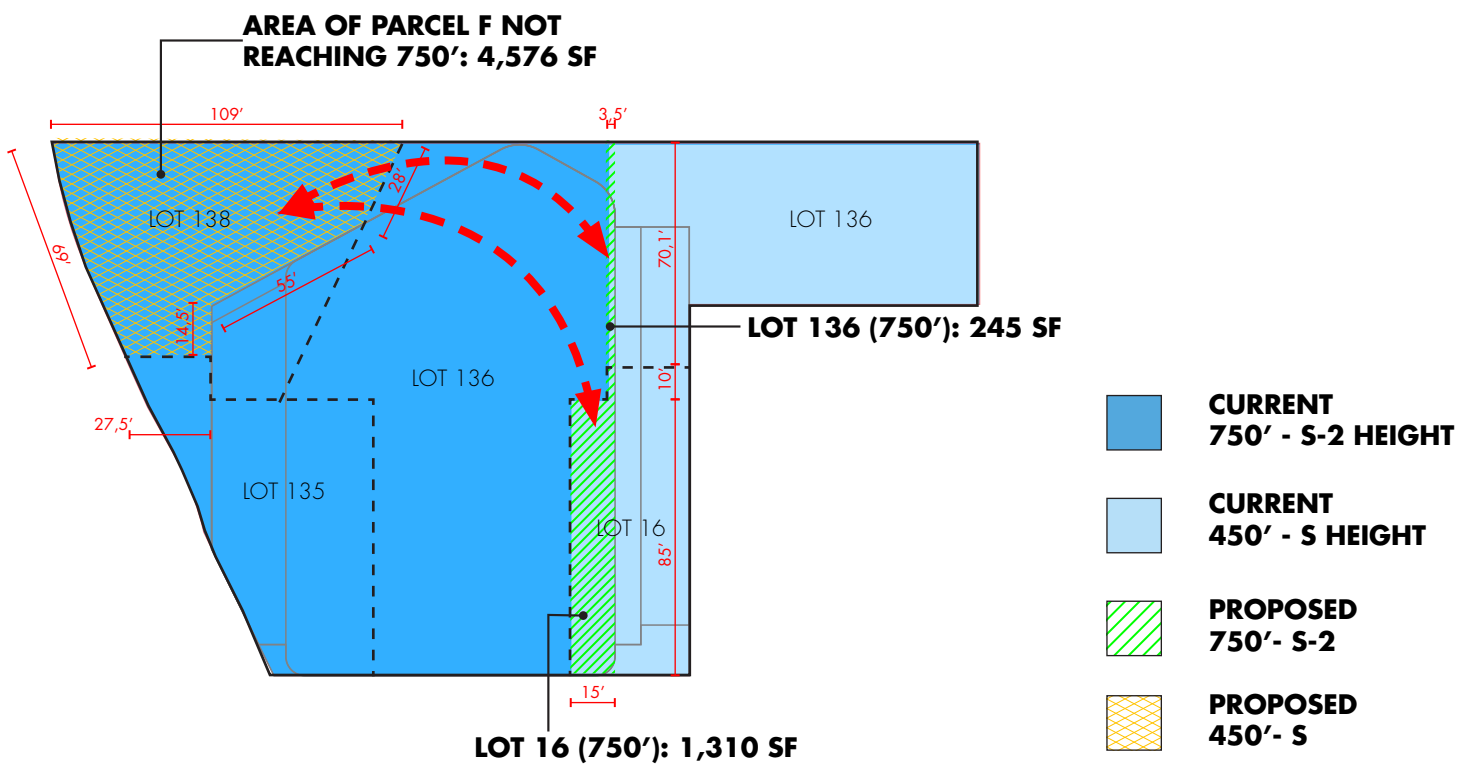


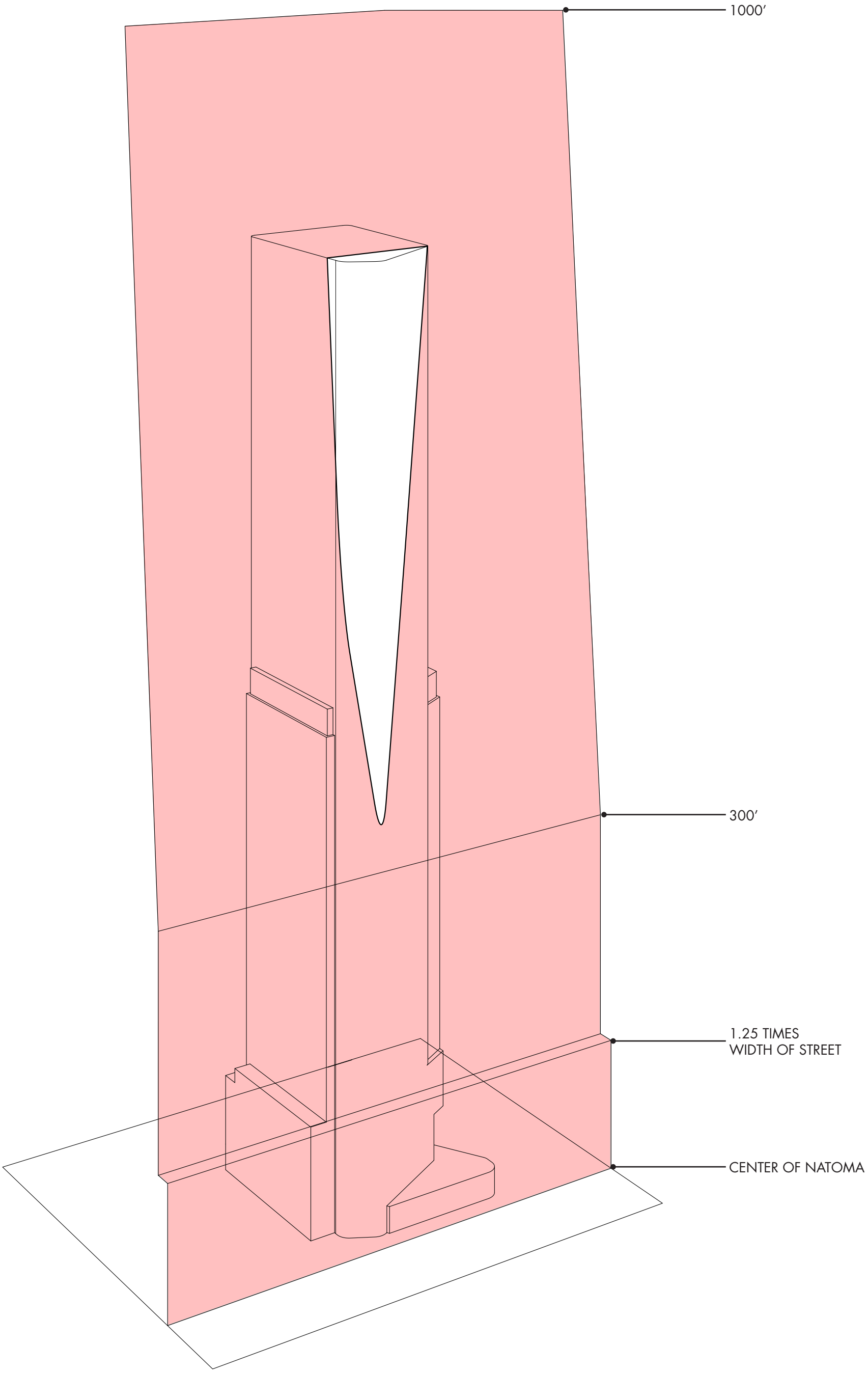
SITE PLAN/PARCELIZATION



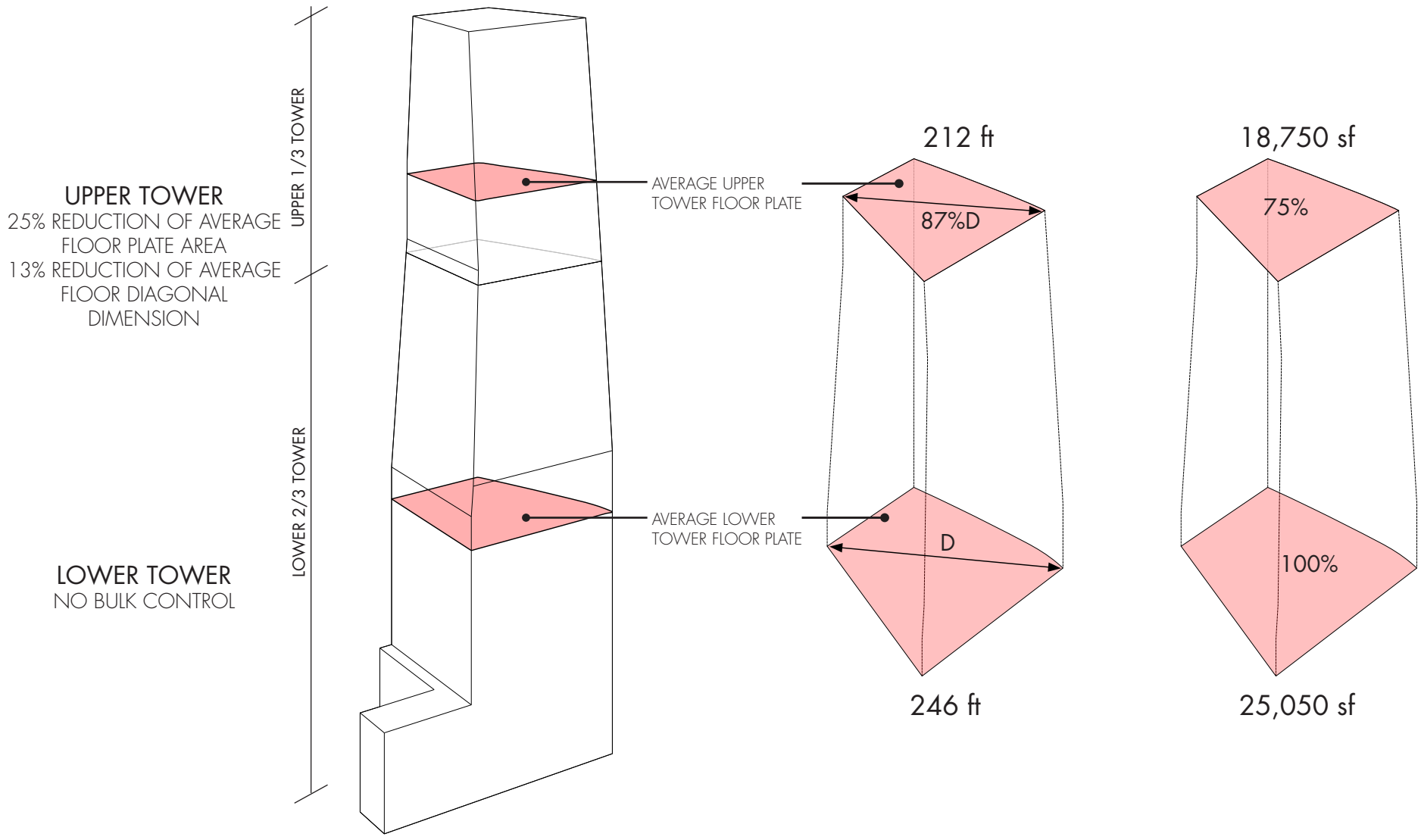
PORTION OF BUILDING AREA REQUIRING RE-CLASSIFICATION TO 750-S-2



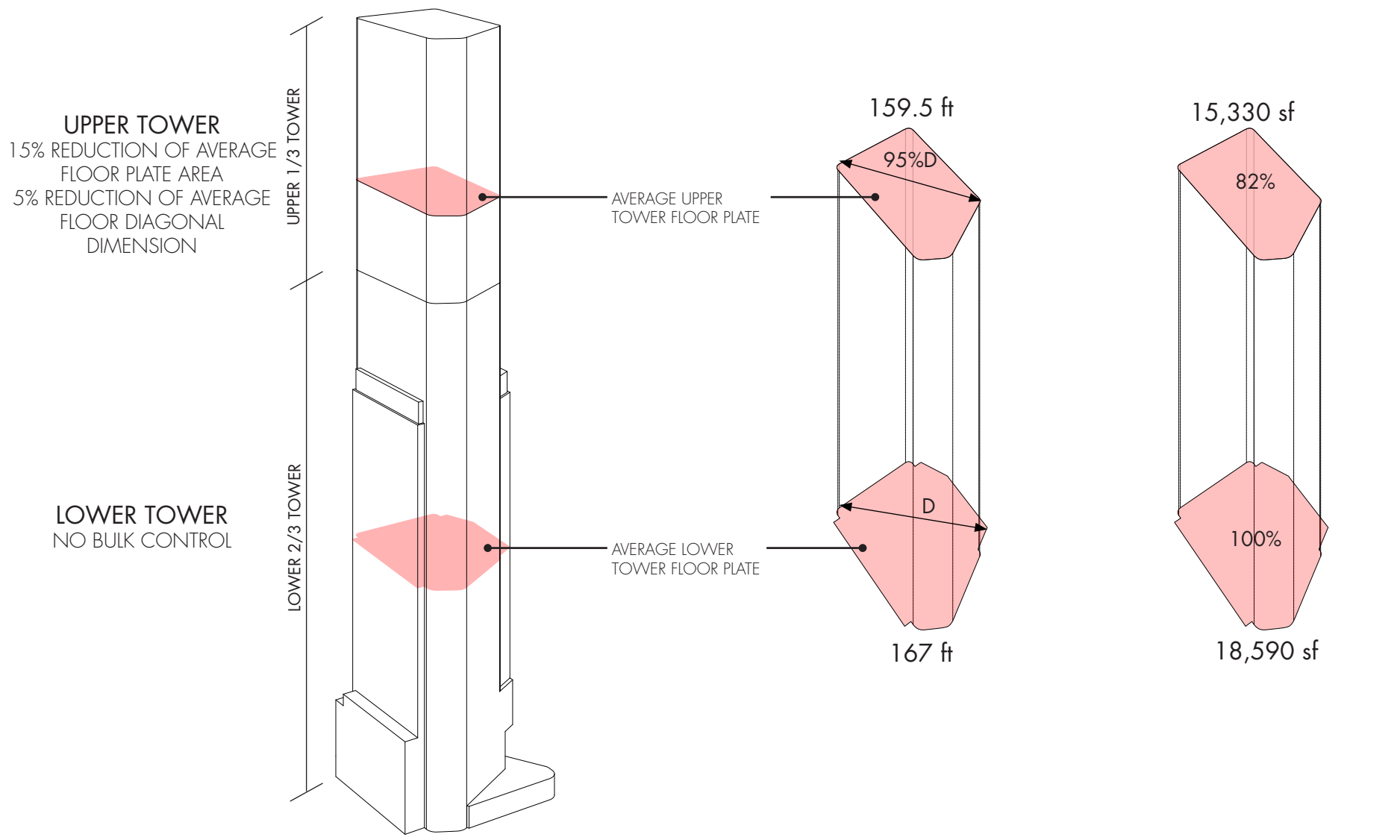
LOT 16 / LOT 136 HEIGHT/BULK DISTRICT SWAP



NATOMA SETBACK

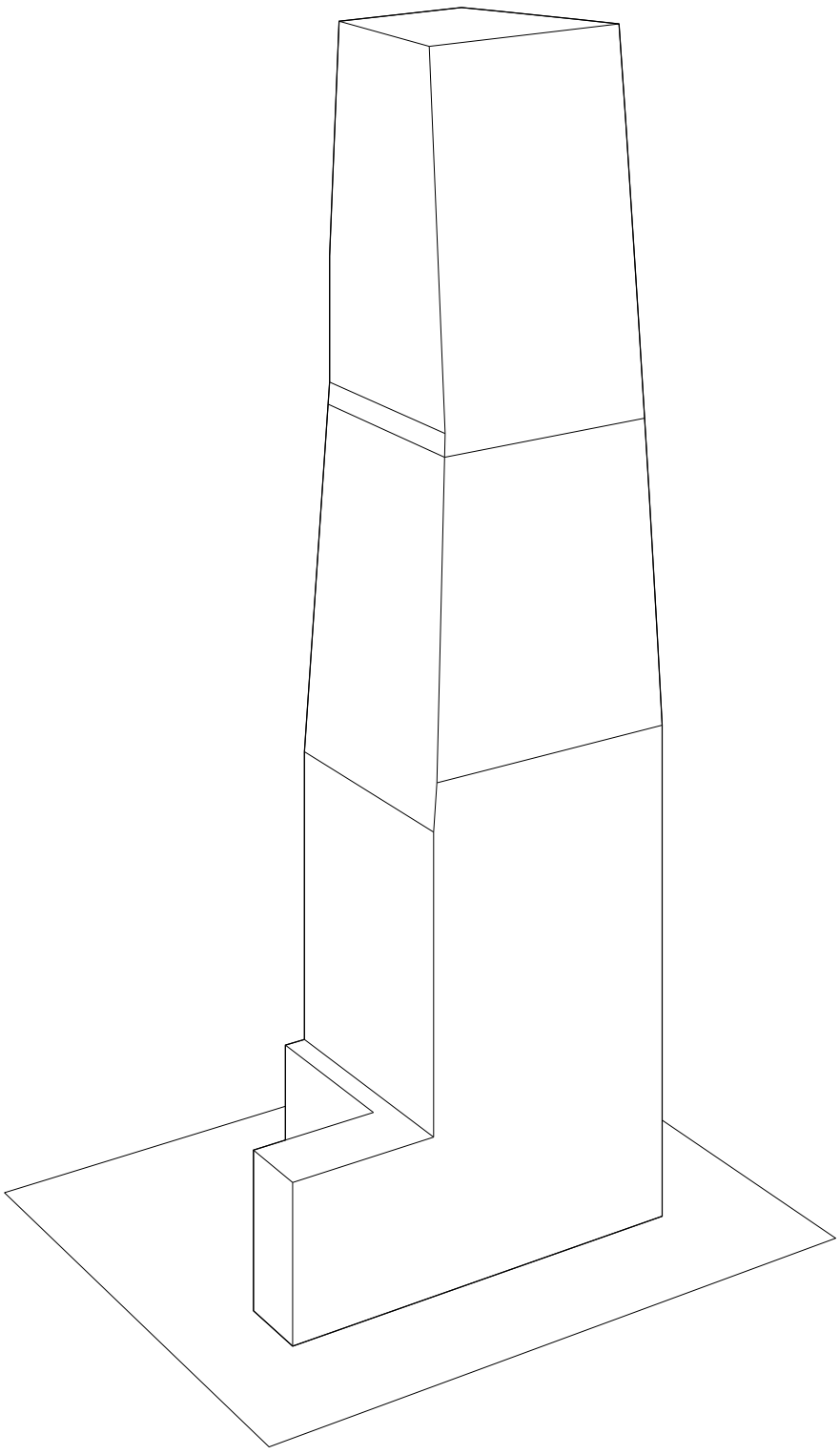


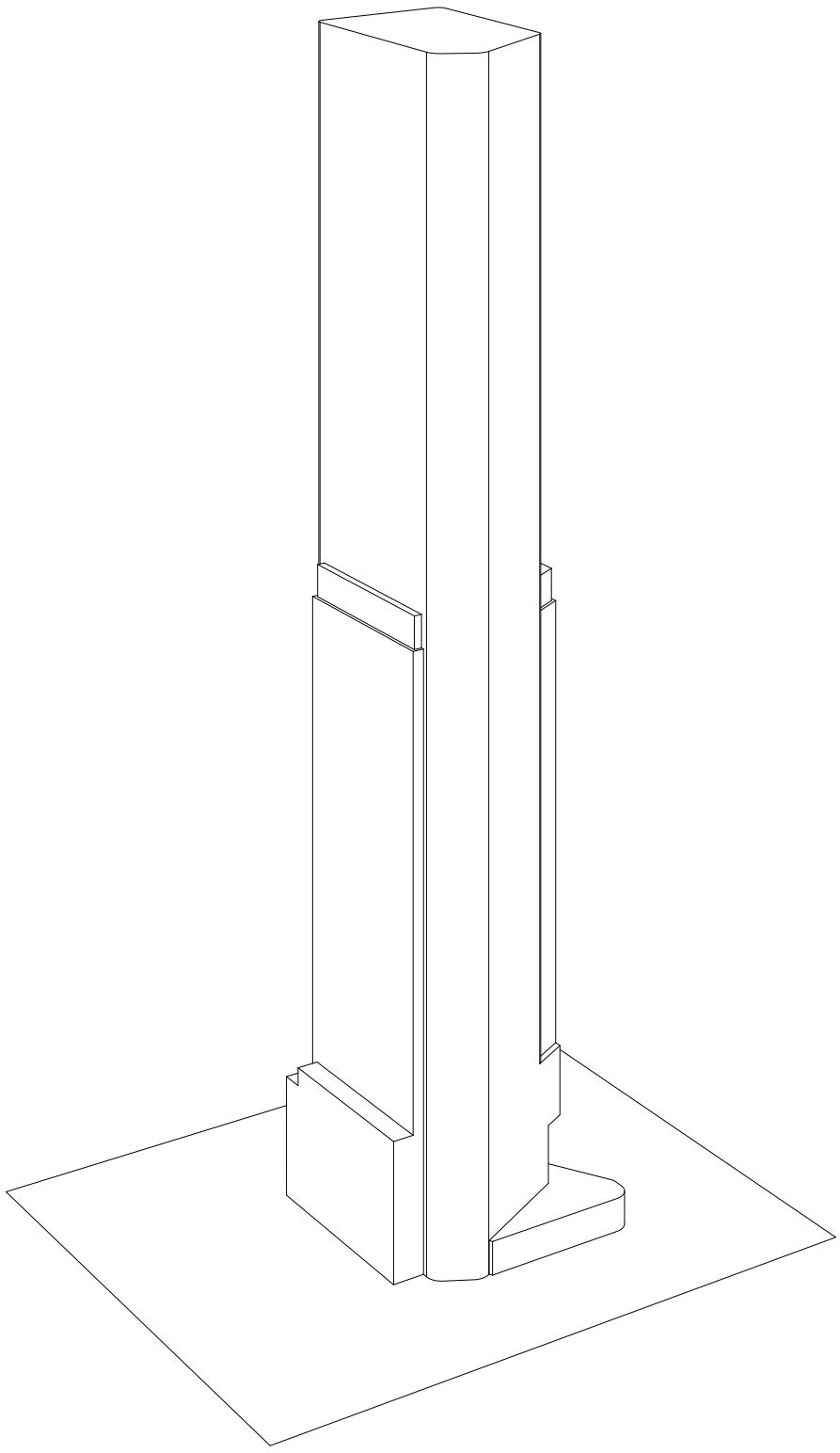
BULK REDUCTION



PROPOSED BULK REDUCTION

BULK EXCEPTIONS - CONTINUED





VOLUME WITH STRICT ADHERENCE TO SETBACKS AND BULK LIMITS

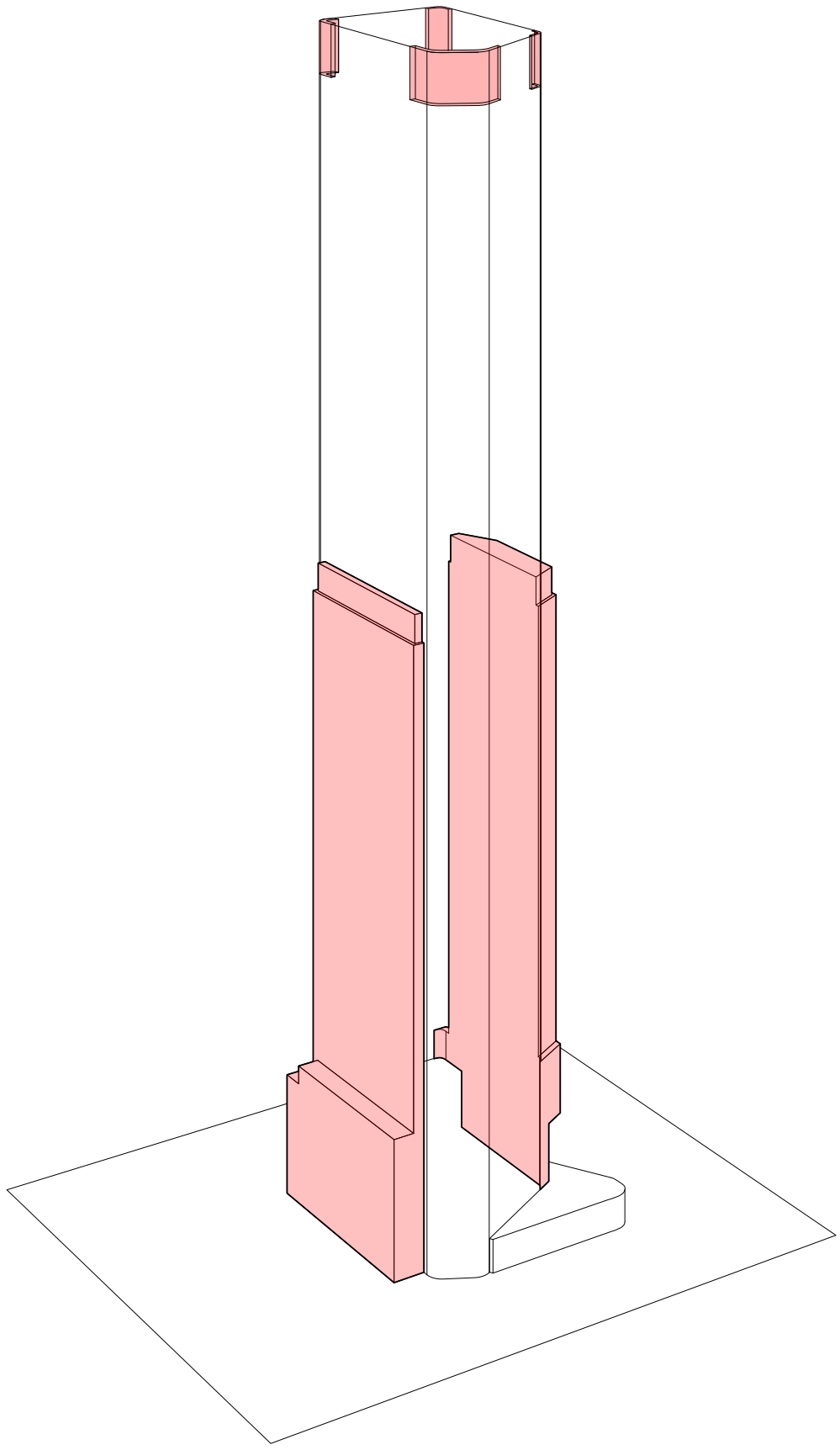
PROPOSED DESIGN

COMPLIANCE WITH SECTION 272.1 CRITERIA

ACHIEVEMENT OF A DISTINCTLY BETTER DESIGN, IN BOTH A PUBLIC AND A PRIVATE SENSE, THAN WOULD BE POSSIBLE WITH STRICT ADHERENCE TO THE BULK LIMITS, AVOIDING AN UNNECESSARY PRESCRIPTION OF BUILDING FORM WHILE CARRYING OUT THE INTENT OF THE BULK LIMITS AND THE PRINCIPLES AND POLICIES OF THE MASTER PLAN;

COMPLIANCE WITH SECTION 272.4D CRITERIA

COMPENSATION FOR THOSE PORTIONS OF BUILDING, STRUCTURE OR DEVELOPMENT THAT MAY EXCEED THE BULK LIMITS BY CORRESPONDING REDUCTION OF OTHER PORTIONS BELOW THE MAXIMUM BULK PERMITTED



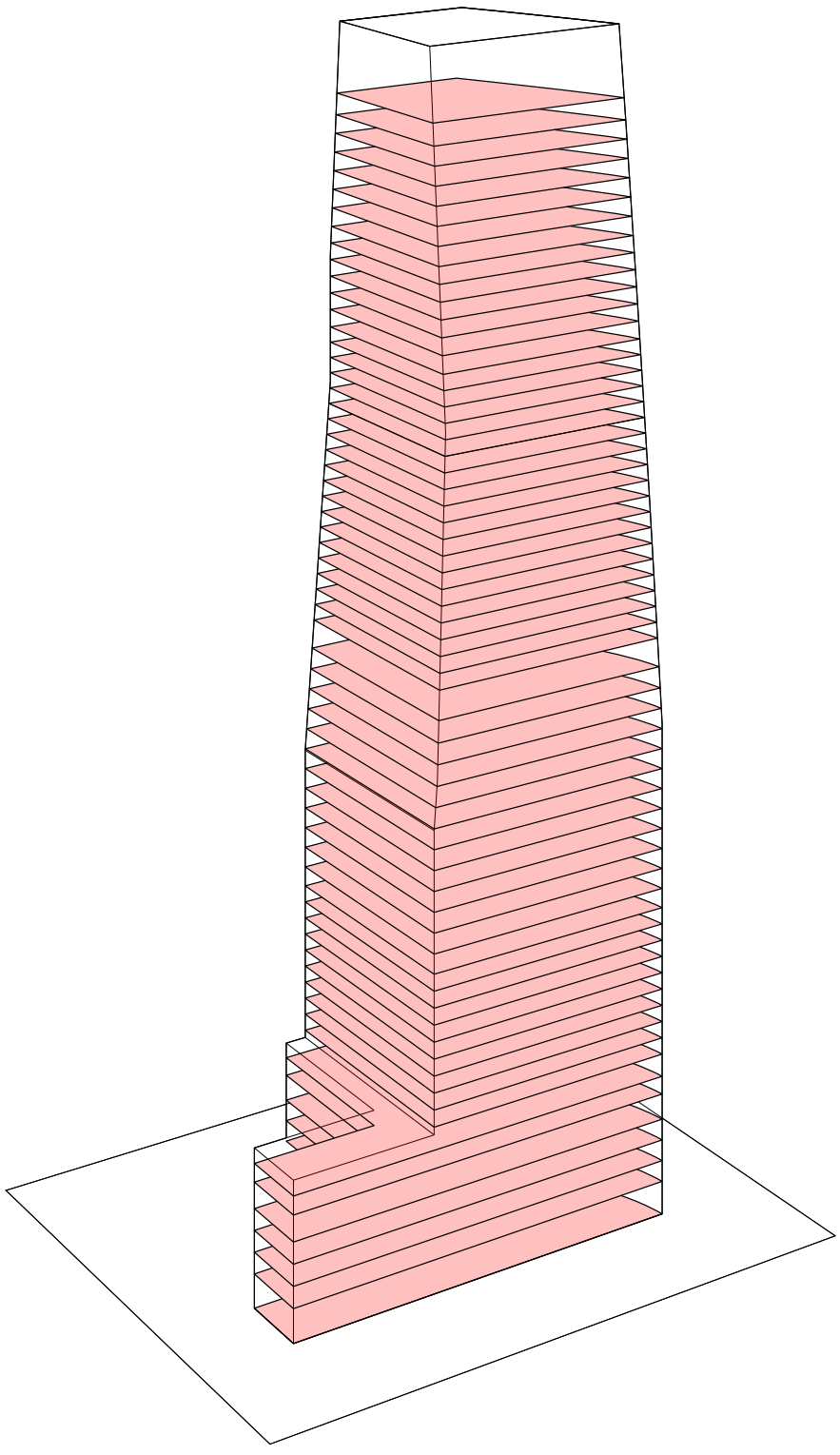
COMPLIANCE WITH SECTION 272.4A CRITERIA

MAJOR VARIATIONS IN THE PLANES OF WALL SURFACES, IN EITHER DEPTH OR DIRECTION, THAT SIGNIFICANTLY ALTER THE MASS.

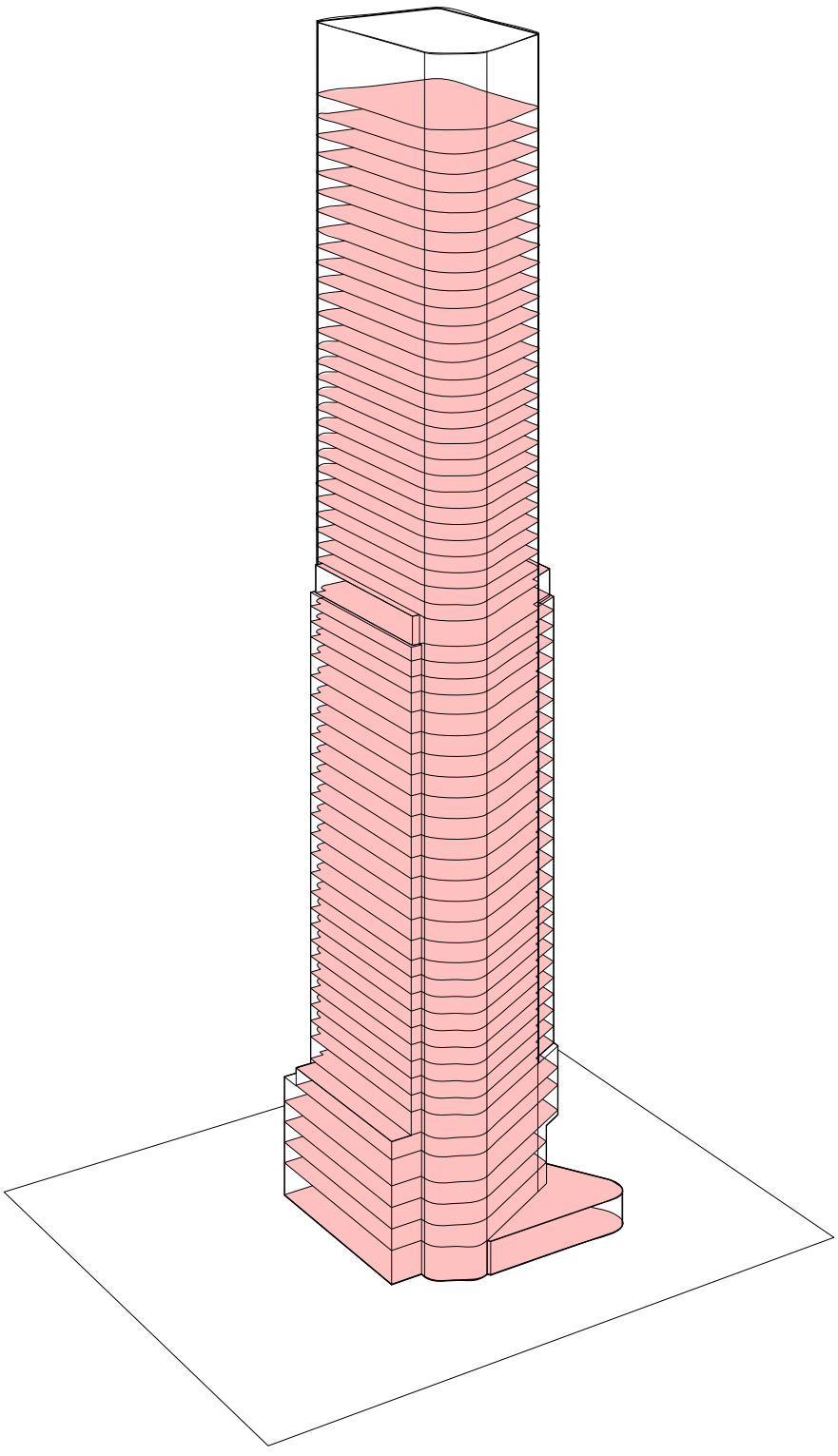
COMPLIANCE WITH SECTION 272.4B CRITERIA

SIGNIFICANT DIFFERENCES IN THE HEIGHTS OF VARIOUS PORTIONS OF THE BUILDING, STRUCTURE OR DEVELOPMENT THAT DIVIDE THE MASS INTO DISTINCT ELEMENTS.

BULK EXCEPTIONS - CONTINUED



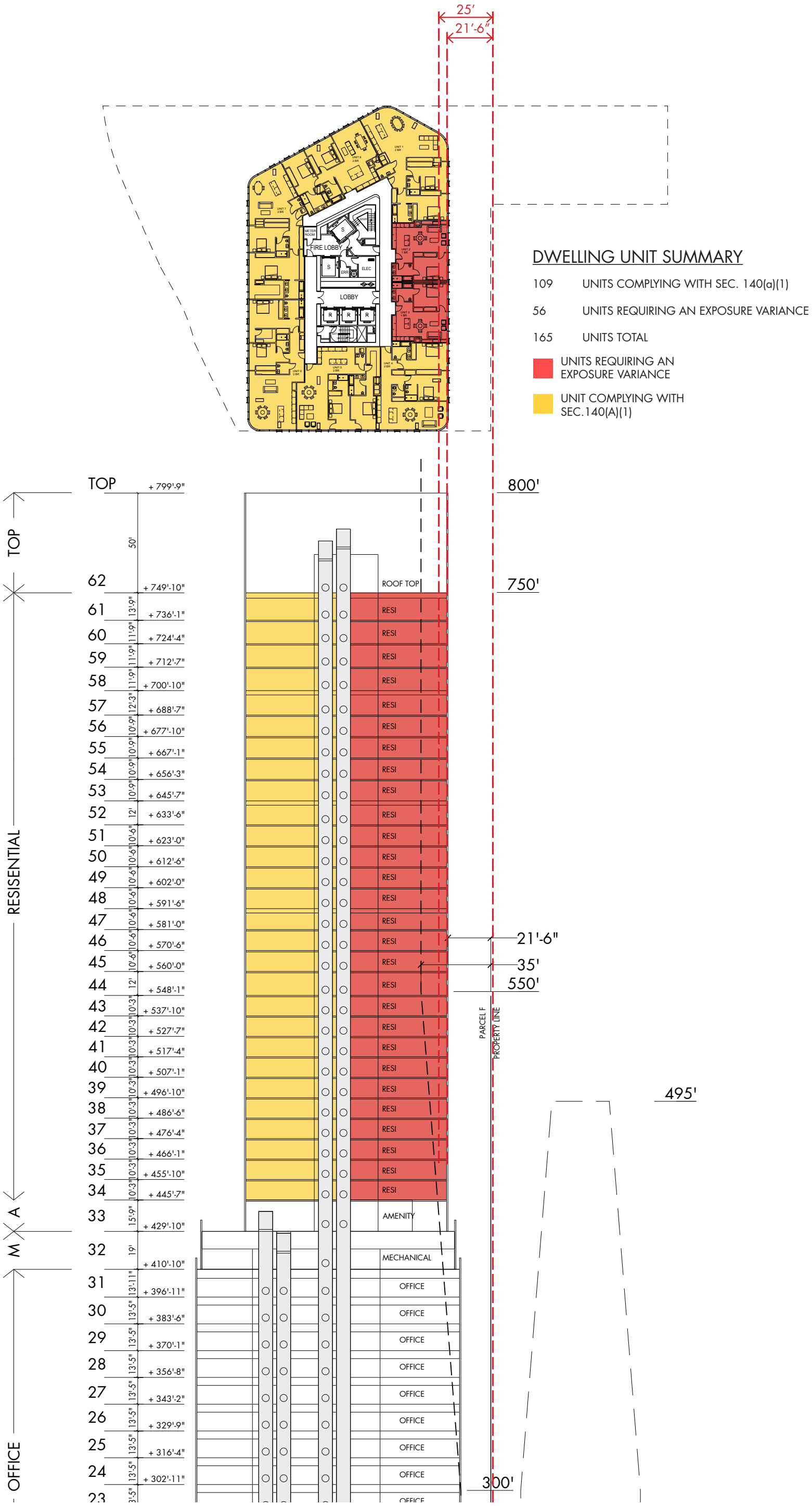
1,385,032 SF



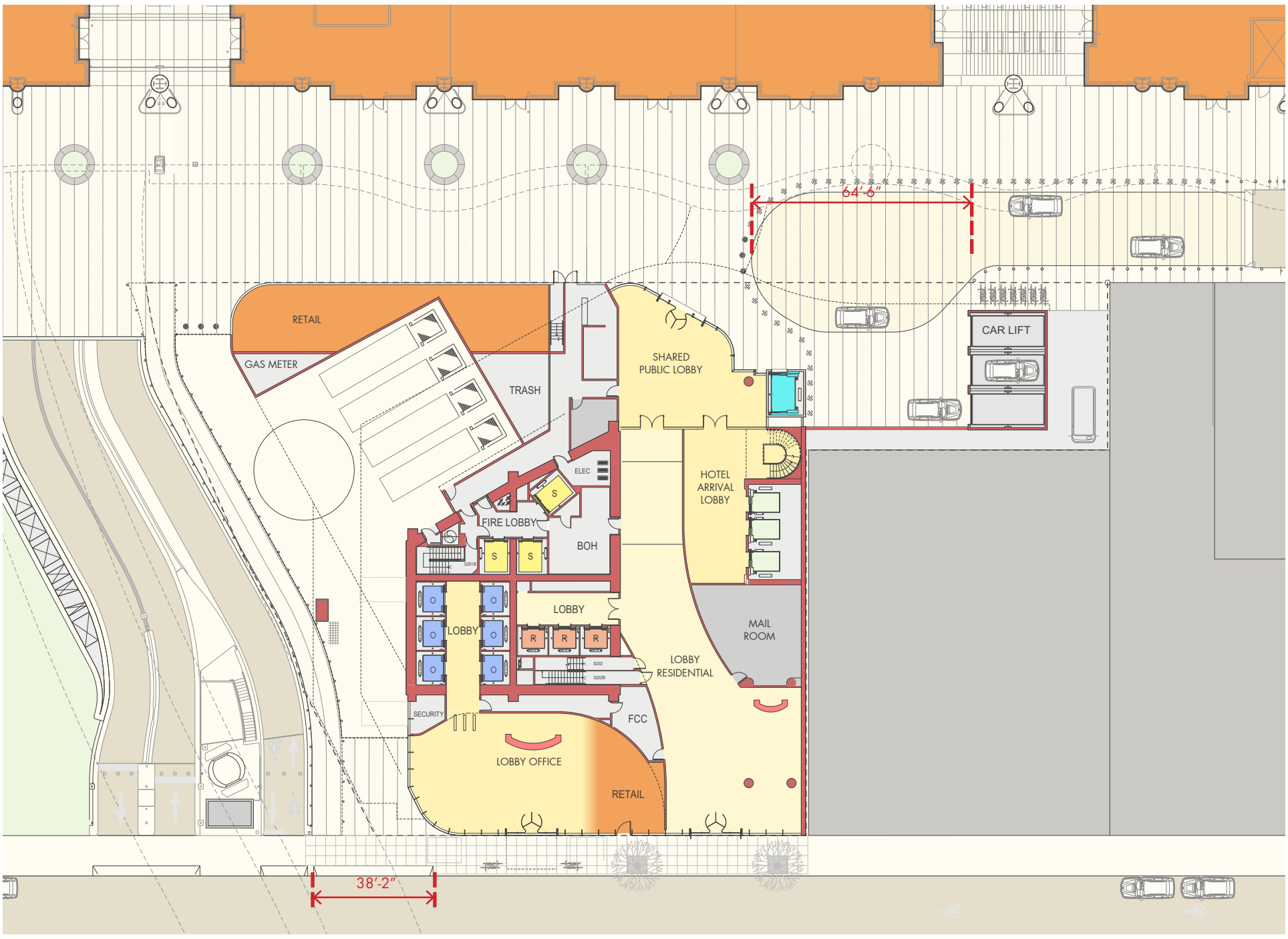
1,057,968 SF

COMPLIANCE WITH SECTION 272.6 CRITERIA

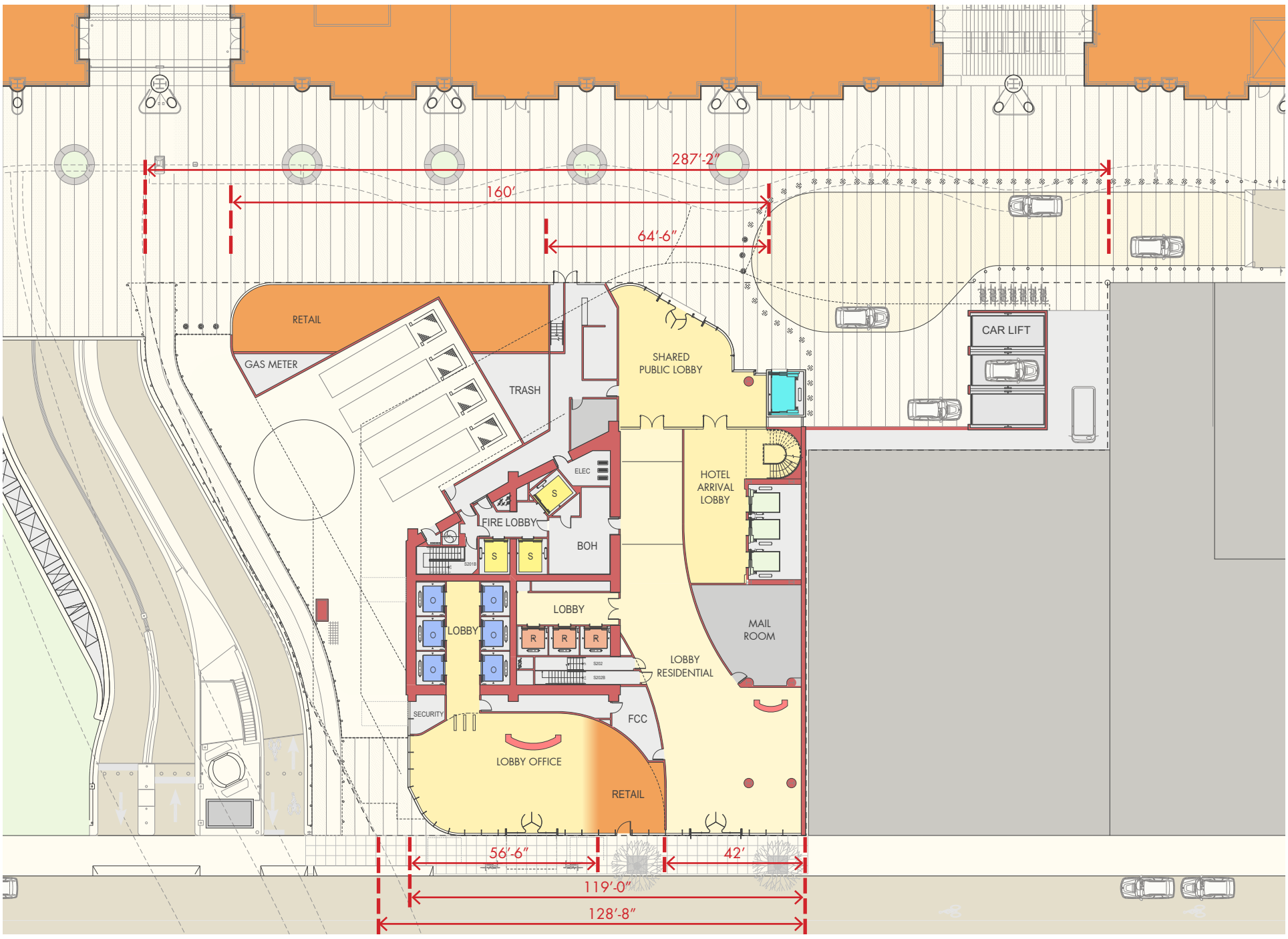
EXCEPTIONS TO BULK LIMITS SHALL NOT RESULT IN A BUILDING OF GREATER TOTAL GROSS FLOOR AREA THAN WOULD BE PERMITTED IF THE BULK LIMITS WERE MET.



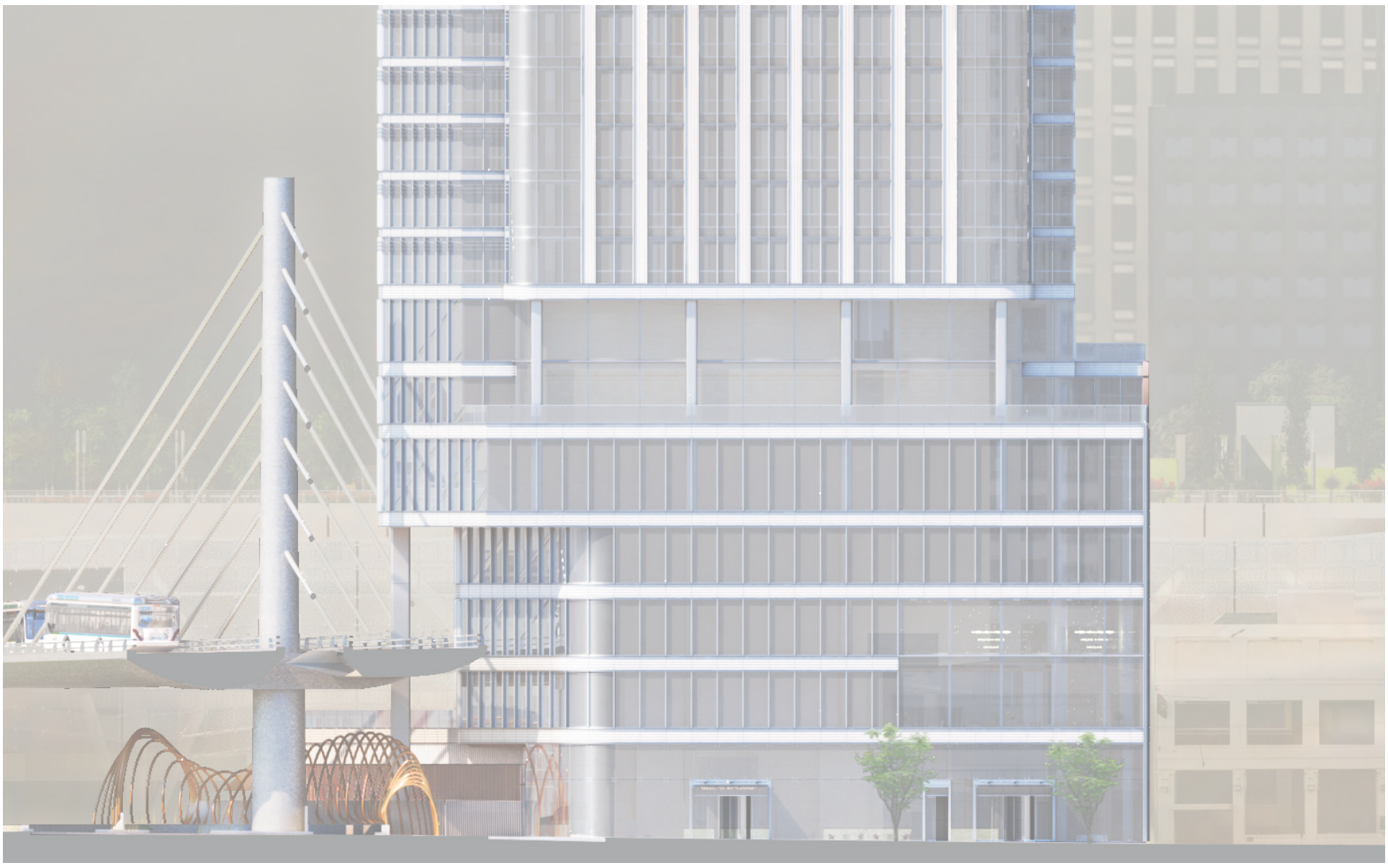
DWELLING EXPOSURE DIAGRAM - SECTION 140(a)(1) CRITERIA

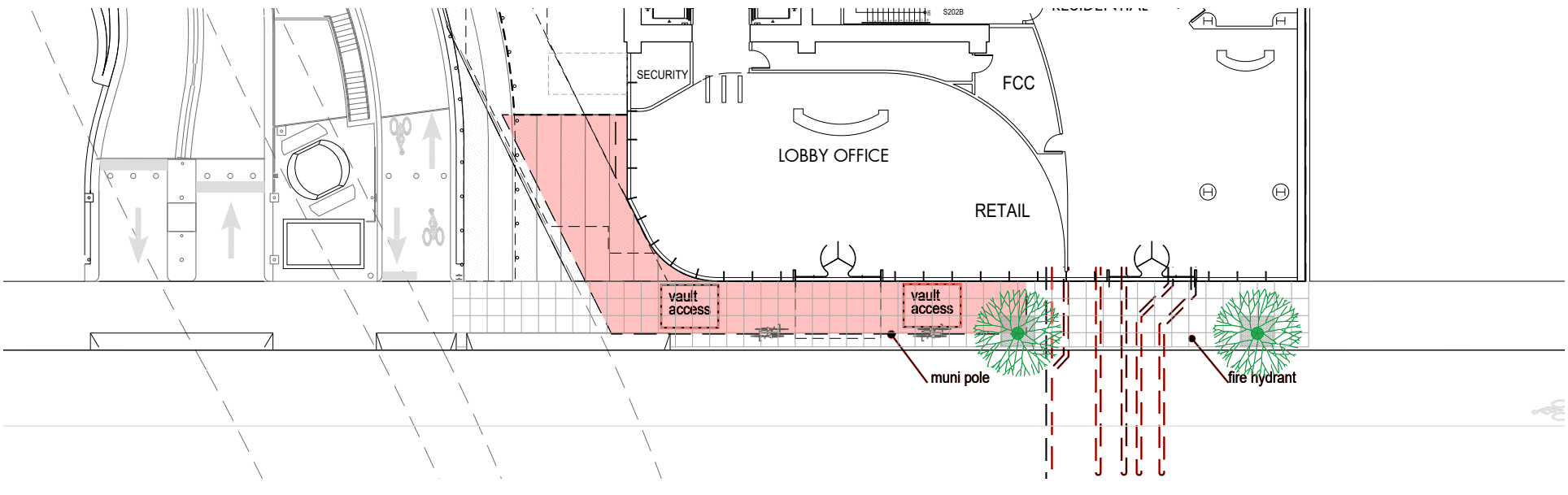


PARKING / LOADING ENTRANCES - SECTION 145 CRITERIA



ACTIVE FRONTAGE DIAGRAM - SECTION 145.1 CRITERIA



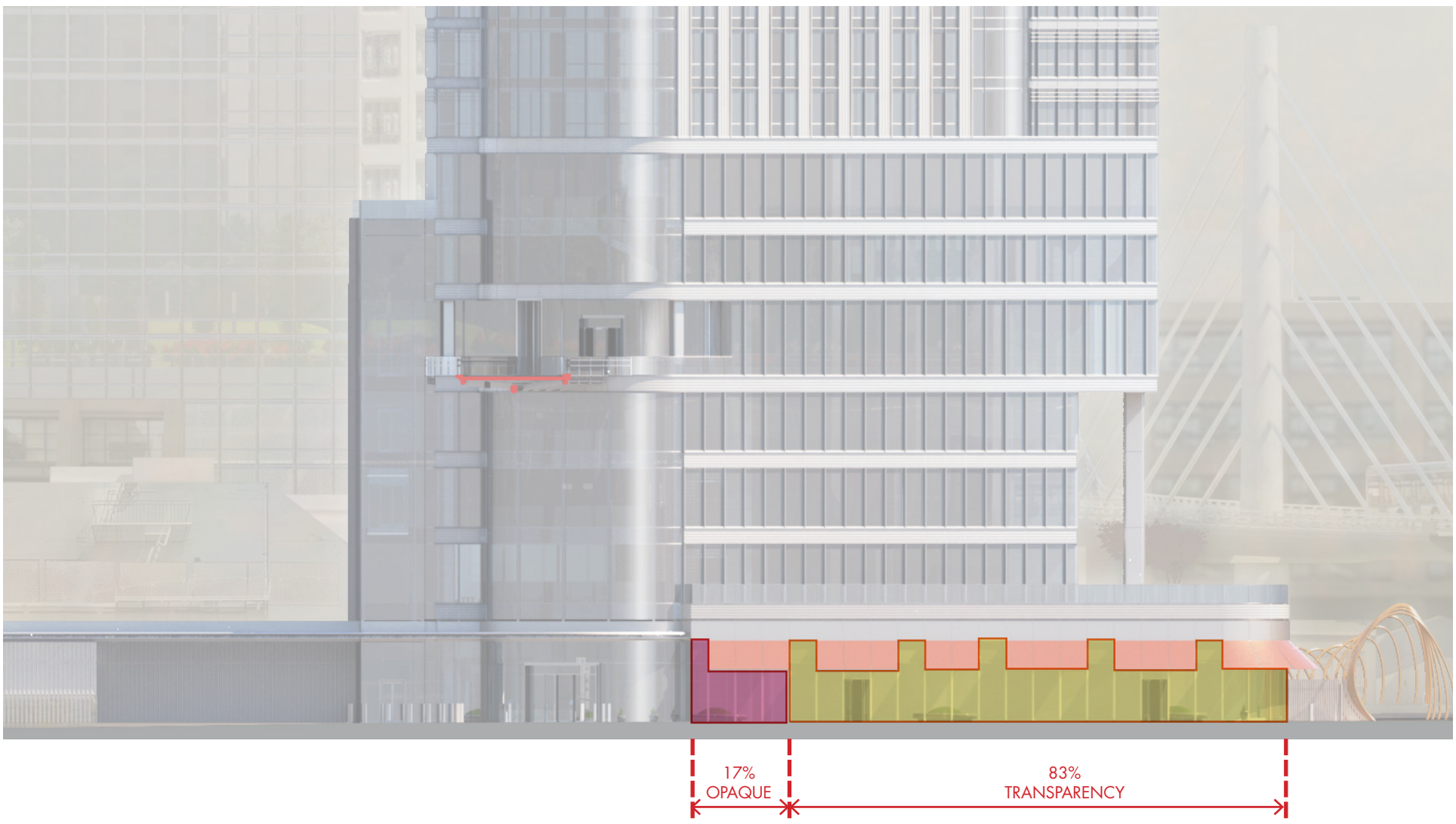


PG&E VAULT BELOW

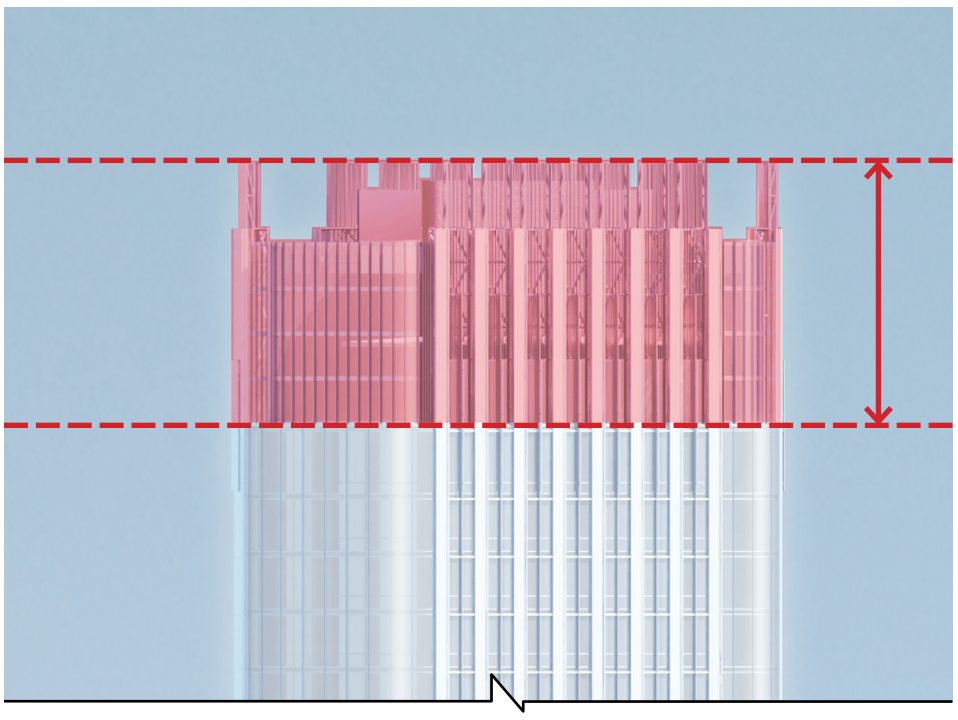
- STORM/SEWER, PG&E VAULT & INCOMING UTILITIES LIMIT THE POSSIBILITY OF PLANTING NEW TREES ALONG HOWARD ST.

- PROPOSED TREE LOCATION SUBJECT TO COORDINATION WITH SF PUBLIC WORKS, TJPA AND UTILITY COMPANIES

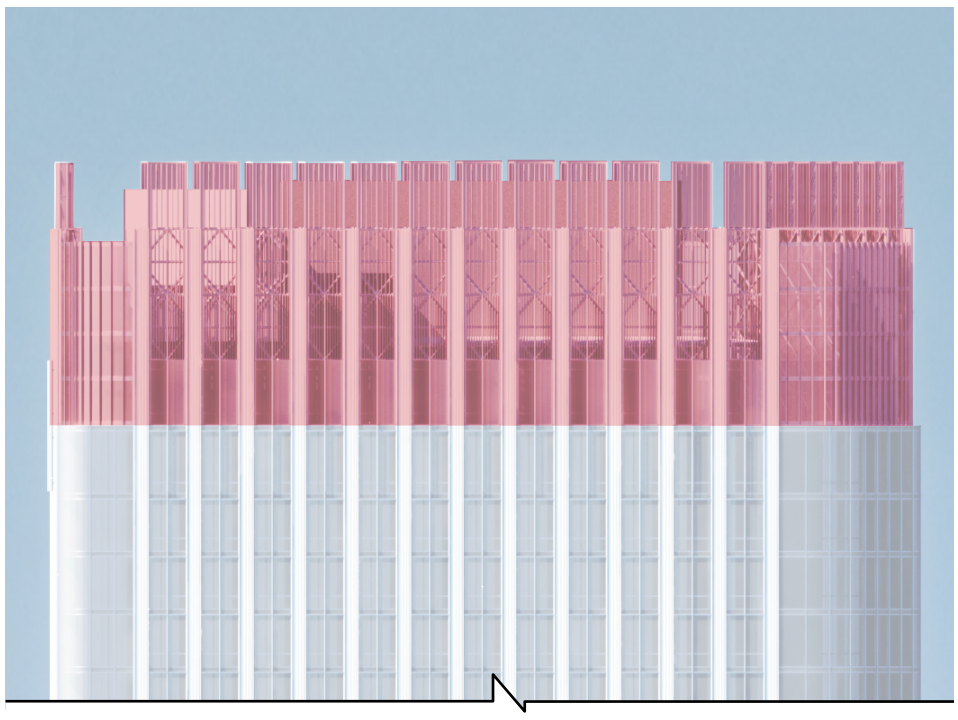
BETTER STREET PLAN - SECTION 138.1(c)(2) CRITERIA



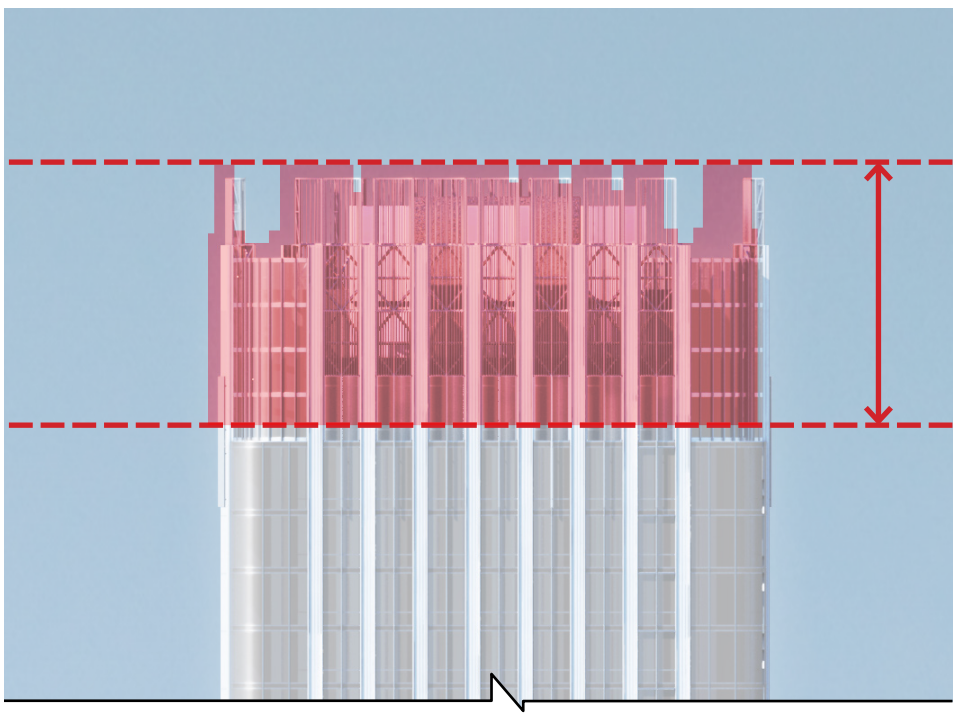
TRANSPARENCY AND FENESTRATION DIAGRAM - SECTION 145.1(c)(6) CRITERIA

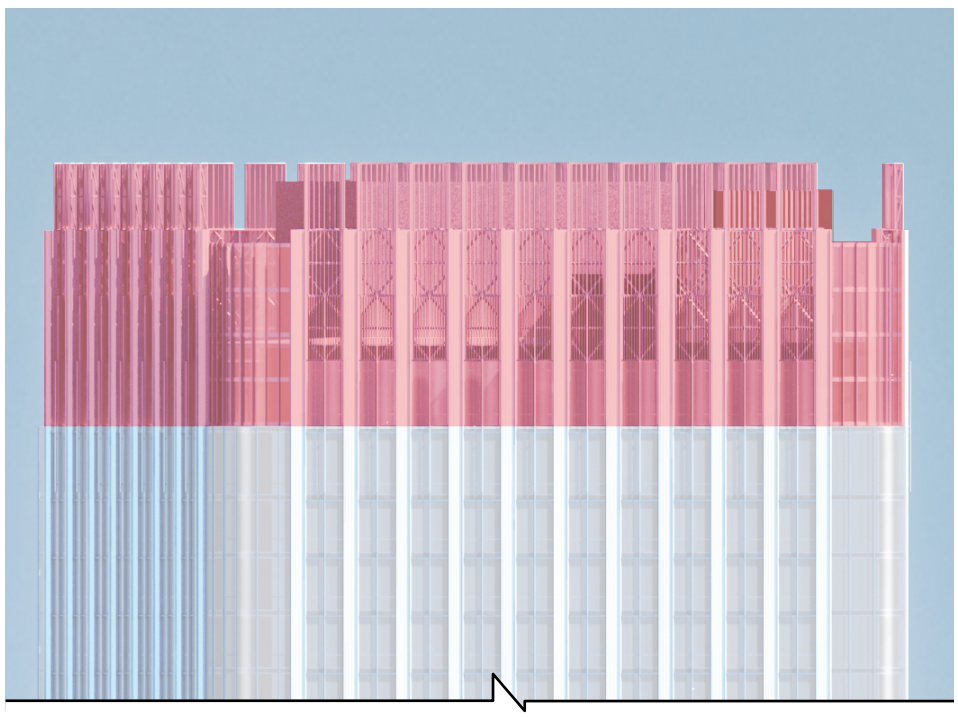


NORTH ELEVATION

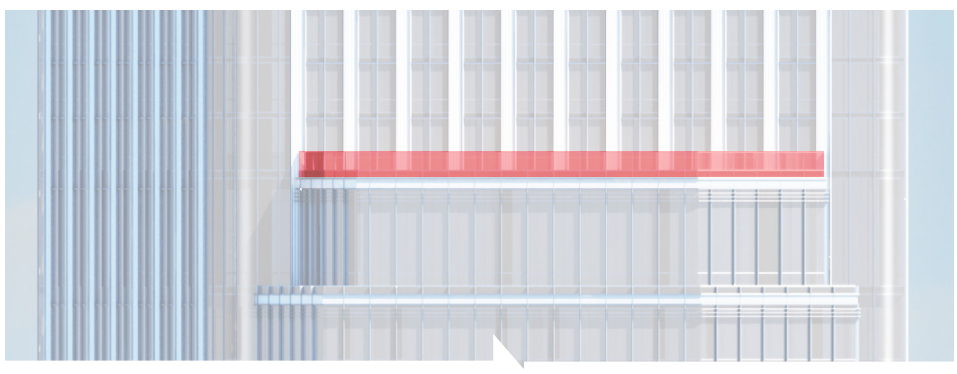


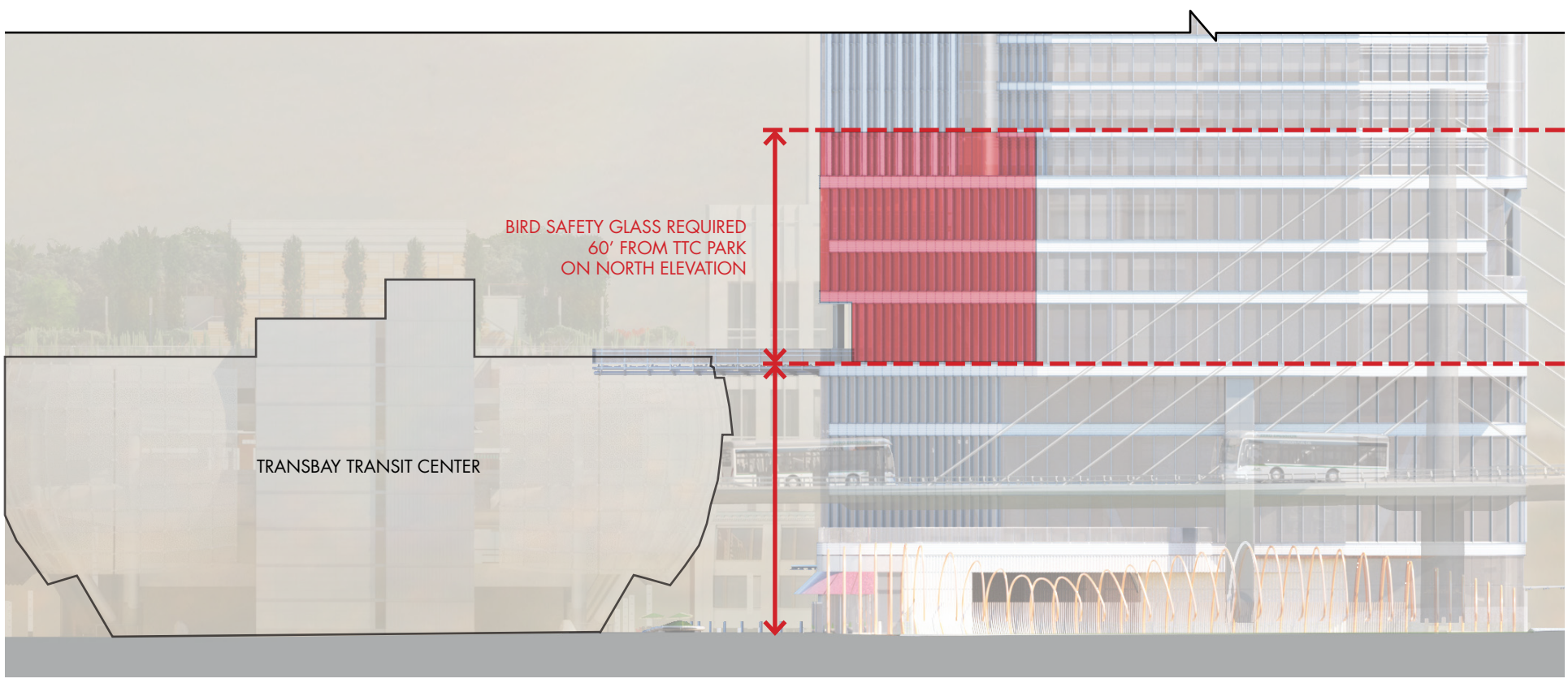
EAST ELEVATION





BIRD SAFETY GLASS REQUIRED AT THE BUILDING'S CROWNON ALL FOUR ELEVATIONS

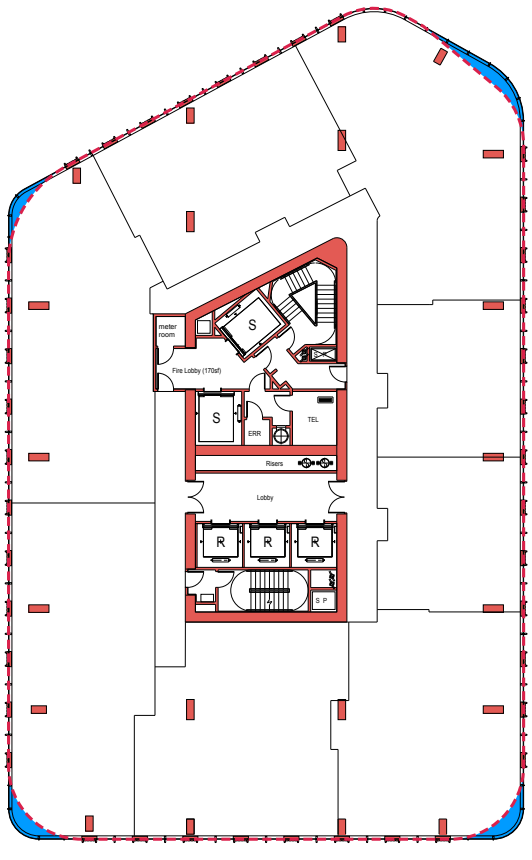




WEST ELEVATION

BIRD SAFETY GLAZING WILL BE PROVIDED ON ALL FEATURE RELATED HAZARDS
NOT YET DETERMINED - PER SECTION 139 OF PLANNING CODE.

COMPLIANCE WITH SECTION 139 CRITERIA

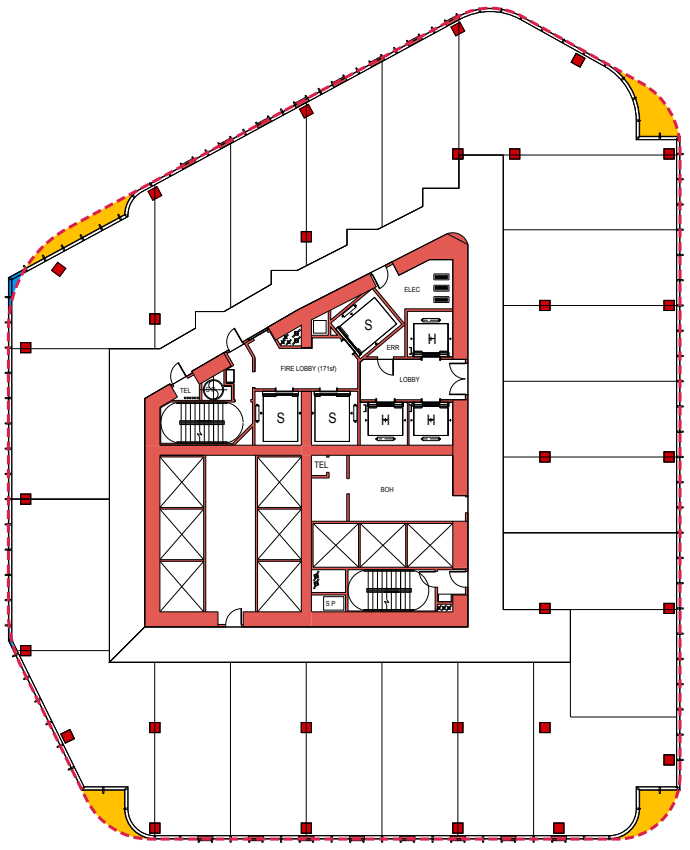


PREVIOUS FLOOR PLATE:15,000 SF
REVISED FLOOR PLATE:15,305 SF
305 SF ADDITION PER FLOOR PLATE

TYPICAL RESIDENTIAL LEVEL

PREVIOUS FLOOR PLATE:18,750 SF
REVISED FLOOR PLATE:18,590 SF
160 SF LOSS PER FLOOR PLATE

TYPICAL OFFICE LEVEL



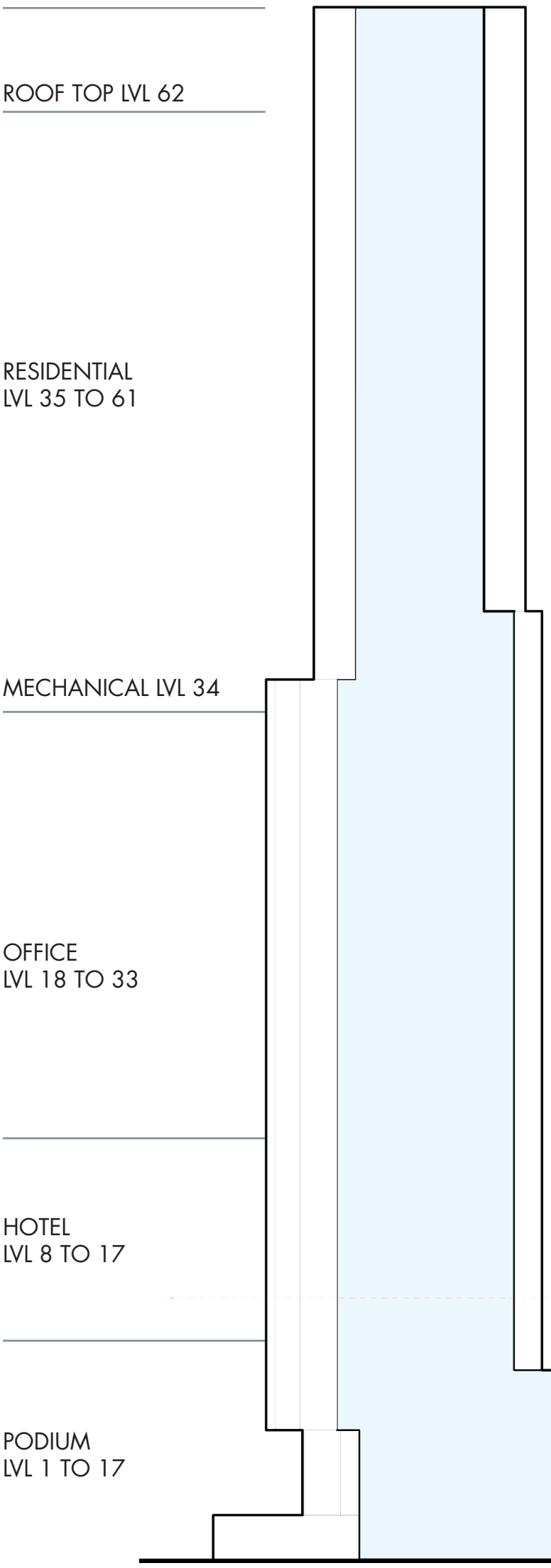
PREVIOUS FLOOR PLATE:18,750 SF
REVISED FLOOR PLATE:18,590 SF
160 SF LOSS PER FLOOR PLATE

AREA GAINED PER MASSING REVISION

AREA LOSS PER MASSING REVISION

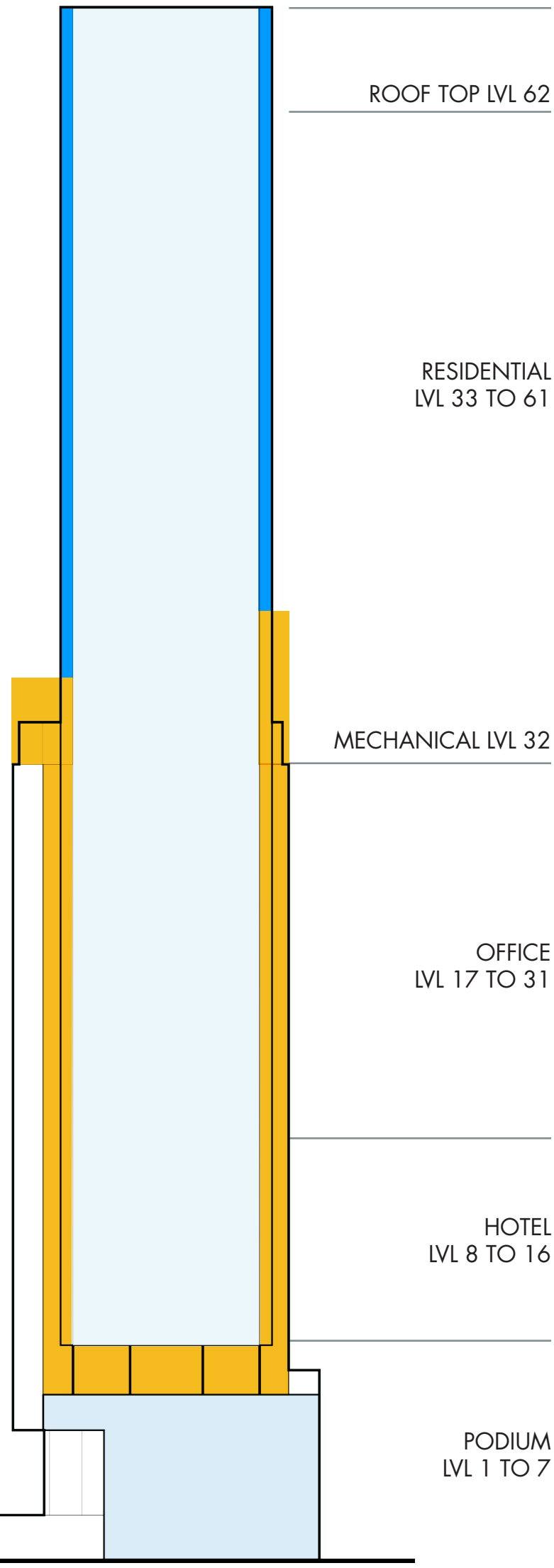
TYPICAL HOTEL LEVEL

ORIGINAL 309 APPLICATION



ORIGINAL 309 APPLICATION
TOTAL AREA: 1,066,721 SF

REVISED MASSING



REVISED MASSING
TOTAL AREA: 1,057,968 SF

NET AREA LOSS: 8.753 SF

AREA GAINED PER MASSING REVISION

AREA LOSS PER MASSING REVISION

309 PLAN OUTLINE OVERLAY

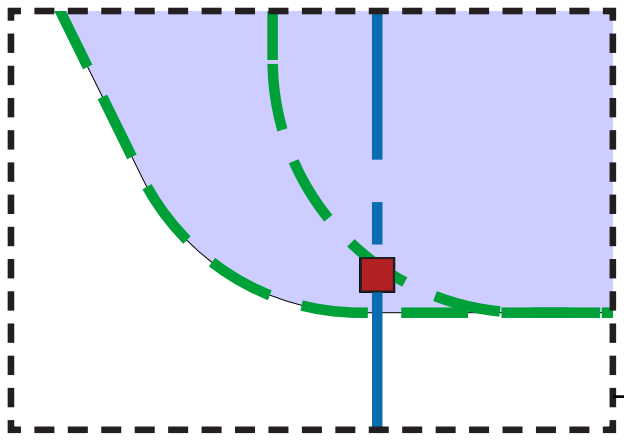
ALIGNMENT ESSENTIAL TO TRANSFER CANTILIVER STRUCTURE TO SHEAR WALLS

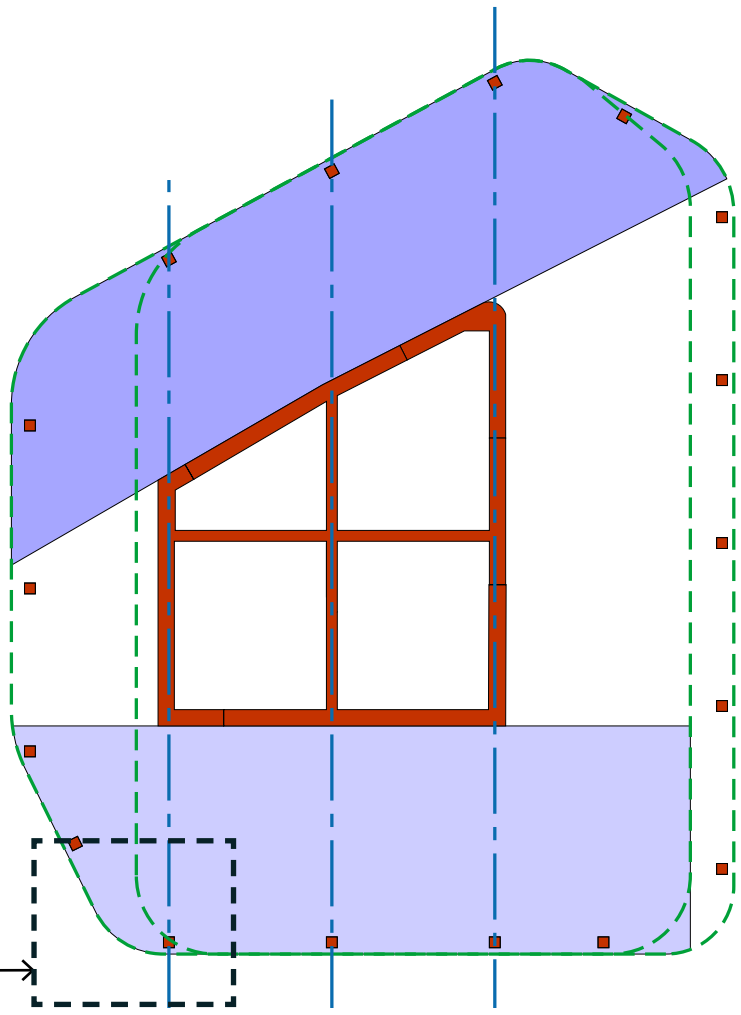
MAIN STRUCTURE

CANTELIVER STRUCTURE OVER TRAIN BOX

CANTELIVER STRUCTURE FOR BALANCE

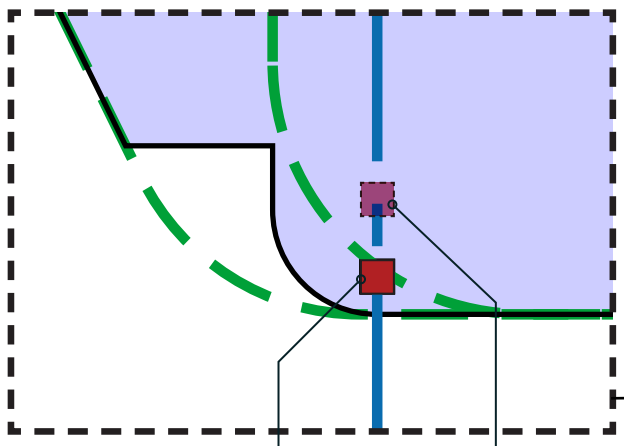
HOTEL/ OFFICE AND RESIDENTIAL PLATES HAVE INDEPENDENT MASSING CURVES





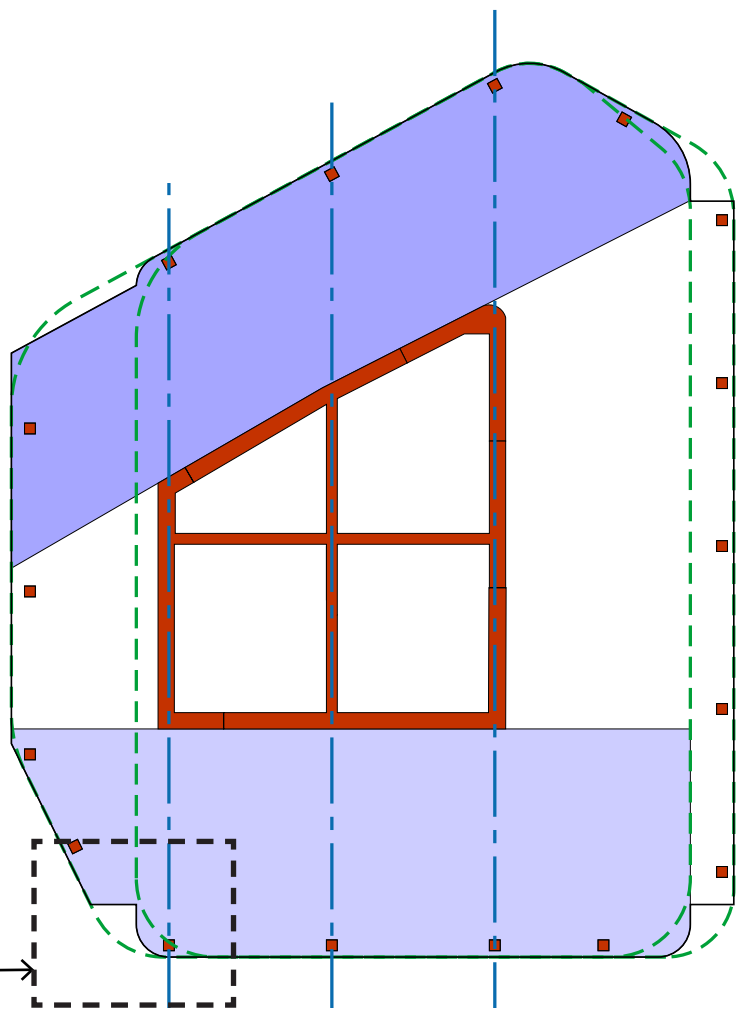
ORIGINAL 309 APPLICATION PLAN

HOTEL/ OFFICE AND RESIDENTIAL PLATES HAVE INTERLOCKED MASSING/CURVES; HOTEL/ OFFICE PLATES CANNOT MATCH PRIOR RADIUS WITHOUT CONFLICT TO REQUIRED COLUMN POSITION.



REQUIRED COLUMN POSITION

MAINTAINING PRIOR RADIUS WOULD DISPLACE COLUMN AND UNBALANCE CANTILIVERED STRUCTURE



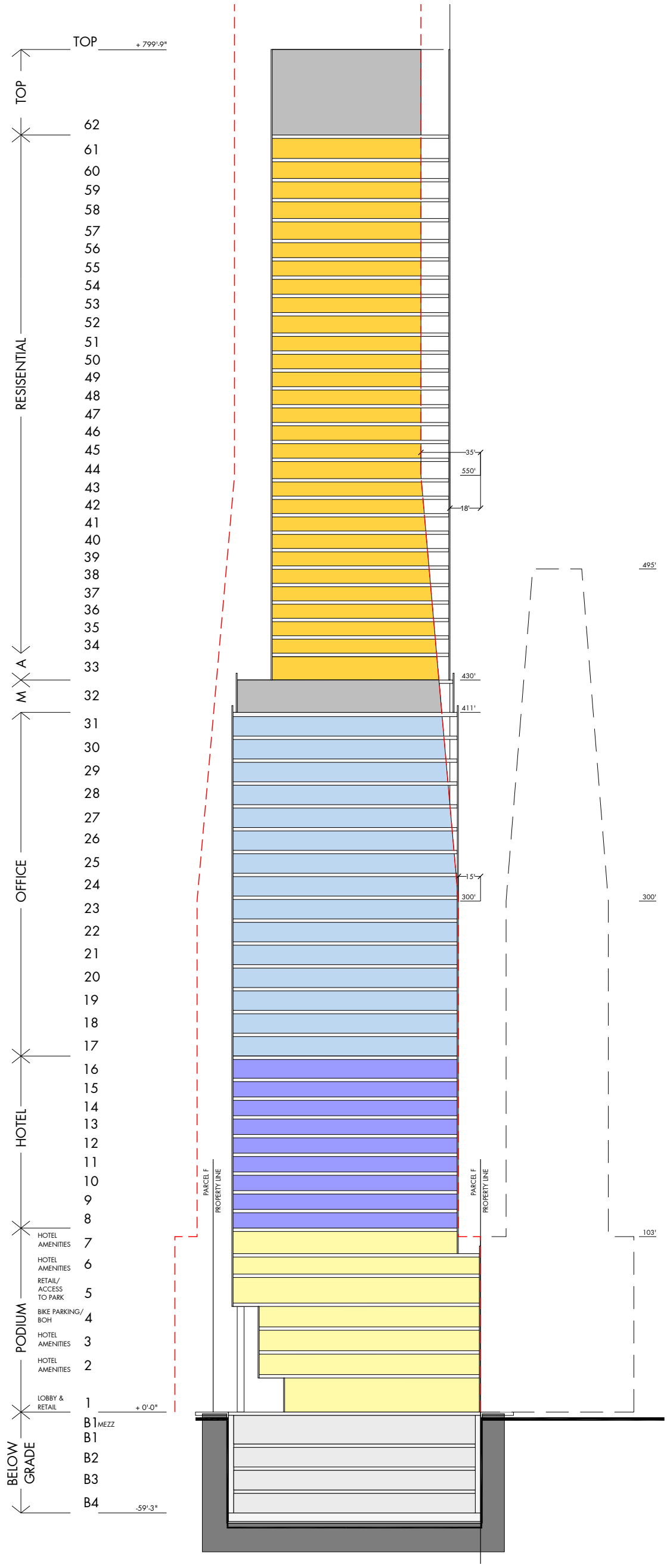
REVISED PLAN

CONFLICT BETWEEN PREVIOUS CORNER RADIUS AND STRUCTURE

THE SPONSOR'S REQUEST FOR AN EXCEPTION TO THE 15,000 SF FLOOR PLATE AREA LIMITATION IS CENTERED AROUND 1) CRITICAL STRUCTURAL REQUIREMENTS AND 2) AREA-NEUTRAL/NEGATIVE DESIGN CONSIDERATIONS DEVELOPED IN CLOSE COLLABORATION WITH UDAT STAFF.

PARCEL F'S UNIQUELY CONSTRAINED SITE DRIVES A COMPLEX AND SOPHISTICATED STRUCTURAL SYSTEM. IN PARTICULAR, THE NEED TO 1) PRECISELY PLACE REQUIRED STRUCTURAL ELEMENTS, AS WELL AS 2) BALANCE FLOOR PLATE AREAS AROUND THE CORE TO SUPPORT THE DESIGN'S SIGNIFICANT CANTILEVER, PROVIDE VERY LIMITED FLEXIBILITY TO ALTER THE STRUCTURAL SYSTEM IN RESPONSE TO DESIGN CRITERIA. FOR THE RESIDENTIAL FLOORS, THE ABILITY TO SHRINK THE PLATES BY MOVING EXTERIOR WALLS INDEPENDENTLY OR IN CONJUNCTION, OR BY ADJUSTING THE RADIUS OF THE CORNERS, CAUSES IMMEDIATE CONFLICTS WITH THE PROJECT'S OVERALL STRUCTURE. THE DIAGRAM ABOVE ILLUSTRATES THIS CONFLICT AS PERTAINS TO THE ABILITY OF STRUCTURAL ELEMENTS IN THE LOWER FLOORS TO SUPPORT THE RESIDENTIAL PLATE CORNERS ABOVE.

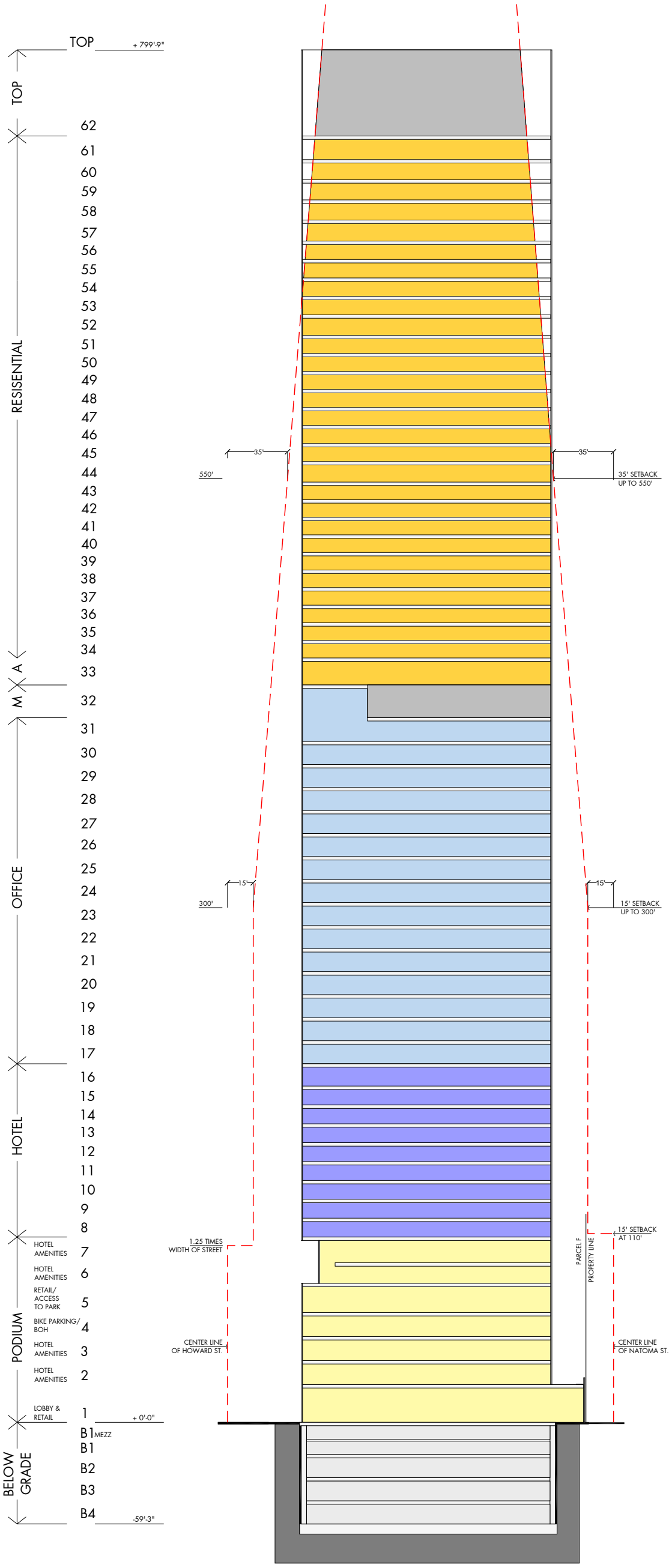
THE PROJECT'S MAJOR DESIGN FEATURES, DEVELOPED IN CONJUNCTION WITH UDAT STAFF, ALSO LIMIT THE ABILITY TO ADJUST FLOOR PLATE DIMENSIONS. SPECIFICALLY, THE DESIGN'S ICONIC VERTICALITY INTERLOCKS THE RESIDENTIAL PLATE (AND ITS MAJOR DIMENSIONS) WITH THE FLOOR PLATES BELOW, PRECLUDING INDEPENDENT ADJUSTMENT. THE TIGHT RADIUSING OF THE CORNERS FEATURED IN THE DESIGN (AND SHARED WITH THE COMMERCIAL PLATES BELOW) ALSO PRECLUDES FURTHER CONCESSIONS IN AREA DUE TO LIMITATIONS IN CURTAIN WALL FABRICATION/CONSTRUCTABILITY. COMPROMISING THESE ELEMENTS IS INCONSISTENT WITH THE COLLABORATIVE DESIGN VISION ESTABLISHED WITH STAFF, AND DISCOUNTS THE PRAGMATIC RATIONALE FOR THE PURSUIT OF THIS EXCEPTION.



INTERIOR SETBACK

PER PAGE 7/ SECTION 272.6, TOTAL AREA REDUCTION RELATIVE TO PRESCRIBED BULK ENVELOPE IS 327,064 SF

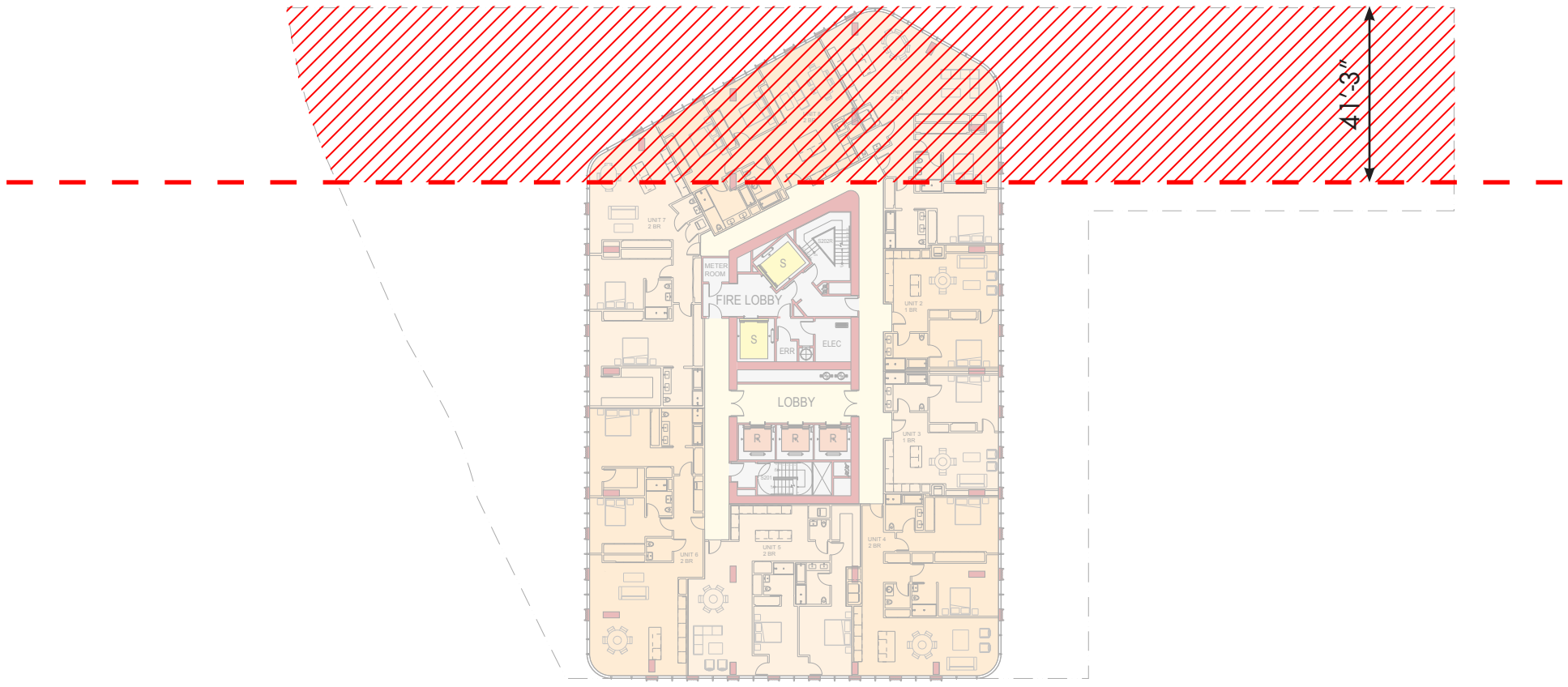
SETBACKS



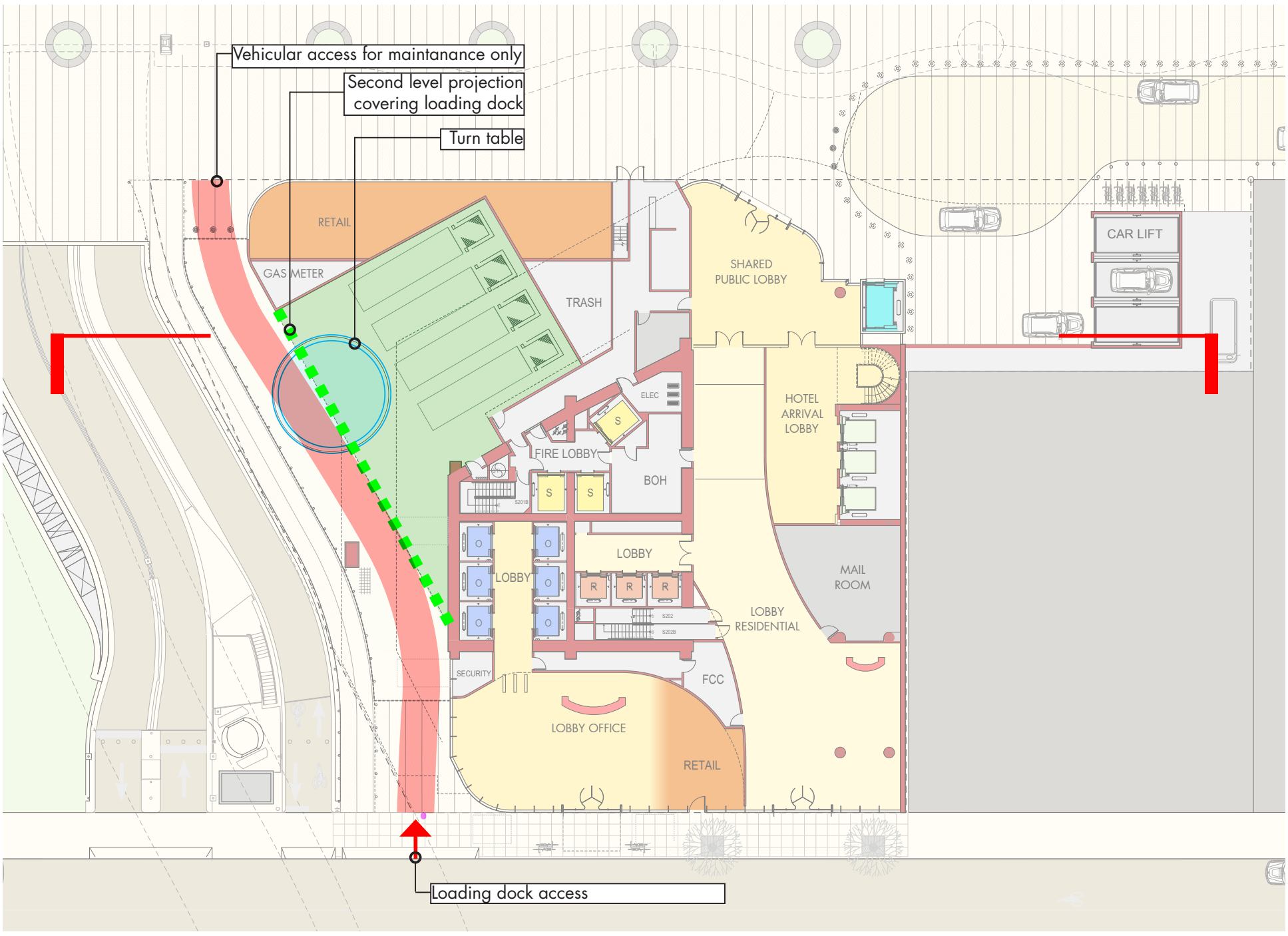
HOWARD ST. SETBACK

PER PAGE 7/ SECTION 272.6, TOTAL AREA REDUCTION RELATIVE TO PRESCRIBED BULK ENVELOPE IS 327,064 SF

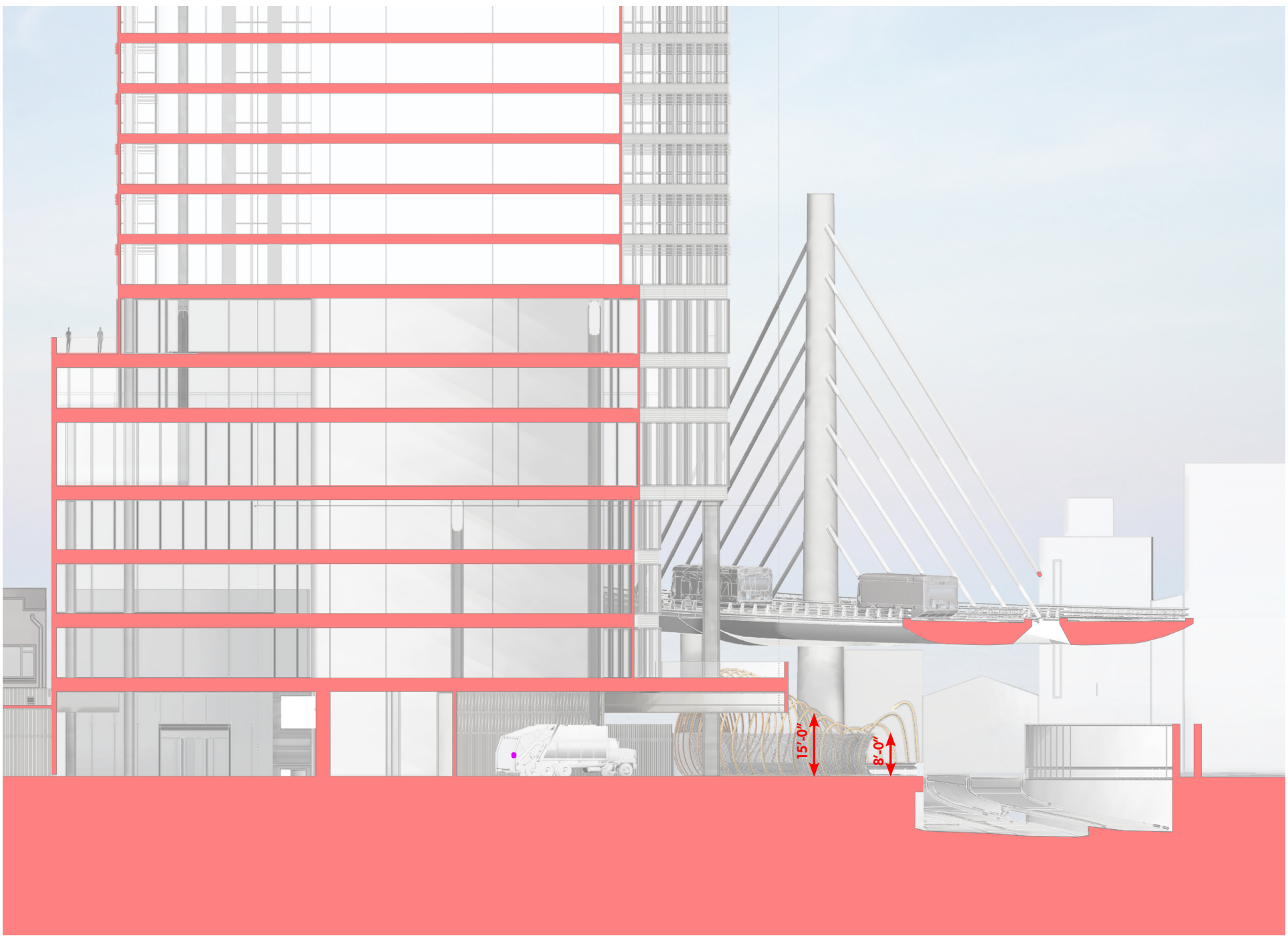
SETBACKS



REAR YARD COMPLIANCE (SECTION 134)



LOADING AREA (SECTION 155)



EAST/WEST SECTION FACING SOUTH

Parcel F Tower

542-550 Howard Street, San Francisco, CA

Supplemental Diagrams for 309 Application (12/20/19)

Hines & Urban Pacific

Pelli Clarke Pelli Architects pcparch.com

NEW HAVEN NEW YORK SAN FRANCISCO SHANGHAI TOKYO

Exhibit C –

MMRP

EXHIBIT 1: MITIGATION MONITORING AND REPORTING PROGRAM
(Including the Text of the Mitigation Measures)

PROPOSED IMPROVEMENT MEASURES TO BE ADOPTED AS CONDITIONS OF APPROVAL	Responsibility for Implementation	Mitigation Action and Schedule	Monitoring/Report Responsibility	Status/Date Completed
Mitigation Measures from the TCDP Area Plan EIR				
Cultural and Paleontological Resources				
Project Mitigation Measure 1- Construction Best Practices for Historic Resources (Implements TCDP PEIR Mitigation Measure M-CP-5a) The project sponsor of a development project in the plan area shall incorporate into construction specifications for the proposed project a requirement that the construction contractor(s) use all feasible means to avoid damage to adjacent and nearby historic buildings, including, but not necessarily limited to, staging of equipment and materials as far as possible from historic buildings to avoid direct impact damage; using techniques in demolition (of the parking lot), excavation, shoring, and construction that create the minimum feasible vibration; maintaining a buffer zone when possible between heavy equipment and historical resource(s) within 125 feet, as identified by the planning department; appropriately shoring excavation sidewalls to prevent movement of adjacent structures; design and installation of the new foundation to minimize uplift of adjacent soils; ensuring adequate drainage from adjacent sites; covering the roof of adjacent structures to avoid damage from falling objects; and ensuring appropriate security to minimize risks of vandalism and fire.	Project sponsor and/or construction contractor, and qualified historic preservation individual.	Prior to issuance of grading or excavation permit	Environmental Review Officer (ERO) , Planning Department Preservation Technical Specialist.	Considered complete upon project sponsor's submittal of Construction Specifications to ERO for review and approval
Project Mitigation Measure 2- Construction Monitoring Program for Historic Resources (Implements TCDP PEIR Mitigation Measure M-CP-5b) The project sponsor shall undertake a monitoring program to minimize damage to adjacent historic buildings and to ensure that any such damage is documented and repaired. The monitoring program would include the following components. Prior to the start of any ground-disturbing activity, the project sponsor shall engage a historic architect or qualified historic preservation professional to undertake a preconstruction survey of historical resource(s) identified by the planning department within 125 feet of planned construction to document and photograph the buildings' existing conditions. Based on the construction and condition of the resource(s), the consultant shall also establish a maximum vibration level that shall not be exceeded at each building, based on existing condition, character-defining features, soils conditions, and anticipated construction practices (a common standard is 0.2 inches per second, peak particle velocity). To ensure that vibration levels do not exceed the established standard, the project sponsor shall monitor	Project sponsor and/or construction contractor, and qualified historic preservation individual.	Prior to any ground-disturbing activities on the project site	ERO, Planning Department Preservation Technical Specialist.	Considered complete upon receipt by ERO of final report

EXHIBIT 1: MITIGATION MONITORING AND REPORTING PROGRAM
(Including the Text of the Mitigation Measures)

PROPOSED IMPROVEMENT MEASURES TO BE ADOPTED AS CONDITIONS OF APPROVAL	Responsibility for Implementation	Mitigation Action and Schedule	Monitoring/Report Responsibility	Status/Date Completed
vibration levels at each structure and shall prohibit vibratory construction activities that generate vibration levels in excess of the standard. Should vibration levels be observed in excess of the standard, construction shall be halted and alternative techniques put in practice, to the extent feasible. The consultant shall conduct regular periodic inspections of each building during ground-disturbing activity on the project site. Should damage to either building occur, the building(s) shall be remediated to its preconstruction condition at the conclusion of ground-disturbing activity on the site.				
Project Mitigation Measure 3- Subsequent Archeological Testing Program (Implements TCDP PEIR Mitigation Measure M-CP-1) Based on a reasonable presumption that archeological resources may be present within the project site, the following measures shall be undertaken to avoid any potentially significant adverse effect from the proposed project on buried or submerged historical resources. The project sponsor shall retain the services of an archaeological consultant from the rotational Department Qualified Archaeological Consultants List (QACL) maintained by the planning department archaeologist. 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 Sect. 15064.5 (a) and (c).	Project sponsor and planning department archeologist or a qualified archeological consultant from the planning department pool.	Archeological consultant shall be under contract and ATP scope will reviewed and approved by ERO prior to issuance of the site permit.	ERO to review and approve the Archeological Testing Program.	Considered complete upon review and approval by ERO of results of Archeological Testing Program/Archeological Monitoring Program/Archeological Data Recovery Program, as applicable.
Archeological Testing Program. The archeological consultant shall prepare and submit to the ERO for review and approval an archeological testing plan	Archeological consultant at the direction of the ERO.	Archeological testing plan completed prior	Submittal of draft ATP to ERO for review and approval. Distribution of	Considered complete upon completion of the archeological testing

EXHIBIT 1: MITIGATION MONITORING AND REPORTING PROGRAM
(Including the Text of the Mitigation Measures)

PROPOSED IMPROVEMENT MEASURES TO BE ADOPTED AS CONDITIONS OF APPROVAL	Responsibility for Implementation	Mitigation Action and Schedule	Monitoring/Report Responsibility	Status/Date Completed
(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. 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.		to soil disturbing activities.	the ATP by the archeological consultant. Archeological consultant undertake activities specified in ATP and immediately notify ERO of any encountered archeological resource.	program outlined in the ATP.
Archeological Monitoring Program. If the ERO in consultation with the archeological consultant determines that an archeological monitoring program shall be implemented, the archeological consultant shall prepare an archeological monitoring plan (AMP): ▪ 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, driving of piles (foundation, shoring, etc.), site remediation, etc., shall require archeological monitoring because	Project sponsor/ archeological consultant at the direction of the ERO.	During soils-disturbing activities.	Project sponsor/archeological consultant shall meet and consult with ERO on scope of AMP. Archeological consultant to monitor soils-disturbing activities specified in AMP and immediately notify ERO of any encountered archeological resource.	Considered complete upon completion of archeological monitoring plan as outlined in the AMP.

EXHIBIT 1: MITIGATION MONITORING AND REPORTING PROGRAM
(Including the Text of the Mitigation Measures)

PROPOSED IMPROVEMENT MEASURES TO BE ADOPTED AS CONDITIONS OF APPROVAL	Responsibility for Implementation	Mitigation Action and Schedule	Monitoring/Report Responsibility	Status/Date Completed
of the risk these activities pose to potential archaeological resources and to their depositional context; ▪ Archeological monitoring shall conform to the requirements of the final AMP reviewed and approved by the ERO; ▪ 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 site 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 artifactual/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/pile driving/construction activities and equipment until the deposit is evaluated. If in the case of pile driving activity (foundation, shoring, etc.), the archeological monitor has cause to believe that the pile driving activity may affect an archeological resource, the pile driving activity shall be terminated until an appropriate evaluation of the resource has been made in consultation with the ERO. 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. The archeological data recovery program shall be conducted in accord with an archeological data recovery plan	ERO, archeological consultant, and	In the event that an archeological	Archeological consultant to	Considered complete upon completion of

EXHIBIT 1: MITIGATION MONITORING AND REPORTING PROGRAM
(Including the Text of the Mitigation Measures)

PROPOSED IMPROVEMENT MEASURES TO BE ADOPTED AS CONDITIONS OF APPROVAL	Responsibility for Implementation	Mitigation Action and Schedule	Monitoring/Report Responsibility	Status/Date Completed
(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. 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.	project sponsor.	site is uncovered during the construction period.	prepare an ADRP and to undertake the archeological data recovery program in consultation with ERO.	archeological data recovery plan as outlined in the ADRP.
Human Remains, Associated or Unassociated Funerary Objects. 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, including immediate notification of the Office of the Chief Medical Examiner of the City and County of San Francisco and in the event of the Medical Examiner's determination that the	Archeological consultant, ERO, and Medical Examiner.	Following discovery of human remains.	Notification of ERO, Coroner and, as warranted, notification of NAHC.	Considered complete on finding by ERO that all State laws regarding human remains/burial objects have been adhered to, consultation

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PROPOSED IMPROVEMENT MEASURES TO BE ADOPTED AS CONDITIONS OF APPROVAL	Responsibility for Implementation	Mitigation Action and Schedule	Monitoring/Report Responsibility	Status/Date Completed
human remains are Native American remains, notification of the California State Native American Heritage Commission (NAHC) who shall appoint a Most Likely Descendant (MLD) (Pub. Res. Code Sec. 5097.98). The ERO shall also be immediately notified upon discovery of human remains. The archeological consultant, project sponsor, ERO, and MLD shall have up to but not beyond six days after the discovery to make all reasonable efforts to develop an agreement for the treatment of human remains and associated or unassociated funerary objects with appropriate dignity (CEQA Guidelines. Sec. 15064.5(d)). The agreement should take into consideration the appropriate excavation, removal, recordation, analysis, curation, possession, 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. If no agreement is reached State regulations shall be followed including the reburial of the human remains and associated burial objects with appropriate dignity on the property in a location not subject to further subsurface disturbance (Pub. Res. Code Sec. 5097.98).				with MLD is completed as warranted, and that sufficient opportunity has been provided has been provided to the archeological consultant for scientific and historical analysis of remains and funerary objects.
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.	Archeological consultant at the direction of the ERO.	Following completion of cataloguing, analysis, and interpretation of recovered archeological data.	Archeological consultant to prepare FARR.	Considered complete upon review and approval of FARR by ERO.
Once approved by the ERO, copies of the FARR shall be distributed as follows: California Archaeological 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 Major Environmental Analysis 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	Archeological consultant at the direction of the ERO.	Following completion of FARR and review and approval by ERO.	Following approval from the ERO, archeological consultant to distribute FARR.	Considered complete upon certification to ERO that copies of FARR have been distributed.

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(Including the Text of the Mitigation Measures)

PROPOSED IMPROVEMENT MEASURES TO BE ADOPTED AS CONDITIONS OF APPROVAL	Responsibility for Implementation	Mitigation Action and Schedule	Monitoring/Report Responsibility	Status/Date Completed
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.				
Transportation				
Project Mitigation Measure 4: Garage/Loading Dock Attendant (Implements TCDP PEIR Mitigation Measure M-TR-5) The project sponsor shall ensure that building management employs attendant(s) for the project's garage. The attendant shall be stationed at the project's valet station to direct vehicles entering and exiting the building and avoid any safety-related conflicts with pedestrians on the sidewalk during the peak periods of traffic and pedestrian activity, with extended hours as dictated by traffic and pedestrian conditions and by activity in the project garage. The project shall also install audible and/or visible warning devices, or comparably effective warning devices as approved by the planning department and/or the Sustainable Streets Division of the Municipal Transportation Agency, to alert pedestrians of the outbound vehicles from the car elevators, as applicable. The project sponsor shall ensure that valet attendants actively manage vehicle traffic in the porte cochère area, passenger loading zone, and loading dock.	Project sponsor/ building management.	Ongoing during building occupancy.	ERO and planning department.	Considered complete upon verification of provisions by ERO or designated Planning staff.
Project Mitigation Measure 5: Loading Dock Management (Implements TCDP PEIR Mitigation Measure M-TR-7a) The project sponsor shall develop a loading dock management plan to ensure that off-street loading facilities are efficiently used and maintained and that trucks longer than can be safely accommodated are not permitted to use a building's loading dock. In order to do so, the project sponsor shall develop a plan for management and maintenance of the building's loading dock and truck turntable and shall ensure that tenants in the building are informed of limitations and conditions on loading schedule and truck size. Such a management plan shall include strategies such as the use of an attendant to direct and guide trucks, installing a "Full" sign at the loading dock driveway, limiting activity during peak hours, installation of audible and/or visual warning devices, and other features. The maintenance plan will include a schedule for routine maintenance of the truck turntable.	Project sponsor/ building management.	Prior to occupancy; Revise Management Plan as necessary to reflect changes in generally accepted technology or operation protocols, or changes in conditions.	ERO and planning department.	Initial completion upon receipt of Management Plan by ERO or designated Planning staff for review and approval. Periodically revise Management Plan during project operation.

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(Including the Text of the Mitigation Measures)

PROPOSED IMPROVEMENT MEASURES TO BE ADOPTED AS CONDITIONS OF APPROVAL	Responsibility for Implementation	Mitigation Action and Schedule	Monitoring/Report Responsibility	Status/Date Completed
Project Mitigation Measure 6: Construction Coordination (Implements TCDP PEIR Mitigation Measure M-TR-9) To minimize potential disruptions to transit, traffic, and pedestrian and bicyclists, the project sponsor and/or construction contractor shall develop a Construction Management Plan that could include, but not necessarily be limited to, the following: ▪ Limit construction truck movements to the hours between 9:00 a.m. and 4:00 p.m. (or other times, if approved by the Municipal Transportation Agency) to minimize disruption of traffic, transit, and pedestrian flow on adjacent streets and sidewalks during the weekday a.m. and p.m. peak periods. ▪ Identify optimal truck routes to and from the site to minimize impacts to traffic, transit, pedestrians, and bicyclists; and, ▪ Encourage construction workers to use transit when commuting to and from the site, reducing the need for parking. The project sponsor shall also coordinate with the Municipal Transportation Agency/Sustainable Streets Division, the Transbay Joint Powers Authority, and construction manager(s)/ contractor(s) for the Transit Center project, and with Muni, AC Transit, Golden Gate Transit, and SamTrans, as applicable, to develop construction phasing and operations plans that would result in the least amount of disruption that is feasible to transit operations, pedestrian and bicycle activity, and vehicular traffic. The Construction Management Plan would disseminate appropriate information to contractors and affected agencies with respect to coordinating construction activities to minimize overall disruptions and ensure that overall circulation in the project area is maintained to the extent possible, with particular focus on ensuring transit, pedestrian, and bicycle connectivity. The program would supplement and expand, rather than modify or supersede, any manual, regulations, or provisions set forth by SFMTA, the Department of Public Works, or other city departments and agencies, and Caltrans.	Project sponsor and/or construction contractor.	Prior to project construction and throughout construction.	SFMTA, planning department, other affected agencies.	Considered complete upon project sponsor's submittal of construction management plan to MTA and planning department.
Noise				
Project Mitigation Measure 7: Reduce Mechanical Equipment Noise (Implements TCDP PEIR Mitigation Measure M-NO-1e): After completing installation of the mechanical equipment but before receipt of any Certificate of Occupancy, the project sponsor shall conduct noise measurements to ensure that the noise generated by stationary equipment complies with section 2909 (b) and (d) of the San Francisco Noise	Project sponsor, acoustical consultant/ acoustical engineer.	Prior to receipt of Certificate of Occupancy.	Planning Department.	Considered complete upon submittal of an acoustic memorandum demonstrating measured noise levels do not exceed noise standards.

EXHIBIT 1: MITIGATION MONITORING AND REPORTING PROGRAM
(Including the Text of the Mitigation Measures)

PROPOSED IMPROVEMENT MEASURES TO BE ADOPTED AS CONDITIONS OF APPROVAL	Responsibility for Implementation	Mitigation Action and Schedule	Monitoring/Report Responsibility	Status/Date Completed
Ordinance. The noise measurements shall be conducted by persons qualified in acoustical analysis and/or engineering. To ensure that the project noise from mechanical equipment is minimized to meet the Noise Ordinance requirements, the project sponsor shall incorporate the following measures: • The generators shall include sound attenuators sufficient to not exceed 75 dBA at the project property plane. • The Level 4 air-handler unit air intake systems shall include 10 feet of internally lined duct **or** a sound attenuator sufficient to not exceed 61 dBA at the project property plane. • The Level 6 exhaust fan air discharge system shall include 40 feet of internally lined duct **or** a sound attenuator sufficient to not exceed 61 dBA at the project property plane. • The Level 32 air-handler unit air intake systems shall include 5 feet of internally lined duct **or** a sound attenuator sufficient to not exceed 61 dBA at the project property plane. • The Level 32 exhaust fan air discharge systems shall include 5 feet of internally lined duct **or** a sound attenuator sufficient to not exceed 61 dBA at the project property plane. • The Level 62 (also referenced as mechanical mezzanine) exhaust fan air discharge systems shall include 10 feet of internally lined duct **or** a sound attenuator sufficient to not exceed 61 dBA at the project property plane. On completion of such testing, the acoustical consultant/acoustical engineer shall submit a memorandum summarizing test results to the San Francisco Planning Department. If measured noise levels are found to exceed these standards, the project sponsor shall be responsible for implementing stationary equipment noise control measures or other acoustical upgrades such as additional noise insulation in mechanical rooms, until similar measurements of interior sound levels in sleeping or living rooms in residential units after installation of these upgrades demonstrate compliance with the noise ordinance standards above. No Certificate of Occupancy shall be issued for any part of the structure until the standards in the Noise Ordinance are shown to be met. **Project Mitigation Measure 8: Control Exterior Amplified Noise (Implements TCDP PEIR Mitigation Measure M-NO-1e)** To ensure that the project noise from amplified noise is minimized to meet the Noise Ordinance requirements (article 29 of the Police Code), the project	Project sponsor	During operation of the project.	Project sponsor to implement ongoing monitoring of amplified noise, as needed and on an on-going basis.	Project sponsor to monitor compliance on an on-going basis following start of operation. Monitoring to continue indefinitely.

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(Including the Text of the Mitigation Measures)

PROPOSED IMPROVEMENT MEASURES TO BE ADOPTED AS CONDITIONS OF APPROVAL	Responsibility for Implementation	Mitigation Action and Schedule	Monitoring/Report Responsibility	Status/Date Completed
sponsor shall incorporate the following measures: • During events on the Level 2 Terrace, the project sponsor shall ensure that amplified music be controlled to a noise level no greater than 57 dBA at 25 feet from the center of a given noise source (e.g., two loudspeakers, guitar amplifier, etc.). Permanent equipment (e.g., speakers) on-site and provided by the sponsor shall have electronic limiters and shall be set to maintain the 57 dBA at 25 feet limit. • The sponsor shall ensure that speakers do not face sensitive receivers, including the mixed-use residential tower at 524 Howard Street. For temporary equipment brought for special events, the sponsor shall have a staff person with a sound level meter who would monitor the noise levels to ensure that the 57 dBA at 25 feet limit is maintained. **Project Mitigation Measure 9: General Construction Noise Control Measures (Implements TCDP PEIR Mitigation Measure M-NO-2b)** To ensure that project noise from construction activities is minimized to the maximum extent feasible, the project sponsor shall incorporate the following practices into the construction agreement to be implemented by the construction contractor during the entire construction phase of the proposed project: • The project sponsor shall 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 shall require the general contractor to ensure that equipment and trucks used for project construction utilize the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures and acoustically-attenuating shields or shrouds, wherever feasible). • The project sponsor shall require the general contractor to avoid placing stationary noise sources (such as generators and compressors) within noise-sensitive buffer areas (measured at linear 20 feet) between immediately adjacent neighbors to muffle such noise sources, and to construct barriers around such sources and/or the construction site, which could reduce construction noise	Project sponsor and construction contractor(s).	Prior to site mobilization or use of any construction vehicles or equipment at the site and during construction.	Project sponsor to provide planning department with monthly reports during the construction period	Considered completed upon receipt of final monitoring report at completion of construction.

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PROPOSED IMPROVEMENT MEASURES TO BE ADOPTED AS CONDITIONS OF APPROVAL	Responsibility for Implementation	Mitigation Action and Schedule	Monitoring/Report Responsibility	Status/Date Completed
by as much as five dBA. To further reduce noise, the contractor shall locate stationary equipment in pit areas or excavated areas, if feasible. • The project sponsor shall require the general contractor to use impact tools (e.g., jack hammers, pavement breakers, and rock drills) that are hydraulically or electrically powered wherever possible to avoid noise associated with compressed air exhaust from pneumatically powered tools. Where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust shall be used, along with external noise jackets on the tools, which could reduce noise levels by as much as 10 dBA. • The project sponsor shall include noise control requirements in specifications provided to construction contractors. Such requirements could include, but not be limited to, performing all work in a manner that minimizes noise to the extent feasible; use of equipment with effective mufflers; undertaking the noisiest activities during times of least disturbance to surrounding residents and occupants, as feasible; and selecting haul routes that avoid residential buildings inasmuch as such routes are otherwise feasible. • Prior to the issuance of each building permit, along with the submission of construction documents, the project sponsor shall submit to the planning department and Department of Building Inspection (the building department) a list of measures to respond to and track complaints pertaining to construction noise. These measures shall include (1) a procedure and phone numbers for notifying the building department, the Department of Public Health, and the Police Department (during regular construction hours and off-hours); (2) a sign posted on-site describing permitted construction days and hours, noise complaint procedures and who to notify in the event of a problem, with telephone numbers listed, and a complaint hotline number that shall be answered at all times during construction; (3) designation of an on-site construction complaint and enforcement manager for the project; and (4) notification of neighboring residents and non-residential building managers within 300 feet of the project construction area at least 30 days in advance for each major phase of construction and expected loud activities (extreme noise generating activities defined as activities generating noise levels of 90 dBA or greater) including estimated duration of activity, construction hours, and contact				

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PROPOSED IMPROVEMENT MEASURES TO BE ADOPTED AS CONDITIONS OF APPROVAL	Responsibility for Implementation	Mitigation Action and Schedule	Monitoring/Report Responsibility	Status/Date Completed
information. • The project sponsor shall limit construction to the hours of 7:00 a.m. to 8:00 p.m. per San Francisco Police Code Article 29. • The project sponsor shall require that all construction equipment be in good working order and that mufflers are inspected to be functioning properly. Avoid unnecessary idling of equipment and engines.				
Air Quality				
Project Mitigation Measure 10- Construction Vehicle Emissions Minimization (Implements TCDP PEIR Mitigation Measure M-AQ-4a) To reduce construction vehicle emissions, the project sponsor shall incorporate the following into construction specifications: ▪ All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.	Project sponsor and construction contractor(s).	Prior to site mobilization or use of any construction vehicles or equipment at the site and during construction.	Project sponsor, contractor(s), and ERO.	Considered complete upon submittal and acceptance of certification statement.
Project Mitigation Measure 11- Construction Vehicle Emissions Evaluation and Minimization (Implements TCDP PEIR Mitigation Measure M-AQ-5) The project sponsor or the project sponsor's contractor shall comply with the following: 1) Engine Requirements. a) All off-road equipment greater than 25 horsepower (hp) and operating for more than 20 hours over the entire duration of construction activities shall have engines that meet or exceed either U.S. Environmental Protection Agency (U.S. EPA) or California Air Resources Board (ARB) Tier 2 off-road emission standards and have been retrofitted with an ARB Level 3 Verified Diesel Emissions Control Strategy. Equipment with engines meeting Tier 4 Interim or Tier 4 Final off-road emissions standards automatically meet this requirement. b) Where access to alternative sources of power are available, portable diesel engines shall be prohibited. c) Diesel engines, whether for off-road or on-road equipment, shall not be left idling for more than two minutes, at any location, except as provided in exceptions to the applicable state regulations regarding	Project sponsor and construction contractor(s).	Submit certification statement prior to construction activities requiring the use of off-road equipment.	Project sponsor, contractor(s) to submit certification statement to the ERO.	Considered complete upon submittal and acceptance of certification statement.

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idling for off-road and on-road equipment (e.g., traffic conditions, safe operating conditions). The Contractor shall post legible and visible signs in English, Spanish, and Chinese, in designated queuing areas and at the construction site to remind operators of the two minute idling limit.

d) The Contractor shall instruct construction workers and equipment operators on the maintenance and tuning of construction equipment, and require that such workers and operators properly maintain and tune equipment in accordance with manufacturer specifications.

2) Waivers

a) The planning department's Environmental Review Officer or designee (ERO) may waive the alternative source of power requirement of section (1)(b) if an alternative source of power is limited or infeasible at the project site. If the ERO grants the waiver, the Contractor must submit documentation that the equipment used for onsite power generation meets the requirements of section (1)(a). The ERO may waive the equipment requirements of section (1)(a) if: a particular piece of off-road equipment with an ARB Level 3 VDECS is technically not feasible; the equipment would not produce desired emissions reduction due to expected operating modes; installation of the equipment would create a safety hazard or impaired visibility for the operator; or, there is a compelling emergency need to use off-road equipment that is not retrofitted with an ARB Level 3 VDECS. If the ERO grants the waiver, the Contractor must use the next cleanest piece of off-road equipment, according to the table below.

Compliance Alternative	Engine Emission Standard	Emissions Control
1	Tier 2	ARB Level 2 VDECS
2	Tier 2	ARB Level 1 VDECS
3	Tier 2	Alternative Fuel*

How to use the table: If the ERO determines that the equipment requirements cannot be met, then the project sponsor would need to meet Compliance Alternative 1. If the ERO determines that the contractor cannot supply off-road equipment meeting Compliance Alternative 1, then the

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contractor must meet Compliance Alternative 2. If the ERO determines that the contractor cannot supply off-road equipment meeting Compliance Alternative 2, then the contractor must meet Compliance Alternative 3. *Alternative Fuels are not a VDECS. 3) Construction Emissions Minimization Plan. Before starting on-site construction activities, the Contractor shall submit a Construction Emissions Minimization Plan to the ERO for review and approval. The plan shall state, in reasonable detail, how the Contractor will meet the requirements of section 1. a) The plan shall include estimates of the construction timeline by phase, with a description of each piece of off-road equipment required for every construction phase. The description may include, but is not limited to: equipment type, equipment manufacturer, equipment identification number, engine model year, engine certification (Tier rating), horsepower, engine serial number, and expected fuel usage and hours of operation. For VDECS installed, the description may include: technology type, serial number, make, model, manufacturer, ARB verification number level, and installation date and hour meter reading on installation date. For off-road equipment using alternative fuels, the description shall also specify the type of alternative fuel being used. b) The ERO shall ensure that all applicable requirements of the plan have been incorporated into the contract specifications. The plan shall include a certification statement that the contractor agrees to comply fully with the plan. c) The contractor shall make the plan available to the public for review on-site during work hours. The contractor shall post at the construction site, a legible and visible sign summarizing the plan. The sign shall also state that the public may ask to inspect the plan for the project at any time during working hours and shall explain how to request to inspect the plan. The Contractor shall post at least one copy of the sign in a visible location on each side of the construction site facing a public right-of-way. 4) Monitoring. After start of construction activities, the Contractor shall submit quarterly reports to the ERO documenting compliance with the plan. After completion of construction activities and prior to receiving a final certificate of occupancy, the project sponsor shall submit to the ERO a final report summarizing construction activities, including the start and end dates and duration of each construction phase, and the specific	Project sponsor and construction contractor(s). Project sponsor and construction contractor(s).	Prepare and submit a Plan prior to issuance of a permit specified in Section 106A.3.2.6 of the San Francisco Building Code. Submit quarterly reports.	Project sponsor, contractor(s) and the ERO. Project sponsor, construction contractor(s) and the ERO.	Considered complete upon findings by the ERO that the Plan is complete. Considered complete upon findings by the ERO that the Plan is being/has been implemented.

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PROPOSED IMPROVEMENT MEASURES TO BE ADOPTED AS CONDITIONS OF APPROVAL	Responsibility for Implementation	Mitigation Action and Schedule	Monitoring/Report Responsibility	Status/Date Completed
information required in the plan. **Project Mitigation Measure 12- Best Available Control Technology for Diesel Generators (Implements TCDP PEIR Mitigation Measure M-AQ-3)** The project sponsor shall ensure that the backup diesel generators meet or exceed one of the following emission standards for particulate matter: (1) Tier 4 certified engine, or (2) Tier 2 or Tier 3 certified engine that is equipped with a California Air Resources Board (ARB) Level 3 Verified Diesel Emissions Control Strategy (VDECS). A non-verified diesel emission control strategy may be used if the filter has the same particulate matter reduction as the identical ARB verified model and if the Bay Area Air Quality Management District (air district) approves of its use. The project sponsor shall submit documentation of compliance with the air district New Source Review permitting process (Regulation 2, Rule 2, and Regulation 2, Rule 5) and the emission standard requirement of this mitigation measure to the planning department for review and approval prior to issuance of a permit for a backup diesel generator from any City agency.	Project sponsor and project contractor; air district.	Prior to issuance of a permit for a backup diesel generator	Project sponsor shall submit documentation to the Planning Department verifying best available control technology for all installed diesel generators on the project site.	Considered complete upon submittal of documentation to the Planning Department.

Improvement Measures

Transportation				
Project Improvement Measure 1- Install Conflict Striping To increase visibility of the driveway crossing and passenger loading zone, the project should construct a highly visible treatment on the street across the loading dock driveway and passenger loading zone. For example, skip stop conflict striping or solid green markings could be used in the bike lane to demarcate the conflict zones. Implementation of this improvement measure would require the review and approval of SFMTA.	Project sponsor and construction contractor(s).	Prior to issuance of occupancy permit and during construction.	Planning Department and SFMTA.	Considered complete upon installation of conflict striping.
Project Improvement Measure 2- Queue Abatement It shall be the responsibility of the owner/operator of any off-street parking facility with more than 20 parking spaces to ensure that vehicle queues do not occur regularly on the public right-of-way. A vehicle queue is defined as one or more vehicles (destined to the parking facility) blocking any portion of Natoma Street or sidewalk for a consecutive period of 3 minutes or longer on a daily or weekly basis.	Project sponsor, building management, and owner/operator of the parking facility to implement ongoing monitoring of vehicle queues indefinitely.	During operation of the project.	Project sponsor to implement ongoing monitoring of vehicle queues and employ abatement methods, as needed on an on-going basis.	Project sponsor to monitor compliance on an on-going basis following start of operation. Monitoring to continue indefinitely.

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PROPOSED IMPROVEMENT MEASURES TO BE ADOPTED AS CONDITIONS OF APPROVAL	Responsibility for Implementation	Mitigation Action and Schedule	Monitoring/Report Responsibility	Status/Date Completed
If a recurring queue occurs, the owner/operator of the parking facility should employ abatement methods as needed to abate the queue. Suggested proactive methods may include: ▪ Employment or deployment of additional valet staff to direct passenger loading activities ▪ Installation of LOT FULL signs with active management by attendants ▪ Use of off-site parking facilities ▪ Implementation of additional transportation demand management strategies, including parking time limits, paid parking, time of day parking surcharge If the Planning Director, or his or her designee, suspects that a recurring queue is present, the Planning Department should notify the property owner in writing. Upon request, the owner/operator shall hire a qualified transportation consultant to evaluate the conditions at the site for no less than seven days. The consultant shall prepare a monitoring report to be submitted to the Planning Department for review. If the Planning Department determines that a recurring queue does exist, the facility owner/operator shall have 90 days from the date of the written determination to abate the queue.	Project sponsor, transportation consultant.	During operation of the project.	Transportation consultant to prepare a monitoring report.	Considered complete upon approval of monitoring report and abatement of vehicle queues to the Planning Director or designated Planning staff.

SAN FRANCISCO
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Planning Commission Motion No. 20617

HEARING DATE: JANUARY 9, 2020

Record Number:	**2016-013312OFA**
Project Address:	**542-550 Howard Street (Transbay Parcel F)**
Existing Zoning:	C-3-O(SD) Downtown-Office (Special Development) Zoning District 750-S-2 and 450-S Height and Bulk Districts Transit Center C-3-O(SD) Commercial and Transbay C-3 Special Use Districts Downtown and Transit Center District Plan Areas
Block/Lot:	3721/016, 135, 136, 138
Project Sponsor:	F4 Transbay Partners, LLC 101 California Street, Suite 1000 San Francisco, CA 94111
Property Owner:	Parcel F Owner, LLC 101 California Street, Suite 1000 San Francisco, CA 94111
Staff Contact:	Nicholas Foster, AICP, LEED GA nicholas.foster@sfgov.org, (415) 575-9167

ADOPTING FINDINGS RELATED TO THE ALLOCATION OF OFFICE SQUARE FOOTAGE UNDER THE 2019-2020 ANNUAL OFFICE DEVELOPMENT LIMITATION PROGRAM PURSUANT TO PLANNING CODE SECTIONS 320 THROUGH 325 THAT WOULD AUTHORIZE UP TO 275,764 GROSS SQUARE FEET OF GENERAL OFFICE USE WITHIN AN APPROXIMATELY 750-FOOT TALL (800 FEET INCLUSIVE OF ROOFTOP MECHANICAL FEATURES) 61-STORY, MIXED-USE TOWER LOCATED AT 542-550 HOWARD STREET (TRANSAY PARCEL "F"), LOTS 016, 135, 136, 138 OF ASSESSOR'S BLOCK 3721, WITHIN THE C-3-O(SD) DOWNTOWN-OFFICE (SPECIAL DEVELOPMENT) ZONING DISTRICT AND 750-S2 AND 450-S HEIGHT AND BULK DISTRICTS, AND ADOPTING FINDINGS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.

PREAMBLE

On October 13, 2016, Cameron Falconer of Hines, acting on behalf of F4 Transbay Partners, LLC (hereinafter "Project Sponsor"), submitted an application with the Planning Department (hereinafter "Department") for a Preliminary Project Assessment ("PPA"). The PPA Letter, assigned to Case No. 2016-013312PPA, was issued on January 9, 2016.

On December 9, 2016, the Project Sponsor submitted Planning Code Text and Map Amendment applications. The application packets were accepted on December 9, 2016 and assigned to Case Numbers 2016-013312MAP and 2016-013312PCA.

On April 19, 2017, the Project Sponsor submitted an Environmental Evaluation Application. The application packet was accepted on July 14, 2016 and assigned Case Number 2016-013312ENV.

On October 17, 2018, the Project Sponsor submitted, as modified by subsequent submittals, the following applications with the Department: Downtown Project Authorization; Conditional Use Authorization; Office Allocation; Variance; Shadow Analysis; and Transportation Demand Management. The application packets were accepted on October 17, 2018 and assigned to Case Numbers: 2016-013312DNX; 2016-013312CUA; 2016-013312OFA; 2016-013312VAR; 2016-013312SHD; and 2016-013312TDM, respectively.

The environmental effects of the Project were determined by the San Francisco Planning Department to have been fully reviewed under the Transit Center District Plan Environmental Impact Report (hereinafter "EIR"). On May 24, 2012, the Commission reviewed and considered the Final EIR ("FEIR") and found that the contents of said report and the procedures through which the FEIR 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").

The Transit Center District Plan EIR is a program-level EIR. Pursuant to CEQA Guideline 15168(c)(2), if the lead agency finds that no new effects could occur or no new mitigation measures would be required of a subsequent project in the program area, the agency may approve the project as being within the scope of the project covered by the program EIR, and no new or additional environmental review is required. In certifying the Transit Center District Plan FEIR, the Commission adopted CEQA findings in its Motion No. 18629 and hereby incorporates such Findings by reference herein.

Additionally, State CEQA Guidelines Section 15183 provides a streamlined environmental review for projects that are consistent with the development density established by existing zoning, community plan or general plan policies for which an EIR was certified, except as might be necessary to examine whether there are project-specific effects which are peculiar to the project or its site. Section 15183 specifies that examination of environmental effects shall be limited to those effects that (a) are peculiar to the project or parcel on which the project would be located, (b) were not analyzed as significant effects in a prior EIR on the zoning action, general plan or community plan with which the project is consistent, (c) are potentially significant off-site and cumulative impacts which were not discussed in the underlying EIR, or (d) are previously identified in the EIR, but which are determined to have a more severe adverse impact than that discussed in the underlying EIR. Section 15183(c) specifies that if an impact is not peculiar to the parcel or to the proposed project, then an EIR need not be prepared for that project solely on the basis of that impact.

On August 27, 2019, the Department determined that the proposed application did not require further environmental review under Section 15183 of the CEQA Guidelines and Public Resources Code Section 21083.3. The Project is consistent with the adopted zoning controls in the Transit Center District Plan and was encompassed within the analysis contained in the Transit Center District Plan FEIR. Since the Transit Center District Plan FEIR was finalized, there have been no substantial changes to the Transit Center District Plan and no substantial changes in circumstances that would require major revisions to the FEIR due to the involvement of new significant environmental effects or an increase in the severity of previously identified significant impacts, and there is no new information of substantial importance that would change the conclusions set forth in the FEIR. The file for this Project, including the Transit Center District Plan

FEIR and the Community Plan Exemption certificate, is available for review at the San Francisco Planning Department, 1650 Mission Street, Suite 400, San Francisco, California.

Planning Department staff prepared a Mitigation Monitoring and Reporting Program (MMRP) setting forth mitigation measures that were identified in the Transit Center District Plan FEIR that are applicable to the project. These mitigation measures are set forth in their entirety in the MMRP attached to the draft Motion as Exhibit C.

The Planning Department Commission Secretary is the Custodian of Records; all pertinent documents are located in the File for Case No. 2016-013312OFA, at 1650 Mission Street, Fourth Floor, San Francisco, California.

On September 19, 2019, the Recreation and Park Commission conducted a duly noticed public hearing at regularly scheduled meeting and recommended, through Resolution No. 1909-016, that the Planning Commission find that the shadows cast by the Project would not be adverse to the use of Union Square and Willie "Woo Woo" Wong Playground.

On October 8, 2019, the Project Sponsor filed a request for a General Plan Amendment. The application packet was accepted on October 8, 2019 and assigned to Case Number 2016-013312GPA.

On October 17, 2019, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the initiation of a General Plan Amendment for Case No. 2016-013312GPA. After hearing the item, the Commission voted 5-0 (Koppel absent) to continue the item to December 5, 2019.

On December 5, 2019 the Commission conducted a duly noticed public hearing at a regularly scheduled meeting to consider the initiation of a General Plan Amendment for Case No. 2016-013312GPA. The Commission voted 6-0 (Richards absent) to initiate the General Plan Amendment for Case No. 2016-013312GPA.

On January 9, 2020, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting on Office Allocation application No. 2016-001794OFA.

The Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of the applicant, Department staff, and other interested parties.

MOVED, that the Commission hereby authorizes the Office Allocation as requested in Application No. 2016-013312OFA, subject to the conditions contained in "EXHIBIT A" of this motion, based on the following findings:

FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The above recitals are accurate and constitute findings of this Commission.

2. **Project Description.** The proposed project ("Project") includes the construction of a new 61-story mixed-use building reaching a height of 749'-10" tall (799'-9" inclusive of rooftop screening/mechanical equipment). The Project would include 165 dwelling units, 189 hotel rooms, approximately 276,000 square feet of office use floor area, approximately 79,000 square feet of floor area devoted to shared amenity space, approximately 9,000 square feet of retail space, approximately 20,000 square feet of open space, 178 Class 1 and 34 Class 2 bicycle parking spaces, and four below-grade levels that would accommodate up to 183 vehicle parking spaces provided for the residential, hotel, and office uses. The Project also would construct a pedestrian bridge providing public access to Salesforce Park located on the roof of the Transbay Transit Center.

3. **Site Description and Present Use.** The Project Site ("Site") consists of four contiguous lots (Lots 016, 135, 136, and 137) within Assessor's Block 3721, totaling 32,229 square feet (0.74 acres) in area. The site, bounded by Howard Street to the south and Natoma Street to the north, is undeveloped at-grade and served as a construction staging area for the adjacent Salesforce Transit Center during its construction. A below-grade "Train Box" is located within the northwest corner of the Site, occupying approximately 12,000 square feet of the Site. The Train Box consists of a two-story structure that will allow Caltrain—and eventually High-Speed Rail—trains to enter and exit the adjacent Salesforce Transit Center below-grade. Because the Train Box can only support a very limited structural load above-grade, the proposed mixed-use building is purposely set back from the northwest corner of the Site (along the Natoma Street frontage), towards the southeast corner of the Site (along the Howard Street frontage). The Project responds to the unique site constraint by cantilevering the building podium over the area of the Train Box, thereby shifting the majority of the tower's mass onto Lots 016 and 135, away from the area of the Train Box.

4. **Surrounding Properties and Neighborhood.** The Site is located within the Downtown Core, and more specifically, within the Transit Center District Plan (TCDP) area. Development in the vicinity consists primarily of high-rise office buildings, interspersed with low-rise mixed-use buildings. The block on which the Site is located contains several low to mid-rise office buildings and construction staging for planned developments. The 5-story Salesforce Transit Center (STC) and the Salesforce Park are located to the north of the Site, 2- to 3- story buildings at 547, 555, and 557 Howard streets are located to the south of the Site, and a 3-story building at 540 Howard Street, a 4-story building at 530 Howard Street, and a parking lot at 524 Howard Street are located east of the Site. The 2- to 3-story buildings at 547, 555, and 557 Howard streets are planned to be replaced with an approximately 385 foot-tall, 36-story mixed use residential and hotel development project. The parking lot at 524 Howard Street is planned to be replaced with an approximately 495-foot tall, 48-story mixed use residential and hotel development. Several other high-rise buildings are

planned, under construction, or have recently completed construction in the surrounding area, including a newly completed office-residential tower at 181 Fremont Street.

5. **Public Outreach and Comments.** The Department has received correspondence regarding the proposed Project related to shadow impacts on Willie "Woo Woo" Wong Park, citing concerns around shadows caused by the Project having an adverse impact on the use of the Willie "Woo Woo" Wong Park. The Project Sponsor has conducted community outreach that includes local community groups to respond to concerns over shadow impacts resulting from the Project.

6. **Planning Code Compliance.** The Planning Code Compliance as set forth in Downtown Project Authorization Motion No. 20616 apply to this Office Allocation Motion, and are incorporated as though fully set forth herein.

7. **Office Development Authorization (Section 321).** The Planning Code establishes standards for San Francisco's Office Development Annual Limit. In determining which office developments best promote the public welfare, convenience and necessity, the Commission shall consider:

   A. Apportionment of office space over the course of the approval period in order to maintain a balance between economic growth, on the one hand, and housing, transportation and public services, on the other.

   As of September 19, 2019, there exists 21,752 gross square feet (gsf) of office development allocations available for "Large Allocation Projects" (projects with greater than 50,000 gsf) under the Office Allocation Program (Section 321). That amount does not reflect the 6,008,677 gsf that has been "pre-allocated" for "pending projects" for which the Planning Department has a current Office Allocation Application on-file. The Project is included within the pending projects group and seeks an allocation of up to 275,764 square feet, or, approximately 5 percent of the pending projects group. If the Project is approved, 5,732,903 square feet of space will remain in pending projects group for Large Allocation Projects.

   The Project maintains an appropriate balance between economic growth on the one hand, and housing, transportation, and public services, on the other. As part of its unique mixed-use program, the Project will provide an integrated balance of housing and economic growth, delivering 165 dwelling units in 433,556 gross square feet of residential use plus a 189-room hotel to downtown San Francisco. In addition, the Project will further contribute to the development of affordable housing pursuant to its participation in the Jobs-Housing Linkage Program. The Project's transit-orientation is unrivaled owing to its location directly adjacent to the Salesforce Transit Center ("STC"), which will link 11 transit systems and serve over 100,000 passengers each weekday and 45 million commuters annually. This location will serve to provide office density in the closest possible proximity to sustainable transit alternatives including BART, MUNI, regional bus, and future Caltrain/HSR, among others. In addition to proximity to the STC, the Project is within two blocks of the Montgomery BART and Muni station and within close walking distance of the Ferry Building, providing more convenient public transportation alternatives to its tenants and residents.

Lastly, the Project's unique mixed-use program will provide the city with permanent public amenities. These include enhanced access to the STC and its rooftop park from the Project's integrated through-block pedestrian passageway and sky bridge, several thousand square feet of high-quality retail, and the services and amenities of its 189-key hotel. In summary, the Project provides a thoughtful and balanced response to the city's needs for economic growth and housing, transportation, and public services.

B. The contribution of the office development to, and its effects on, the objectives and policies of the General Plan.

The City approved the Transit Center District Plan ("TCDP"), a subarea plan of the Downtown Plan, and the Transit Center C-3-O(SD) Commercial Special Use District in 2012. The Subarea Plan and SUD reaffirm long-standing City policy to concentrate intensive office development in the Transit Center District and does so by mandating large sites such as the Project Site be reserved for predominately commercial development.

The Project's unique mix of retail, office, hotel and residential uses will mean a built-in customer base and frequent foot traffic through the area, also providing a direct benefit to the immediately adjacent ground floor specialty retail of the STC.

C. The quality of the design of the proposed office development.

The Project seeks to provide an exceptional design that will make a lasting, iconic contribution to the city's architectural character and skyline. The building's streamlined volume will present gently rounded corners and a series of setbacks on its east and west sides, becoming increasingly slender as it reaches the sky. The building's energy efficient and expressive façade exhibits a unique materiality and verticality that is reminiscent of some of San Francisco's most remarkable traditional buildings, such as the Pacific Telephone and Telegraph Tower. As the tower reaches its top, the design culminates in an elegant and iconic crown.

Within the pedestrian realm, the Project will incorporate a lively pedestrian and retail alleyway on Natoma Street, as well as a public passageway that will allow pedestrians and cyclists to pass through the Site from Howard Street and Under Ramp Park to Natoma Street and access STC to the north of the Site. In addition, the Project will provide direct public access to the 5.4 acre rooftop park located atop the STC, via an on-site public elevator and a pedestrian sky bridge that connects the Project's fifth level directly to the park.

D. The suitability of the proposed office development for its location, and any effects of the proposed office development specific to that location;

i. Use.

The Project is ideally located in the Transit Center C-3-O(SD) Commercial Special Use District directly adjacent to the STC, within the core of the city's office district. In addition to its superior proximity to transit access, the Project will offer its office tenants abundant access to existing and planned retail goods and services, as well as over 4,300 new housing units (recently delivered or under construction) in the Transbay Redevelopment Area and adjacent Rincon Hill District, all within close walking distance.

The Special Use District reserves the Project area for intensive office development by limiting other competing uses, and under the TCDP, office is the preferred use at the site. However, the Project's unique mixed-use program balances office use at just under 29% of the total gross square footage, and further provides 165 dwelling units, a 189-room hotel, and significant new retail space.

ii. Transit Accessibility.

The Project's location within the heart of the TCDP provides it with immediate access to the greatest concentration of local and regional transit anywhere in San Francisco and the greater Bay Area. The adjacent Salesforce Transit Center will serve the Project's occupants with 11 interconnected transit systems at their front door and provide additional access to MUNI/Bart and ferry service within close walking distance. This unrivaled proximity to public transit affords the Project the optimal location to produce sustainable, desirable office space to meet the city's long-term needs.

By locating a critical density of jobs, housing, hotel rooms, and amenities in this bustling area, the Project will furthermore build on the synergies created by the City's thriving Financial District and South of Market neighborhoods, and assist in realizing the Transit Center District Plan's vision of a transit- and pedestrian-oriented, mixed-use neighborhood surrounding the new transit hub.

iii. Open Space Accessibility.

The Project adds a significant amount of publicly-accessible open space that will be not only an amenity to office tenants and the public, but significantly enhance pedestrian and bicycle circulation in the immediate area. In total the Project will provide nearly 11,000 square feet of open space, including a 1,920 square foot pedestrian passageway from Howard Street to Natoma Street on the ground floor. A public elevator will enable pedestrians to travel up to the 2,530 square foot terrace and sky bridge on the Project's fifth level, providing direct access for the STC's 5.4 acre rooftop park.

In addition to this integrated open space, the Project offers its occupants abundant open space options within close walking distance as part of the 11 acres of new public open space created by

the TCDP. In addition to the directly adjoining Salesforce Park atop the STC, the Project is located at the intersection of the future Howard Square Park at 2nd and Howard, as well as Under-Ramp Park immediately to the south.

iv. Urban Design.

As the final project to complete the realization of the TCDP's rezoning of the city's new downtown, the Project will provide an important contribution to San Francisco's urban form. The Project's 750-foot height limit designates the site for the third-tallest building in the Transbay District that will mark it as an important crescendo of the downtown "hill" towards the nearby Salesforce Tower at its center, and complete the elegance of the City's new skyline envisioned by the TCDP.

v. Seismic Safety.

The Project would be designed in conformance with current seismic and life safety codes as mandated by the Department of Building Inspection

E. The anticipated uses of the proposed office development, in light of employment opportunities to be provided, needs of existing businesses, and the available supply of space suitable for such anticipated uses;

i. Anticipated Employment Opportunities.

The unique size and program of the Project will enable it to create a significant number of temporary and permanent jobs. In addition to facilitating a significant amount of local employment through its provision of office space, the Project's 189-room hotel, 165 dwelling units, and retail components will employ a significant staff on a permanent basis. A qualified consultant, (Economic & Planning Systems, Inc., or "EPS") estimates that the Project's permanent workforce will total 1,550 employees.[1] These positions will span from entry-level to executive-level employees and provide a uniquely multifaceted source of employment for the region's workforce. The Project's significant scale of construction itself will also create a large number of union construction jobs, and will support the provision of jobs to disadvantaged San Franciscans by participating in the First Source Hiring Program. EPS estimates that the Project will support nearly 3,000 full-time equivalent jobs during its construction.[2]

ii. Needs of Existing Businesses.

The Project will supply office space in the Downtown/Transit Center District area, which permits office use within C-3-O(SD) Zoning District. The Project will provide office space with high ceilings and large floor plates, which are characteristics desired by emerging technology

[1] "Fiscal & Community Benefits of Parcel F" - Economic & Planning Systems, Inc. Memorandum 3.10.17
[2] Ibid.

businesses. This building type offers flexibility for new businesses to further grow in the future. In addition, the Project adds approximately 9,000 gross square feet new retail use on the ground and fifth floors, which would complement other residential and non-residential uses within subject building, but help to active two street frontages (Howard and Natoma).

iii. Availability of Space for Anticipated Uses.

Demand for new office space has increased rapidly in the past few years. In particular shortage are large blocks of office space over 50,000 sf. In providing such large-block space, as well as the flexibility to accommodate smaller users as well, the Project will serve to address the needs of a broad variety of potential tenants and the City over the long term. Further, large, open floor plates are among the most important features in today's office market, and the Project will help meet this demand with large floorplate and flexible office space that is suitable for a variety of office uses and sizes.

F. The extent to which the proposed development will be owned or occupied by a single entity.

At this stage the Project Sponsor has not identified particular tenants or an overall ownership structure. However, because of the mixed-use nature of the Project, it is likely that numerous entities will occupy the Project.

G. The use, if any, of TDR by the project sponsor.

The Site is 32,229 square feet (0.74 acres) in area. Therefore, up to 193,374 gsf is allowed under the basic FAR limit, and up to 290,061 gsf is permitted with the purchase of TDR. The Project proposes a total of approximately 964,000 gsf, for a floor-area ratio of approximately 29.9-to-1. Conditions of Approval are included with the Downtown Project Authorization (Motion No. 20616) to require the Project Sponsor to purchase TDR for the increment of development between 6.0 to 1 FAR and 9.0 to 1 FAR (96,687 gsf).

8. **General Plan Compliance.** The Project is, on balance, consistent with the following Objectives and Policies of the Transit Center District Plan ("TCDP") (a sub-area of the Downtown Area Plan), the Downtown Area Plan, and the General Plan for the reasons set forth in the findings in the Downtown Project Authorization, Motion No. 20616, which are incorporated by reference as though fully set forth herein.

9. **Planning Code Section 101.1(b)** establishes eight priority-planning policies and requires review of permits for consistency with said policies. On balance, the project complies with said policies for the reasons set forth in the findings in the Downtown Project Authorization, Motion No. 20616, which are incorporated by reference as though fully set forth herein.

10. The Project is consistent with and would promote the general and specific purposes of the Code provided under Section 101.1(b) in that, as designed, the Project would contribute to the character and stability of the neighborhood and would constitute a beneficial development.

11. The Commission hereby finds that approval of the Office Development Authorization would promote the health, safety and welfare of the City.

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 Office Development Application No. 2016-013312OFA** subject to the following conditions attached hereto as "EXHIBIT A" in general conformance with plans on file, dated December 20, 2019, and stamped "EXHIBIT B", which is incorporated herein by reference as though fully set forth.

APPEAL AND EFFECTIVE DATE OF MOTION: Any aggrieved person may appeal this Section 329/309 Large/Downtown Project Authorization to the Board of Appeals within fifteen (15) days after the date of this Motion. The effective date of this Motion shall be the date of adoption of this Motion if not appealed (after the 15-day period has expired) OR the date of the decision of the Board of Appeals if appealed to the Board of Appeals. Any appeal shall be made to the Board of Appeals, unless an associated entitlement is appealed to the Board of Supervisors, in which case the appeal of this Motion shall also be made to the Board of Supervisors (see Charter Section 4.135). For further information, please contact the Board of Appeals at (415) 575-6880, 1660 Mission, Room 3036, San Francisco, CA 94103, or the Board of Supervisors at (415) 554-5184, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

Protest of Fee or Exaction: You may protest any fee or exaction subject to Government Code Section 66000 that is imposed as a condition of approval by following the procedures set forth in Government Code Section 66020. The protest must satisfy the requirements of Government Code Section 66020(a) and must be filed within 90 days of the date of the first approval or conditional approval of the development referencing the challenged fee or exaction. For purposes of Government Code Section 66020, the date of imposition of the fee shall be the date of the earliest discretionary approval by the City of the subject development.

If the City has not previously given Notice of an earlier discretionary approval of the project, the Planning Commission's adoption of this Motion, Resolution, Discretionary Review Action or the Zoning Administrator's Variance Decision Letter constitutes the approval or conditional approval of the development and the City hereby gives **NOTICE** that the 90-day protest period under Government Code Section 66020 has begun. If the City has already given Notice that the 90-day approval period has begun for the subject development, then this document does not re-commence the 90-day approval period.

I hereby certify that the Planning Commission ADOPTED the foregoing Motion on January 9, 2020.

Jonas P. Ionin
Commission Secretary

AYES:	Diamond, Fung, Johnson, Koppel, Melgar, Moore
NAYS:	None
ABSENT:	Richards
ADOPTED:	January 9, 2020

EXHIBIT A

AUTHORIZATION

This authorization is for an **Office Development Allocation** authorizing up to 275,674 square feet of general office space under the 2019-2020 Annual Office Development Limitation Program, pursuant to Planning Code Sections 320 through 325 in connection with a Project that would allow for the construction of an approximately 750-foot tall (800 feet inclusive of rooftop mechanical features) 61-story, mixed-use tower with a total of approximately 964,000 gross square feet of floor area, including 165 dwelling units, 189 hotel rooms, 275,674 square feet of office use floor area located at 542-550 Howard Street (Transbay Parcel F), within Assessor's Block 3721, Lots 016, 135, 136, and 138, pursuant to Planning Code Sections 303 and 210.2 within the C-3-O(SD) Downtown-Office (Special Development) Zoning District and 750-S-2 and 450-S Height and Bulk Districts, in general conformance with plans, dated **December 20, 2019**, and stamped "EXHIBIT B" included in the docket for Record No. **2016-013312OFA** and subject to conditions of approval reviewed and approved by the Commission on **January 9, 2020** under Motion No. **20617**. This authorization and the conditions contained herein run with the property and not with a particular Project Sponsor, business, or operator.

RECORDATION OF CONDITIONS OF APPROVAL

Prior to the issuance of the building permit or commencement of use for the Project the Zoning Administrator shall approve and order the recordation of a Notice in the Official Records of the Recorder of the City and County of San Francisco for the subject property. This Notice shall state that the project is subject to the conditions of approval contained herein and reviewed and approved by the Planning Commission on **January 9, 2020** under Motion No. **20617**.

PRINTING OF CONDITIONS OF APPROVAL ON PLANS

The conditions of approval under the 'Exhibit A' of this Planning Commission Motion No. **20617** shall be reproduced on the Index Sheet of construction plans submitted with the site or building permit application for the Project. The Index Sheet of the construction plans shall reference to the Conditional Use authorization and any subsequent amendments or modifications.

SEVERABILITY

The Project shall comply with all applicable City codes and requirements. If any clause, sentence, section or any part of these conditions of approval is for any reason held to be invalid, such invalidity shall not affect or impair other remaining clauses, sentences, or sections of these conditions. This decision conveys no right to construct, or to receive a building permit. "Project Sponsor" shall include any subsequent responsible party.

CHANGES AND MODIFICATIONS

Changes to the approved plans may be approved administratively by the Zoning Administrator. Significant changes and modifications of conditions shall require Planning Commission approval of a new Conditional Use authorization.

Conditions of Approval, Compliance, Monitoring, and Reporting

PERFORMANCE

1. **Development Timeline - Office.** Pursuant to Planning Code Section 321(d) (2), construction of the office development project shall commence within 18 months of the effective date of this Motion. Failure to begin work within that period or to carry out the development diligently thereafter to completion, shall be grounds to revoke approval of the office development under this office development authorization.
   For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

2. **Extension.** This authorization may be extended at the discretion of the Zoning Administrator only where failure to issue a permit by the Department of Building Inspection to perform said tenant improvements is caused by a delay by a local, State or Federal agency or by any appeal of the issuance of such permit(s).
   For information about compliance, contact the Planning Department at 415-558-6378, www.sf-planning.org

3. **Additional Project Authorization.** The Project Sponsor must also obtain Downtown Project Authorization, pursuant to Section 309; Conditional Use Authorization Office to establish a hotel use, pursuant to Section 303; adoption of shadow findings, pursuant to Section 295; Planning Code Text and Map Amendments to amend San Francisco Zoning Maps ZN-01 and HT-01 for height and bulk classification and zoning designation, and uncodified legislative amendments for the residential footprint requirement per Section 248(d)(2), and authorization of off-site inclusionary affordable dwelling units per Section 249.28(b)(6)(B)(C); General Plan Amendment to amend Maps 1 and 5 of the Downtown Plan and Figure 1 of the Transit Center District Plan; and Variances for Parking and Loading Entrance Width per Section 145, Active Street Frontages per Section 145.1, and Vehicular Ingress and Egress on Natoma Street per Section 155; and location of Bicycle Parking per Section 155, and satisfy all the conditions thereof. The conditions set forth below are additional conditions required in connection with the Project. If these conditions overlap with any other requirement imposed on the Project, the more restrictive or protective condition or requirement, as determined by the Zoning Administrator, shall apply.
   For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org