

CITY OF OAKLAND

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OFFICE OF THE CITY CLERK  
OAKLAND

2016 APR 14 PM 5:37

# AGENDA REPORT

**TO:** Sabrina B. Landreth  
City Administrator

**FROM:** Mark Sawicki  
Director, EWD

**SUBJECT:** DDA for 500 Kirkham

**DATE:** March 31, 2016

City Administrator Approval

Date:

4/14/16

## RECOMMENDATION

**Staff Recommends That The City Council Adopt An Ordinance (1) Authorizing The Purchase Of 500 Kirkham Street In West Oakland (The "Property") From Caltrans, (2) Authorizing A Disposition And Development Agreement With TL Partners V, L.P., Or A Related Entity, For The Sale And Development Of The Property For A Mixed Use Project, And (3) Making CEQA Findings For This Action**

## EXECUTIVE SUMMARY

Adoption of the proposed ordinance will enable the City Administrator, without returning to the City Council, to exercise an exclusive Option to purchase 500 Kirkham (the "Property") from the California Department of Transportation ("Caltrans") in the amount of \$4,253,977 (or the price as dictated by the Option); negotiate and execute a Disposition and Development Agreement (DDA) that will allow the City to sell the Property to TL Partners V, L.P. ("TLC" or "Tim Lewis Communities" or "Developer") for the same amount purchased by the City, to build a mixed-use transit-oriented development project consistent with the vision of the West Oakland Specific Plan (WOSP); and allow staff to make California Environmental Quality Act (CEQA) findings for this action.

The proposed project is an eight-story mixed-use building (five plus stories over a two-level podium) with 417 residential units (44 studios, 295 one-bedrooms and 78 two-bedroom), 21,961 square feet of ground floor retail, 264 parking spaces (55 of which are for retail), and 72,354 square feet of open space (the "Project"). Additionally, the Developer is offering a community benefits package valued at approximately \$8 million, which includes (a) a \$3.15 million payment to the City's Affordable Housing Trust Fund (AHTF); (b) 7.5% of the project's total units (or 31) set as affordable to moderate-income households; (c) a \$1 million payment to the City of Oakland or an entity to be named by the City of Oakland to provide job training for local residents; and (d) building and maintaining open space at the corner of 5th and Kirkham to be made available to the public.

Item: \_\_\_\_\_  
CED Committee  
April 26, 2016

## **BACKGROUND / LEGISLATIVE HISTORY**

### ***A. Property Location, Recent History and Current Ownership Status***

Caltrans owns approximately 2.85 acres of excess land that was the site of the former Cypress Freeway on the block bounded by 5th Street, 7th Street, Kirkham Street and Union Street, commonly known as 500 Kirkham and identified by Caltrans as Director's Deed number 009579-01-01 (**See Attachment A**). Under Caltrans procedures for sale of excess property (per California Transportation Commission Resolution G-98-28), Caltrans is authorized to sell excess land to public agencies at fair market value (FMV) without calling for competitive auction bids upon a determination that the intended uses are for a public purpose, such as a transit oriented development (TOD). In 2012-13, Caltrans offered the Property for lease or sale to a public agency for a public purpose; and the City responded to the offer with a request to purchase the Property for development as a transit-oriented mixed-use project, which qualifies as public purpose.

Under the authority of the Exclusive Negotiating Agreement (ENA) with West Oakland Development Group, LLC (WODG), the City negotiated a sales price with Caltrans for the Property in the amount of \$3,271,325, if 325 residential units are entitled (or \$26/sq. ft.), plus an additional \$10,681 per unit if entitled above 325. This price was based on two FMV appraisals conducted by two independent third-party appraisers approved by Caltrans

On October 14, 2014, the City and Caltrans entered into an Option to Purchase Agreement ("Option") in order to lock in this price and facilitate the transfer of the Property for a TOD project. That Option will expire on June 10, 2016, at which point Caltrans may pursue a competitive auction bid to sell the Property on the open market.

WODG was solely responsible for all costs associated with the Option, which to-date includes three deposits of \$163,566.25 each, for a total of \$490,698.75 paid directly to Caltrans. Only the first two deposits would go toward the land sale price. The third payment was an extension fee paid on December 10, 2015 by TLC, a developer partner brought into the team by WODG to move this Project forward.

### ***B. ENA with WODG***

On April 9, 2013, pursuant to Resolution No. 84309 C.M.S., the City entered into an ENA with WODG for an initial 12-month term, which was later extended for six months. WODG is a limited liability company made up of four members with deep West Oakland roots: Alliance for West Oakland Development, Herbert Enterprise Group, LLC, DCSI and Tomorrow's Answer. Also, WODG is the owner of a 3.89 acre parking lot with development potential, located at 1357 5th Street, across the street from both the Property and the West Oakland Bay Area Rapid Transit District (BART) site.

The ENA expired on October 15, 2014, but the Option to Purchase with Caltrans was executed just the day before. This Option expires on June 10, 2016.

The performance terms of WODG's 2013 ENA have been satisfied, including locking in a sales price with Caltrans, developing the project proposal more fully, hosting at least two community

meetings, completing environmental site assessments, completing financial feasibility, and adding a partner to the development team with demonstrated experience successfully developing projects comparable in type and size to the proposed Project. WODG selected TLC as the development partner who has experience and success with vertical developments to lead DDA negotiations, close the transaction, and get this Project financed and built. WODG assigned their position for the purchase of 500 Kirkham to TLC.

***C. The Developer – Tim Lewis Communities or “TLC”***

The Project Developer will be Tim Lewis Communities (TLC), an experienced builder/contractor, developing projects and building homes for over 30 years, originally based out of Northern California. TLC is solely owned by the President, Mr. Jay Timothy Lewis. Property is acquired directly by a single purpose entity (SPE) (an LLC or a partnership) in which Jay Timothy is directly or indirectly the member or partner, as applicable, also solely owned by Jay Timothy Lewis. The SPE executes a builder agreement with TLC for all site work and homebuilding activities. TLC is a financially strong entity that will be able to provide a Completion Guaranty.

TLC hired Humphreys & Partners Architect, L.P. to prepare the project designs for planning entitlements; Polaris Pacific, a sales and marketing firm, to prepare market study of residential rents; and The Concord Group to prepare a retail market analysis.

***D. Project Description and Current Status***

As of the writing of this report, the WODG/TLC team is scheduled to present their Project to the Planning Commission on April 20, 2016 for approval of project entitlements and project-specific CEQA analysis. Proposed project designs can be found on the City’s webpage for Planning Commission meetings.

The current proposed project is consistent with the West Oakland Specific Plan and consists of an eight-story mixed-used building (five plus stories over a two-level podium) that provides 417 residential units (44 studios, 295 one-bedrooms and 78 two-bedroom), 264 parking spaces (55 of which are for retail), 21,961 square feet of ground floor retail, and 72,354 square feet of open space (the “Project”). Based on the proposed units, the purchase price from Caltrans would total \$4,253,977.

The Option expires on June 10, 2016 but, only if Caltrans agrees, may be extended for a final six-month term, until December 10, 2016, for a fee payment to be paid by TLC in the amount of \$163,566.25.

***E. The Property’s Zoning Designation and Previous Legislative History***

There is an over 10 year history of the City making various efforts to promote development on this Property. First, the Property is located in a Transit Oriented Development Overlay Zone (“S-15W”), which is intended to facilitate dense, mixed-use development around the West Oakland BART station and allows for a reduced parking requirement.

On November 16, 2004, the City Council, through City Resolution No. 78892 C.M.S., designated the Property as an "Infill Opportunity Zone," enabling the City to facilitate transit-oriented mixed use development by modifying traffic standards. That designation terminated after four years, in 2008.

In 2005, the Property was identified as an "opportunity site" in the West Oakland Village Action Report prepared by the City of Oakland, Oakland Housing Authority and BART.

On September 16, 2005, the Agency, pursuant to Resolution No. 2005-0046 C.M.S., entered into a 12-month ENA with 7th Street Partners, LLC for the purpose of evaluating the feasibility of developing a transit-oriented development on the Property. Alliance for West Oakland Development (AWOD) was a member of 7th Street Partners, along with McGrath Properties. The ENA was extended for 12 months after the initial 12-month period and expired on September 16, 2007. By the end of the ENA period, parties were not able to agree on terms for the purchase of the Property or the responsibility for site cleanup costs. However, during the ENA period, 7th Street Partners did retain Environmental Resources Management to complete Phase I of the Environmental Investigation. As the ENA expired, Phase II of the Environmental Investigation was beginning.

On July 1, 2008, the City, pursuant to City Resolution No. 81317 C.M.S., entered into a contract with Northgate Environmental Management, Inc. to conduct both Phase I and Phase II Environmental Investigation for multiple sites in West Oakland, including the Property. This contract was funded by an U.S. Environmental Protection Agency's Brownfields grant. Testing found contamination on the site. The Phase II report was completed on December 11, 2011 and the City later submitted it to the California State Department of Toxic Substances Control (DTSC), the State agency that oversees the development of contaminated properties, for review and approval, before a Remedial Action Plan can be developed.

In June 2014, the City Council adopted the WOSP, which once again identified the Property as an "opportunity site".

## **ANALYSIS AND POLICY ALTERNATIVES**

**A. DDA Terms** - See **Attachment B** for the key DDA terms staff have negotiated to-date. Certain standard DDA terms would apply to this transaction, such as completion guaranty, and repurchase option. Other DDA terms to highlight are as follows:

### **1. Poplar Street Status**

Old parcel maps identify a portion of Poplar Street between 5<sup>th</sup> and 7<sup>th</sup> Street which is part of the proposed land transfer to TLC. Title company records and City records do not show any action by the City to create or dedicate this portion of Poplar Street as a dedicated public street. If possible, the City and Caltrans intend to take actions, as necessary, to help clear title for the Property. Such actions might involve: (a) City vacating this portion of Poplar Street/Right-of Way, if further research or title indicates the City dedicated or otherwise created a public street; (b) City and Caltrans abandoning

rights, if any, that might exist on this portion of Poplar Street; or (c) the City being a party to a subdivision map for the Property to be filed by the Developer, which would constitute abandonment of any public street or public Right-of-Way. Staff would need to return to Council for approval of any street vacation, vested tentative tract map or other title related action.

## 2. Environmental Remediation

The Property suffers from significant contamination because of its former uses as a freeway and truck driver training facility. The scope and costs of environmental mitigation has been identified in Phase II environmental site assessment reports to be in the range of \$550,000 to \$871,000, which will become the sole responsibility of the Developer. However, the City could have hazardous materials responsibilities and liabilities to regulators because the City enters into the Property's chain of title, even for a short period. The City is requiring environmental insurance and an environmental indemnity from the Developer.

## 3. Development Schedule

The development schedule for this transaction does not follow standard City provisions for conveying property. Prior to closing, the Developer will provide evidence of funds for land acquisition, a short-list of potential financing/equity partners, City approval of project entitlements including CEQA compliance, and a Completion Guaranty from a financially strong entity. However, other standard pre-conveyance requirements will not be available until after the Property is transferred (e.g. building permits, construction contract, proof of financing for development, and payment and performance bonds). The City generally requires that these conditions are met prior to closing to ensure that a developer will actually be able to move forward with the proposed project. The potential risks this creates for the City are that the project does not go forward, does not go forward in a timely way, or does not go forward in the form currently proposed. Like other City DDAs, this DDA will include a provision allowing the City to re-purchase the Property in the event of a Developer default (including failure to commence construction within 36 months after closing or failing to complete construction within 36 months thereafter); however, it is exceedingly rare for the City to attempt to exercise such a remedy, and courts may be reluctant to enforce this remedy in the event of a Developer challenge.

Staff is recommending an exception to the standard pre-closing conditions here because, without it, the project definitely does not go forward. While the Developer is motivated and prepared to move fast to submit their building permit, it is not possible for the City to issue a building permit before the end of this year. The Option expires on June 10th (or December 10th, but only if Caltrans agrees to accept an additional payment of \$163,566 by TLC) and if the City does not close on the Option this year, Caltrans will auction off the site, and the City will lose even more control over who gets to develop what and when.

#### 4. **Affordable Housing and Community Benefits**

The City is not providing any funds to subsidize this transaction or proposed development. TLC will pay FMV for the land and provide a community benefits package with a combined value of approximately **\$8 million**, (not including the value of the condo conversion credits) consisting of:

- a \$3.15 million payment to the City's Affordable Housing Trust Fund;
- 7.5% of the total 417 units to be affordable to moderate income households who earn 100 to 120 percent of the Area Median Income (AMI). (The affordable units will be subject to a Regulatory Agreement between the Developer and the City, with a term of 55 years, and will remain rental when the other units are sold as condominiums. The Developer will not seek City funding assistance for the affordable units);
- a \$1 million payment to the City of Oakland or an entity to-be named by the City of Oakland to provide job training for local residents;
- building and maintaining +/- 19,500 square feet of open space at the corner of 5th and Kirkham to be made available to the public. The cost of construction is expected to be \$15.75 per square foot or \$307,125; and
- restriction of condo conversion credits that the project would normally be entitled to under the current Condo Conversion Ordinance.

#### ***B. Analysis of Project Feasibility***

Staff's assessment of TLC's proforma and project feasibility indicate that the proposed project, including the community benefits package offer, is feasible at this time. Total project costs are approximately \$157 million, of which 35 percent or \$54 million will be TLC's equity contribution. The project has a 5.1 percent interim rate of return on cost (ROC) which increases to 6 percent upon stabilization when project is completed leased up. A six percent ROC is typically required in the current market for institutional investment funding for a project of this type and size. Average rents are assumed to start at \$3.51/square foot, which is a conservative assumption in this current market as indicated by a market study of current comparable rents. It is reasonable to assume that rents will continue to increase faster than inflation which will attract investors to this project.

#### ***C. Fiscal and Economic Benefits to the City***

Based on the proforma provided by the Developer, staff estimates this Project will generate approximately 500 construction jobs and 40 permanent jobs. Staff estimates the Project will generate ongoing annual tax revenue to the City, starting at \$314,000 in the first full year of operation from property tax, \$181,000 in the first full year of operation from business tax, and additional tax benefits from parking tax and sales tax. Over 66 years, this amounts to approximately \$40 million in property tax and \$23 million from business tax.

#### ***D. Lease vs. Sale of Property***

Technically because the City will briefly acquire the site, the policy that established a preference to lease versus sale would apply. However, staff does not recommend that the City acquire and

retain ownership of the Property and pursue development under a ground lease. To do so, the City would need to identify sufficient funding to acquire the Property at the FMV price.

Staff's negotiations with Caltrans and WODG under the 2013 ENA began before the City Council adopted the general policy to give preference to the leasing of City property, and has always assumed acquisition of Property via a direct purchase by the City that would rely entirely on funds from a developer that would in turn immediately acquire the Property from the City. The City would only own the property for a moment – the time it takes to record two transfers.

At this point, a ground lease deal between the City and the developer, by contrast, would require the City to identify at least \$3.3 million to cover the upfront payment to Caltrans for the land purchase, assuming the developer would be willing to make upfront ground lease payment of \$1 million. It is more likely that it would cost the City more than the FMV of the land to retain ownership of the improvements in 66 years.

Under a ground lease scenario, the City would be asking the developer to invest \$156 million in improvements and give the project back in 66 years when the lease term ends. In a typical land sale, the value of the project would grow for 66 years and the owner would be able to sell the property for this increased value. If the City wants to switch to a ground lease and retain this future value, it will need to provide similar value to the developer.

In short, leasing the land requires the City to first identify funds to purchase the Property, but selling the land relies solely on funds from the developer with no additional costs to the City.

If the City is able to identify the additional funds required to pursue a ground lease the advantages of ground leasing the Property would be:

- the City retains ownership of an asset and would remain the beneficiary of future property appreciation;
- as a landlord, the City increases its ability to oversee and enforce City policy and compliance with development and operational covenants;
- under a ground lease instead of a sale, the City would have considerably more leverage to enforce lease provisions than as a seller once it has transferred its interest in land to a buyer. Accordingly, the City could more easily enforce community benefits, City policies, and monitor and enforce the tenant's lease covenants and promises; and
- from a legal perspective, leasing provides greater justification for enforcing Project Labor Agreements, since the City will retain a proprietary interest in the Property.

However, the disadvantages of ground leasing the Property should also be noted:

- The City will need to identify funding sources to acquire the Property and pursue development under a ground lease.
- A condominium project would be difficult to develop on leased land and would significantly reduce the feasibility of the project because the financing options would be more limited and costly.
- A 66-year ground lease would require higher developer returns in order to make up for the loss of their original investment after the lease term. Developers have indicated that

longer leases, such as 99 years, would make the project more feasible. Currently the City charter limits lease terms to 66 years.

### **FISCAL IMPACT**

The proposed legislation does not commit the City to expend any funds. The City will acquire the Property from Caltrans relying on Developer's funds and immediately convey to TLC via a double escrow sale, without any expenditure of City funds. The Developer has agreed to pay for all escrow fees and closing costs related to this transaction, including any City and any other County taxes. The Project will produce jobs and ongoing revenue to the City in the form of property tax, sales tax, parking taxes, business license tax, as well as further contributing to the growth of the downtown economy. Staff estimates the project will produce 500 construction jobs and 40 permanent jobs. The City will receive an annual property tax of approximately \$314,000 and annual business tax of \$181,000.

### **PUBLIC OUTREACH / INTEREST**

In June of 2015, WODG hosted two community meetings in West Oakland which helped to inform the current proposal. WODG has also met with neighborhood groups to present the project upon their request.

In addition, the proposed project is consistent with the adopted WOSP, which identifies the Property as an opportunity site for the transit-oriented development. The WOSP was adopted in June 2014 and was the result of an extensive three-year community input process that started in July 2011.

### **COORDINATION**

The Economic & Workforce Development Department has coordinated on this agenda item with the City Administrator's Office, the Building and Planning Department, the Office of the City Attorney, and the Controller's Bureau.

### **SUSTAINABLE OPPORTUNITIES**

**Economic:** The proposed project will transform contaminated, vacant and underutilized land into a dense transit-oriented development that will provide much-needed housing units, some neighborhood-serving retail, and further stimulus to the local economy. Development of the site will produce 500 construction jobs and 40 permanent jobs. Staff estimates the project will generate to the City \$40 million from property tax and \$23 million from business license tax over 66 years, in addition to other tax benefits from parking tax and sales tax.

**Environmental:** As a City infill project with high density use, this Project reduces the pressure to construct on agricultural and other undeveloped land, and thereby contributes to the prevention of urban sprawl. Remediating a contaminated site and bringing it into productive use contributes greatly to the revitalization of West Oakland. The location of the Project in



proximity to major public transportation nodes will likely encourage residents and retail customers to use BART and AC Transit and reduce automobile reliance, which will decrease the use of fossil fuels and resulting greenhouse gas emissions

**Social Equity:** The developer is proposing a community benefits package valued at approximately \$8 million and includes a payment to the City's AHTF.

### **CEQA**

A detailed CEQA analysis was prepared for the Project which concluded that the Project qualifies for several CEQA statutory exemptions and the West Oakland Specific Plan Environmental Impact Report (EIR) adequately addressed the potential environmental effects of the Project.

Staff expects the proposed Project to be considered at the Planning Commission meeting on April 20, 2016. The anticipated environmental effects of the Project have been evaluated by the West Oakland Specific Plan Environmental Impact Report (approved and certified June 2014), pursuant to Sections 15162 and 15164 of the State CEQA Guidelines: Addendum to the approved and certified West Oakland Specific Plan EIR (ER12-0018).

The Project is also Categorically Exempt pursuant to several CEQA Guideline sections:

- Section 15332: In-Fill Development Projects;
- Section 15183.5: Transit Priority Projects;
- Section 15183.3: Streamlining for Infill Projects; and
- Section 15183: Projects consistent with a Community Plan, General Plan or Zoning.

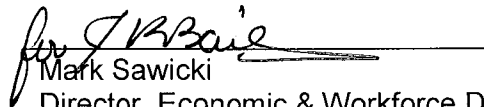
Each of the foregoing provides a separate and independent basis for CEQA compliance and when viewed collectively provides an overall basis for CEQA compliance.

**ACTION REQUESTED OF THE CITY COUNCIL**

Staff Recommends That The City Council Adopt An Ordinance (1) Authorizing The Purchase Of 500 Kirkham Street In West Oakland From Caltrans, (2) Authorizing A Disposition And Development Agreement With TL Partners V, L.P., Or A Related Entity, For The Sale And Development Of The Property For A Mixed Use Project, And (3) Making CEQA Findings For This Action

For questions regarding this report, please contact Hui-Chang Li, Urban Economic Analyst II, Project Implementation Division at (510) 238-6239.

Respectfully submitted,



Mark Sawicki  
Director, Economic & Workforce Development  
Department

Reviewed by: Patrick Lane  
Project Implementation Division, Acting  
Manager

Prepared by:  
Hui-Chang Li, Urban Economic Analyst II  
Project Implementation Division

**Attachments (3):**

- Attachment A: Property Map for 500 Kirkham
- Attachment B: Current DDA Term Sheet for 500 Kirkham
- Attachment C: Development Plans for 500 Kirkham

**Attachment A:**

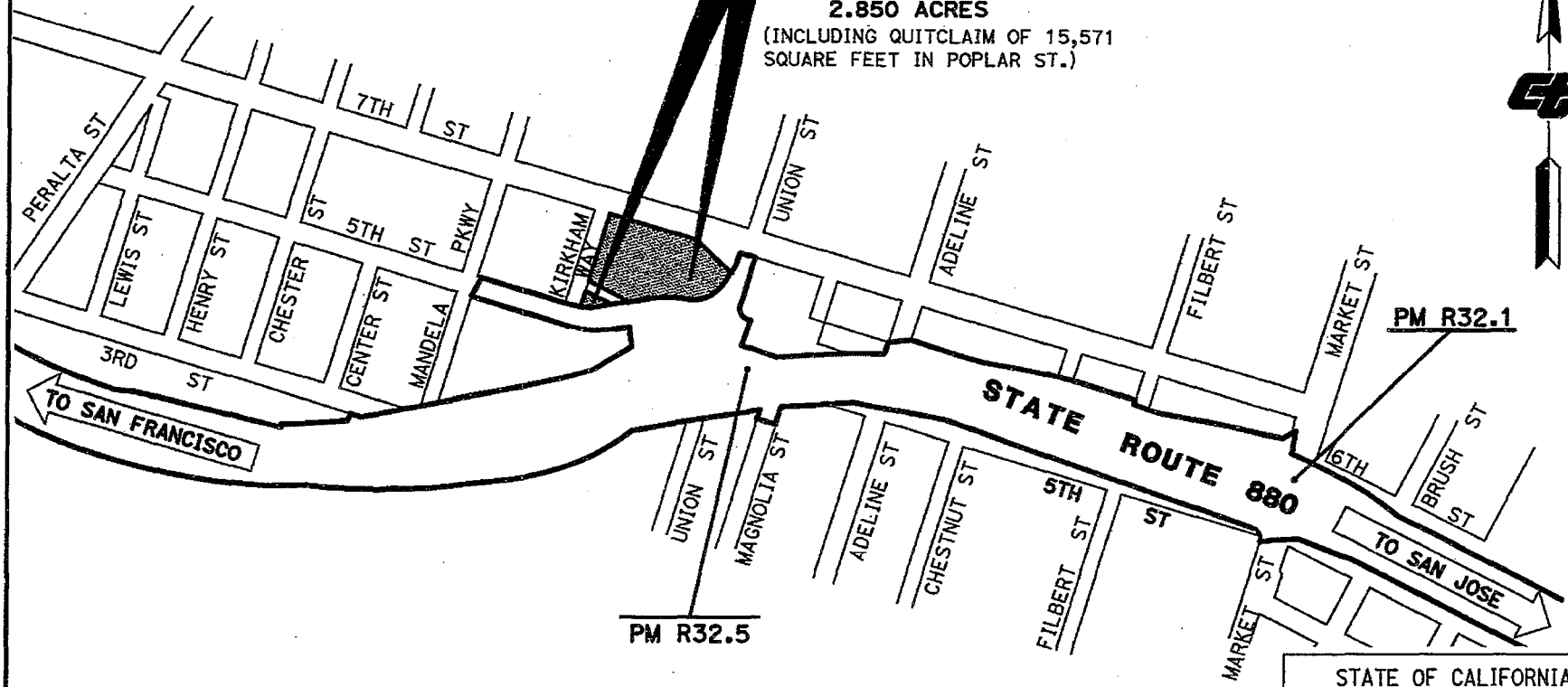
**Property Map**

**Caltran's Director's Deed # 009579-01-01**

**CITY OF OAKLAND  
COUNTY OF ALAMEDA**

**DD-009579-01-01**

2.850 ACRES  
(INCLUDING QUITCLAIM OF 15,571  
SQUARE FEET IN POPLAR ST.)



R-7.11 & R-7X.3

STATE OF CALIFORNIA BUSINESS, TRANSPORTATION AND HOUSING AGENCY DEPARTMENT OF TRANSPORTATION DISTRICT 4			
<b>DIRECTOR'S DEED</b>			
<b>DD-009579-01-01</b>			
DRAWN BY: AZ	DATE: 07/2013		
CHECK BY: ST	NO SCALE		
COUNTY	ROUTE	P.M.	DR.NO.
ALA	880	R32.5	1 OF 3

**NO SCALE**

# Attachment B

## DDA TERM SHEET

### 500 KIRKHAM

City Response – April 11, 2016

Note- This nonbinding term sheet shall serve as the basis for the negotiations of a detailed final Disposition and Development Agreement (“DDA”) between City staff and the developer. The terms hereof are not binding on the City unless and until the developer and the City Administrator, pursuant to City Council authorization within Council’s sole legislative discretion, have executed a mutually acceptable DDA for the proposed project.

<b>1</b>	<b>CURRENT OWNER</b>	State of California (Caltrans)
<b>2A</b>	<b>DEVELOPER</b>	TL Partners V, L.P., a limited partnership or a related entity controlled by TL Partners V, L.P.
<b>2B</b>	<b>COMPLETION GUARANTY</b>	<p>Developer to provide City a completion guaranty as a condition to closing under the DDA. Guarantor must be a financially strong entity with significant assets, pursuant to criteria set forth in the DDA and acceptable to the City in its sole and absolute discretion. The guarantor shall guarantee project completion, as determined by City.</p> <p>A “Form of Guaranty” will be included as an attachment to DDA and will need to be executed by the City-approved guarantor at close of escrow.</p>
<b>3</b>	<b>PROPERTY</b>	An approximately 2.85 acre vacant lot bounded by 7 <sup>th</sup> Street to the north, 5 <sup>th</sup> Street to the south, Kirkham Street to the west and Union Street to the east. Although commonly referenced as “500 Kirkham,” the Property actually consists of various contiguous parcels that were assembled for use as the former Cypress Street section of the original Interstate 880 freeway. The Property is dissected near its 5 <sup>th</sup> St boundary by overhead BART tracks. The Property is currently owned by Caltrans and is identified as DD-009579-01-01.
<b>4</b>	<b>PROJECT DESCRIPTION</b>	The Project will consist of residential and commercial development per the following minimum unit/square footage amounts: 325 residential units; 30,000 sq. ft. of commercial space including retail, the work portion of live-work, incubator space, etc.
<b>5</b>	<b>PURCHASE PRICE</b>	<p>Per Option Agreement between City and Caltrans, the purchase price shall be \$3,271,325 (\$26/sqft.). If the City entitles more than 325 units to be developed on the property, then the purchase price shall increase by a per unit value of \$10,681.</p> <p>By way of example, the purchase price to build a 417 unit development would be \$4,253,977 or (\$34/sqft).</p>

## Attachment B

<b>6</b>	<b>TERMS OF PAYMENT/CLOSING</b>	<p>Purchase price to be due and payable in cash submitted into escrow 3 business days before close of escrow. Escrow to close in accordance with the schedule of performance contained herein (Item 12)</p> <p>The property is currently owned by Caltrans and will be sold by Caltrans directly to the City for immediate transfer to Developer via a double escrow sale and simultaneous close.</p>
<b>7</b>	<b>TITLE INSURANCE</b>	Developer to secure title insurance policy, if desired, at its own cost and expense.
<b>8</b>	<b>CLOSING COSTS</b>	Developer to pay all escrow fees and closing costs including, without limitation, city and any other county taxes.
<b>9</b>	<b>LIMITATIONS ON PROPERTY RIGHTS</b>	<p>Developer accepts and acknowledges that Property is subject to deed restrictions and a recorded covenant to restrict use of Property, as contained in the DDA.</p> <p>Developer to comply with provisions of 1) the West Oakland Redevelopment Plan and nondiscrimination provisions of redevelopment law, and 2) the West Oakland Specific Plan.</p>
<b>10</b>	<b>CONDITION OF PROPERTY AT DELIVERY</b>	Developer agrees to accept the Property "as is" in its current condition without warranty express or implied by the City, including without limitation, with respect to the presence of hazardous materials known or unknown on or near the Property.
<b>11</b>	<b>GOOD FAITH DEPOSIT</b>	Upon executing the DDA, Developer will provide a \$50,000 good faith deposit. Except as otherwise provided herein below, such good faith deposit shall be credited against the purchase price at closing. If Developer fails to fulfill the conditions or meet the obligations set forth in the DDA as reasonably determined by the City, the City may exercise its option to terminate the DDA and retain the good faith deposit as liquidated damages, as well as pursue other remedies.

## Attachment B

12	SCHEDULE OF PERFORMANCE -	DDA Schedule of Performance	Deadline
	<p>Note: Option expires on 6/10/2016 but Caltrans may be agreeable to extending until 12/10/2016 for additional fee.</p> <p>Schedule assumes (1) Planning Commission approval of Planning Application, including CEQA determination, Conditional Use Permits, and other discretionary approvals, (2) no appeal of the Planning Commission's approval is filed with the City Council, and (3) DDA term sheet is approved by the City Council. Note: DDA approval, which is subject to the sole and absolute discretion of the City Council, will likely require at least one closed session meeting of City Council; at least one meeting at CED Committee (Community and Economic Development); and at least two meetings of City Council</p>	1. Developer submits 2 years of audited financial statements for each principal and joint venture partner for City review and approval.	3 months after DDA approval; submit updates prior to close of escrow
		2. Developer submits updated and refined Project Proforma (Development Budget & Operating Cash Flow) for City review and approval.	3 months after DDA approval; submit updates prior to close of escrow
		3. Developer submits Financial Plan, including evidence of funds/equity commitments for land acquisition for City review and approval.	4 months after DDA approval; submit updates prior to close of escrow
		4. Conveyance/Close of Escrow, Execution of Completion Guarantee	Before June 10 <sup>th</sup> or Dec 10 <sup>th</sup> 2016, depending on term of Caltrans option
		5. Developer submits Schematic Designs, Development Designs and Construction Designs	8, 13 and 18 months respectively, after DDA Approval
		6. Developer has a "Construction Pre-Application Meeting" and a draft "Compliance Matrix" submitted to Bureau of Building (i.e. start building permit application process)	18 months after DDA approval (Developer allowed 1 month extension)
		7. Developer submits "Construction Permit Application" including Construction Drawings to Bureau of Building	19 months after DDA approval (Developer allowed 1 month extension)
		8. Developer finalizes Project Financing: submit evidence of construction financing and copy of a construction contract; payment and performance bonds; and other sources (which may include equity commitments from the investors in Developer).	24 months after DDA approval (Developer allowed 1 month extension)
		9. Developer submits approved Construction Permits	Within 30 days after receiving final building permit approvals from the City of Oakland
		10. Commence construction (Site Improvements)	By the later of 60 days after submittal of approved Construction permits, or 60 days after final DTSC approvals, but not later than 36 months after close of escrow
		11. Complete construction	Within 36 months of construction commencement

## Attachment B

<p><b>13</b></p>	<p><b>REPURCHASE OPTION</b></p>	<p>In addition to all other City remedies for Developer default, and subject to the notice and cure rights described below, if (i) construction on the Project does not start by the latter of 36 months after close of escrow, or (ii) the Developer does not diligently continue construction thereafter, or (iii) the Developer does not complete construction within the time period required under the DDA (subject in each case to extension for force majeure), the City will have the option to repurchase the Property (the "Option"). If the Option is exercised prior to the commencement of construction, the repurchase price will be equal to the Purchase Price. If the repurchase option is exercised after the commencement of construction, the City may at its option a) require the Developer at its sole cost to demolish any improvements on the Property and repurchase the Property for the Purchase Price, or b) repurchase the Property with any improvements constructed thereon by the Developer for the Purchase Price plus the fair market value of the improvements. The appraisal process to determine fair market value of the improvements will be set forth in the DDA. Prior to close of escrow, if force majeure individually or cumulatively exceeds 12 months, either party shall have the right to terminate the agreement. Developer shall deposit an executed reversionary grant deed into escrow at close with instructions to deliver reversionary grant deed to City if City exercises the Option.</p> <p>City's Option is assignable or transferable in its sole and absolute discretion.</p> <p>There will be a 30-day notice and cure process for any such default, and the cure period will be extended if the default cannot reasonably be cured within such 30-day period and the Developer has commenced and is proceeding diligently with efforts to cure the default; subject, however, to an maximum cure date deadline to be negotiated by the parties.</p> <p>The City will execute and record such instruments as Developer may reasonably request to terminate the Option, at such time as the Option is no longer exercisable in accordance with its terms.</p>
<p><b>14</b></p>	<p><b>OFF-SITE IMPROVEMENTS</b></p>	<p>Developer to be responsible for the cost of any required off-site improvements in connection with the Project.</p>



## Attachment B

15	<b>ENVIRONMENTAL REMEDICATION</b>	<p>The City gives notice of environmental reports as follows:</p> <ol style="list-style-type: none"> <li>1) 500 Kirkham - Phase I Report, prepared by Northgate Environmental Management, Inc. for the City of Oakland, dated June 6, 2011. Available on City's website: <a href="http://www2.oaklandnet.com/oakca1/groups/pwa/documents/report/oak032703.pdf">http://www2.oaklandnet.com/oakca1/groups/pwa/documents/report/oak032703.pdf</a></li> <li>2) 500 Kirkham - Phase II report, prepared by Northgate Environmental Management, Inc. for the City of Oakland, dated Dec 16, 2011 Available on City's website: <a href="http://www2.oaklandnet.com/Government/o/PWA/o/FE/s/BAC/OAK026274">http://www2.oaklandnet.com/Government/o/PWA/o/FE/s/BAC/OAK026274</a></li> <li>3) 500 Kirkham - Site Mitigation Cost Estimate, prepared by Northgate Environmental Management, Inc. for the City of Oakland, dated October 17, 2011</li> <li>4) 500 Kirkham – Preliminary Site Investigation Report, prepared by Geocon Consultants, Inc. for Caltrans, dated July 2013</li> <li>5) DTSC Letter dated May 20, 2014 – response to 500 Kirkham site investigation reports</li> <li>6) Northgate Letter dated Sept 29, 2014 – response to DTSC May 20 Letter, prepared for the City of Oakland</li> </ol> <p>Developer should be working directly with DTSC now to negotiate and finalize a remediation plan for implementation.</p>
16A	<b>INDEMNIFICATION</b>	<p>Developer to indemnify, hold harmless and defend City and its employees, officers, directors, shareholders, and agents from any claims, actions or liabilities arising from the Project.</p>
16B	<b>ENVIRONMENTAL INDEMNIFICATION</b>	<p>Developer to indemnify and defend the City for any liability or actions arising from environmental conditions on the Property, including preexisting conditions.</p>
16C	<b>POLLUTION INSURANCE</b>	<p>Developer to secure pollution legal liability insurance policy at its sole expense covering pre-existing condition with a 10 year term that names the Developer as the named insured and the City as an additional insured.</p> <p>Minimum coverage: \$10,000,000 per claim and in aggregate</p> <p>Maximum deductible: \$100,000</p> <p>Perils covered including: Pollution Legal Liability, On-site and off-site clean-up costs; non-owned disposal site; in-bound and out-bound contingent transportation; legal defense expense; and business interruption for Developer including soft costs and construction delay.</p> <p>Proof of pollution insurance shall be provided before transfer of Property.</p>
17	<b>DEVELOPER MAINTENANCE</b>	<p>Upon close of escrow, Developer is responsible for all maintenance of the Property, excluding any land that is deeded or dedicated to the City of Oakland.</p>

## Attachment B

<b>18</b>	<b>NO COMMISSION</b>	City shall not pay or be liable for any commissions or brokerage fees. The parties shall hold each other harmless and defend against any claims for commissions or brokerage.
<b>19</b>	<b>SIGNAGE</b>	Developer may not install or place signage on any existing City street outside the Property or in the public corridor. Developer may install and place signage on the remaining Property in compliance with City codes, or other applicable codes or regulations.
<b>20</b>	<b>STANDARD OF PROPERTY</b>	Developer to maintain the Property and Project in first-class condition and will ensure that at no time does the Property violate the City Blight Ordinance. This obligation will be memorialized in the DDA, grant deed and/or recorded covenants.
<b>21</b>	<b>FINAL CONSTRUCTION PLANS</b>	<p>Developer and its design consultants must meet or exceed requirements of City's Green Building Ordinance as it pertains to this project.</p> <p>The Final Construction Plans shall include a plan and schedule to incorporate public art into the Project pursuant to Project's Condition of Approvals and Oakland Municipal Code Section 15.70. Pursuant to the foregoing, the total amount of the obligation shall be calculated as follows:</p> <ol style="list-style-type: none"> <li>1. 1% of "building development costs" allocated to the nonresidential portion of the Project; plus</li> <li>2. 0.5% of the "building development costs" allocated to the residential portion of the Project.</li> </ol> <p>"Building development costs" shall be equal to the aggregate construction costs declared on the building permit applications for the Project (building, plumbing, mechanical and electrical) and accepted by the Building Official.</p>
<b>22</b>	<b>PAYMENT &amp; PERFORMANCE BONDS</b>	Developer shall obtain payment and performance bonds, each in an amount not less than 100% of the cost of construction of the Project pursuant to the Construction Contract to be executed by Developer.
<b>23</b>	<b>RIGHT OF ENTRY</b>	<p>Developer to have the right to enter onto the Property prior to transfer to conduct any investigation, testing, appraisals and other studies, at Developer's cost, required as part of its due diligence. Developer shall be required to provide City with indemnity and evidence of insurance (in form and amounts to be further described in an exhibit to the DDA) and meet other standard City conditions to entry.</p> <p>City to have right of entry onto the Property from close of escrow until construction is completed, to inspect the Property and the Project during standard operating hours and upon required notice except for emergencies; this provision does not otherwise limit City's right to enter under its separate regulatory authority.</p>
<b>24</b>	<b>FINANCING</b>	DDA will include an objective standard (experience, size, etc.) of what an "Approved Lender" is, subject to administrative approval. The DDA shall include customary mortgagee protections in favor of any Approved Lender.

## Attachment B

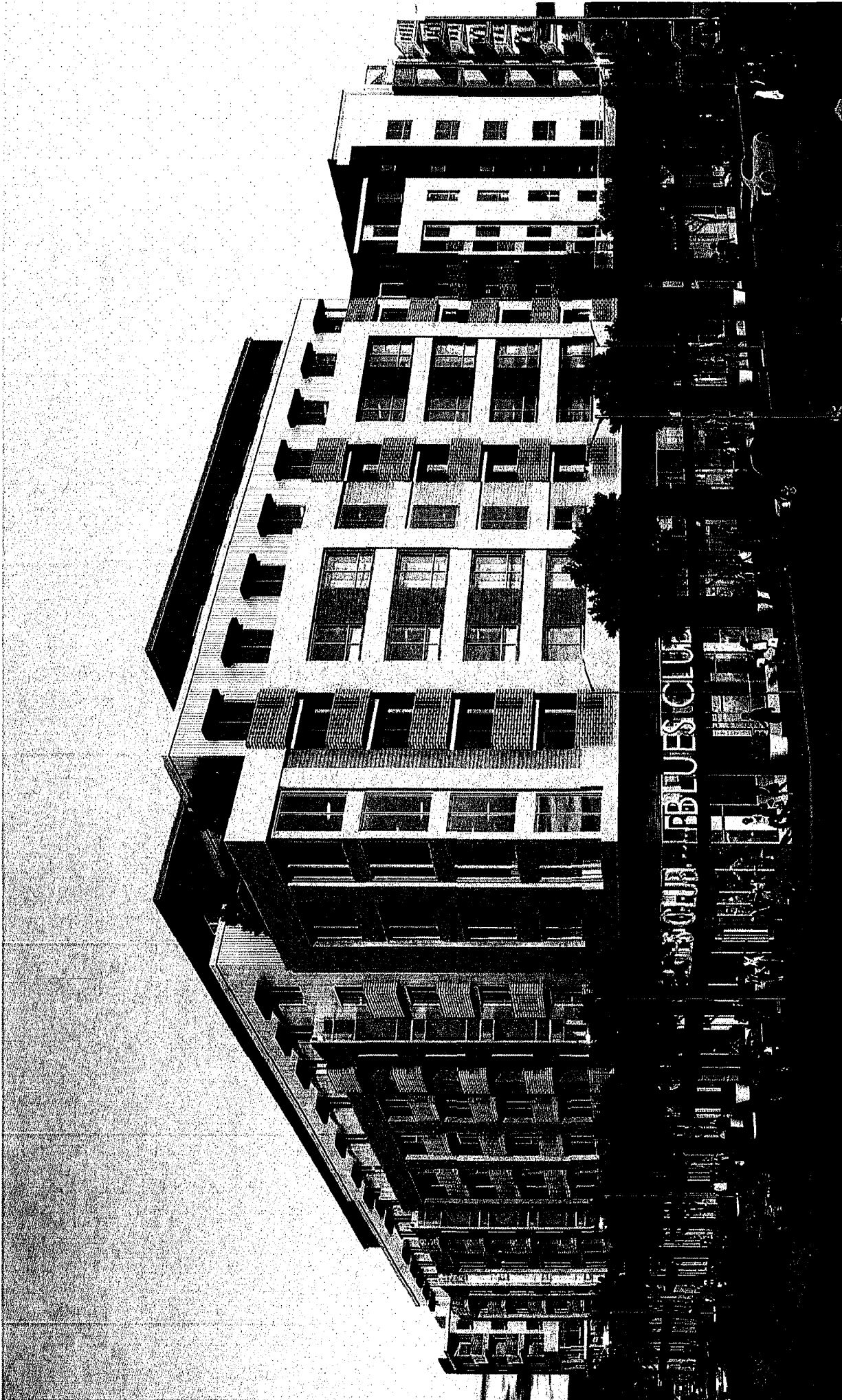
25	<b>PERMITTED TRANSFERS</b>	<p>Prior to Project completion, Developer shall not have the right to assign or transfer all or any portion of its rights and obligations under the DDA, other than an Affiliate Transfer, without the prior written consent of the City, in the City's sole and absolute discretion</p> <p>An Affiliate Transfer shall not require consent, but shall require prior notice and documentation related to the Affiliate Transfer to the City, and shall mean a transfer to an entity or entities controlled by TL Partners V, L.P..</p>
26	<b>STANDARD CONDITIONS</b>	<p>DDA to include standard City conditions, including without limitation: executed completion guaranty, provision of payment and performance bonds, City approval of financing plan, restrictions on assignment and transfer prior to completion of construction, default and cure provisions, termination provisions, and requirements for submission of copies of all required regulatory approvals and insurance policies..</p>
27	<b>CITY EMPLOYMENT PROGRAMS</b>	<p>Does not apply to this Project.</p>
28	<b>PROHIBITION OF GENERATION OF CONDOMINIUM CONVERSION RIGHTS</b>	<p>The DDA shall include an acknowledgement and agreement by Developer that the Project shall not generate, and the Developer shall not assert, condominium "conversion rights" under Chapter 16.36 of the Oakland Municipal Code. Nothing in the DDA shall limit the Developer's right to create apartment or condominium units on the Project. However, the Developer shall agree that, in the event that Project includes rental apartments, the Developer shall not at any time sell any "conversion rights" to another property within the City of Oakland.</p>
29 A	<b>AFFORDABLE HOUSING - City impact fee</b>	<p>If the City adopts an affordable housing impact fee either following or before the Effective Date of this Agreement (an "AH Requirement") that applies to the Project, any payment by Developer of an affordable housing impact fee pursuant to an AH Requirement would be credited against any amount to be paid under Item 29B.</p> <p>If City's adopted AH Requirement includes an option to provide affordable units onsite, the number of affordable units required by Item 29B shall be reduced by the number of units provided onsite at the same affordability level to meet the AH Requirement.</p>

## Attachment B

<p><b>29</b> <b>B</b></p>	<p><b>AFFORDABLE HOUSING</b></p>	<p>A. Developer to set aside 7.5% of residential units onsite as work force housing, affordable to moderate income households (3.75% at 100% of AMI and 3.75% at 120% of AMI), subject to a recorded Regulatory Agreement with an affordability term of 55 years and will remain rental when the other units are sold as condominiums. The Developer will not seek City funding assistance for the affordable units.</p> <p style="text-align: center;">AND</p> <p>B. Developer to pay \$3,150,000 to the City of Oakland Affordable Housing Trust Fund. This payment will be due at the time impact fees would be due.</p>
<p><b>30</b></p>	<p><b>ADDITIONAL COMMUNITY BENEFITS</b></p>	<ol style="list-style-type: none"> <li>1. Developer to provide a total payment of \$1,000,000 to provide job training for local residents to the City of Oakland or an entity to-be named by the City of Oakland. This payment will be due at the time of building permit application. This payment would be in-lieu of any prevailing wage obligations or Project Labor Agreements.</li> <li>2. Developer to build and maintain +/-19,500 square feet of open space at the corner of 5<sup>th</sup> and Kirkham to be made available to the public. Developer values the construction of this open space at approximately \$307,125.</li> </ol>

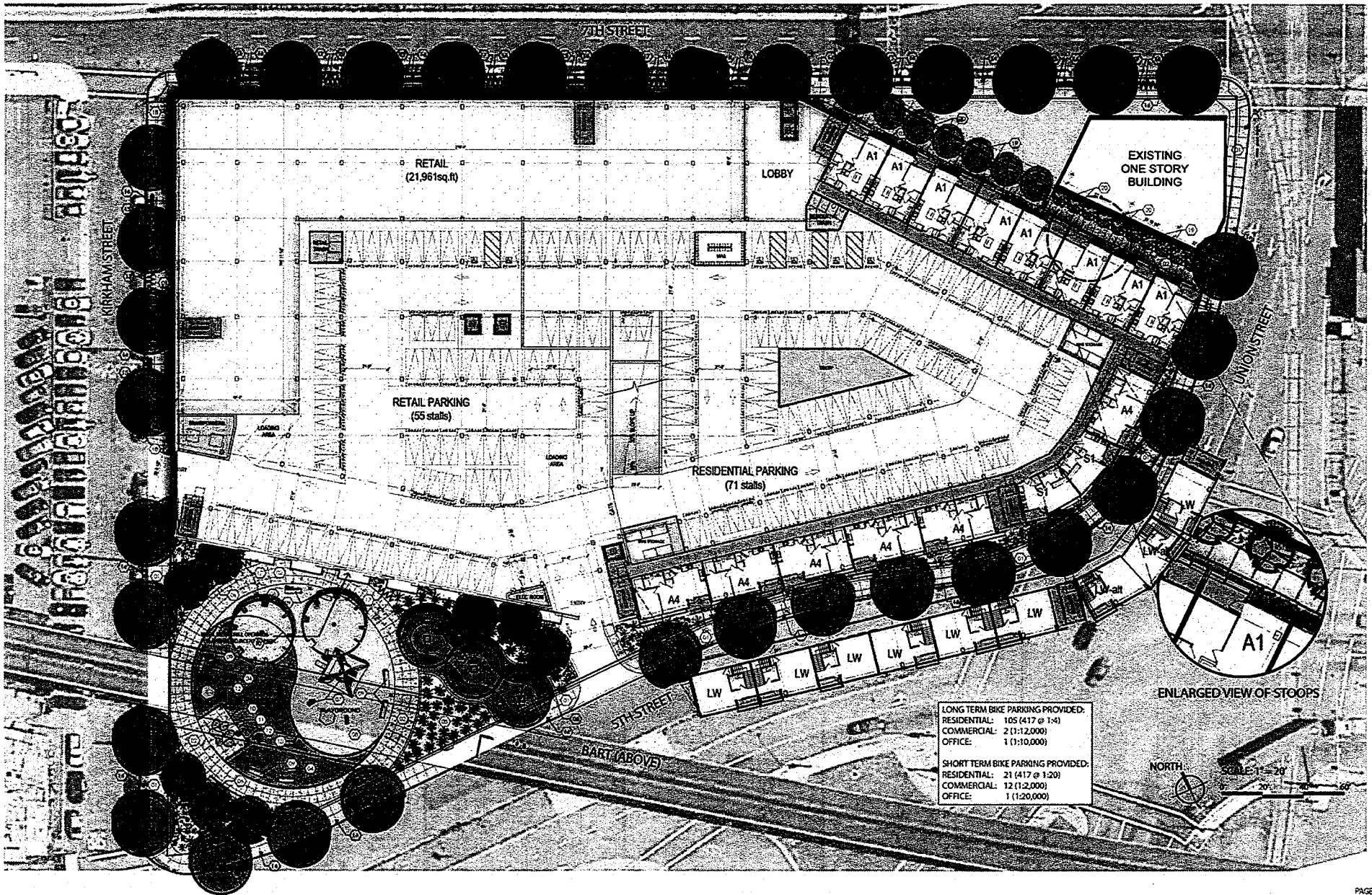
**Attachment C:**

**500 Kirkham – Development Plans**



JOHN BLUES CLUB

# 500 KIRKHAM



LONG TERM BIKE PARKING PROVIDED:	
RESIDENTIAL:	105 (417 @ 1:4)
COMMERCIAL:	2 (1:12,000)
OFFICE:	1 (1:10,000)
SHORT TERM BIKE PARKING PROVIDED:	
RESIDENTIAL:	21 (417 @ 1:20)
COMMERCIAL:	12 (1:2,000)
OFFICE:	1 (1:20,000)

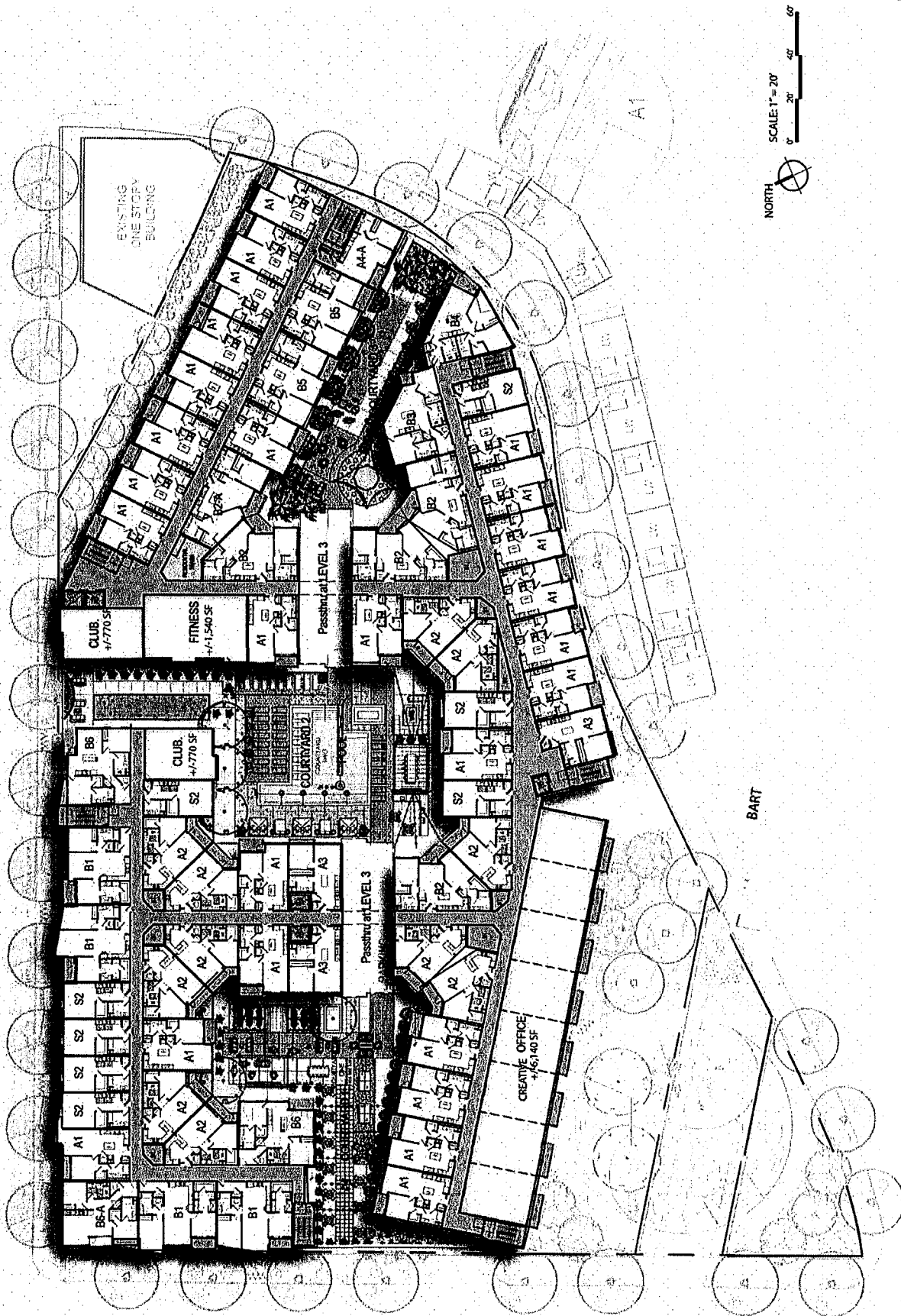
**500 KIRKHAM**  
 Oakland, CA  
 HPA# 15483

humphreys and partners landscape architecture, llc  
 5339 Alpha Rd., Suite 300, Dallas, TX 75240  
 p 214.263.5131 | f 972.701.9636 | www.hplandscapes.com

**GROUND LEVEL PLAN**  
 April 11, 2016

*Tom Lewis*  
 ARCHITECT

**HUMPHREYS & PARTNERS ARCHITECTS, L.P.**  
 5339 Alpha Rd., Suite 300, Dallas, TX 75240 | 972.701.9636 | www.humphreys.com



**PODIUM LEVEL PLAN**  
April 11, 2016



500 Kirkham Oakland CA

**UNIT SUMMARY**

UNIT	#	NET SF*	deck	GROSS SF	total NRSF	total GRSF	Ave NSF	Mix
<b>Studio</b>								
S1	4	462	64	526				
S2	35	544	-	544				
S2m loft	5	691	-	691				
<b>Subtotal Studio</b>	<b>44</b>						<b>553</b>	<b>10.6%</b>
<b>1-bedroom</b>								
A1	161	721	64	785				
A1m loft	15	870	64	934				
A1-A	24	764	-	764				
A1-Am loft	8	913	-	913				
A2	55	697	83	780				
A3	14	768	-	768				
A3m loft	1	915	-	915				
A4	12	724	64	788				
A4-A	5	698	64	762				
<b>Subtotal 1-bedroom</b>	<b>295</b>						<b>735</b>	<b>70.7%</b>
<b>2-bedroom</b>								
B1	16	1,035	66	1,101				
B1m loft	4	1,184	66	1,250				
B2	20	1,006	67	1,073				
B2-A	5	988	78	1,066				
B3	5	1,033	33	1,066				
B4	5	987	71	1,058				
B5	10	1,030	66	1,096				
B6	9	1,028	67	1,095				
B6-A	4	1,037	60	1,097				
<b>Subtotal 2-bedroom</b>	<b>78</b>						<b>1,028</b>	<b>18.7%</b>
<b>Total</b>	<b>417</b>			<b>22,246</b>	<b>321,450</b>	<b>343,696</b>	<b>771</b>	<b>100%</b>

\*NOTE: sf taken to outside of walls and CL of parti walls

\*\*NOTE: sfs are approx. and subject to change as more detail is known

**Gross SF:**

Level 1:	41,017
Level 2:	16,245
Level 3:	75,729
Level 4:	75,244
Level 5:	78,509
Level 6:	78,509
Level 7:	78,509
Level 7m:	4,884
<b>TOTAL:</b>	<b>448,646</b> gross sf

**Garage SF:**

Garage level 1	62,303
Garage level 2	62,303
<b>TOTAL:</b>	<b>124,606</b> gross sf

**Site Summary:**

Site Area:	120,260 SF	2.76 AC
Park/Bart:	9,637 SF	0.22 AC

Zoning: S-15W

**Parking Required:**

Resident:	du	Ratio	Total
Studios	44	0.5	22
1-bed	295	0.5	148
2-bed	78	0.5	39
<b>Subtotal Residential:</b>			<b>209</b>

0.50 ratio

**Retail:**

City req.:	sf	Ratio	Total
	21,961	0	0

**Office:**

City req.:	sf	Ratio	Total
	6,140	0	0
<b>Total Stalls Required:</b>			<b>209</b> Total

**Open Space Required:** per 17.97.130

	du	ratio	total
Group Usable open space	417	75	31,275 sf
Group Usable open space	417	15	6,255 sf

when private o.s. substituted

**Long Term Bike Parking Required:**

Resident:	Ratio	Total
Resident	417 1:4	105
Comm.:	21,961 1:12,000	2
Office:	6,140 1:10,000	1
<b>Subtotal Residential:</b>		<b>108</b>

**Long Term Bike Parking Provided:**

Ground Level:	<b>108</b>
---------------	------------

**Amenity SF:**

Lobby @ level 1	1,953
Club @ level 3	1,540
Fitness @ level 3	1,540
<b>TOTAL:</b>	<b>5,033</b> sf

**Retail:**

Retail:	21,961 sf
Creative Office:	6,140 sf
Skydecks:	2 @ 360 sf

**Max residential density** per 17.97.130

	du	ratio	total
Units allowed	534	225	120,260 sf
SF of lot area required / du			
Units provided	417		

**Parking Provided:**

Resident:	Standard	Compact	Total
	8'6"x18'	7'6"x15'	
Level 1	65	6	71
Level 2	113	25	138
<b>Total</b>	<b>178</b>	<b>31</b>	<b>209</b>

**Retail:**

Standard	Compact	Total
36	19	55

**Office:**

<b>Total Stalls Provided:</b>	<b>264</b> Total
-------------------------------	------------------

**Open Space Provided:**

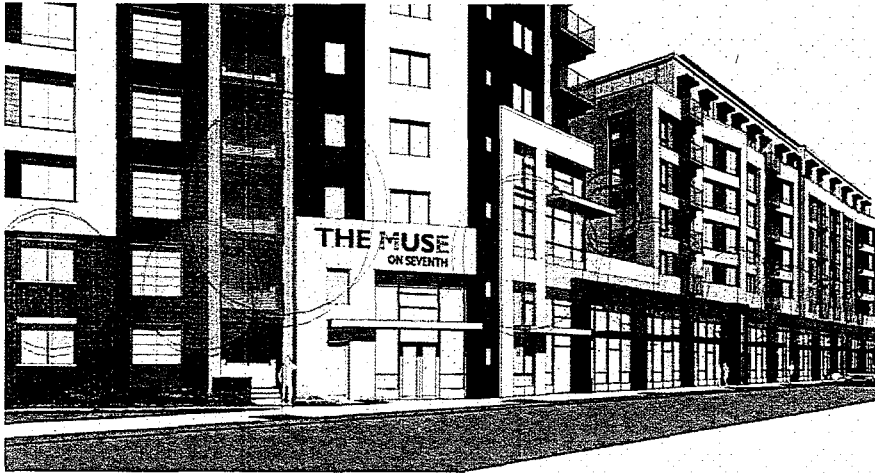
Private open space	22,246 sf
Equivalent Group Usable open space	44,492 sf
Skydecks	720 sf
Courtyard 1	8,174 sf
Courtyard 2	12,819 sf
Courtyard 3	6,149 sf
<b>Total Provided:</b>	<b>72,354</b> sf

**Short Term Bike Parking Required:**

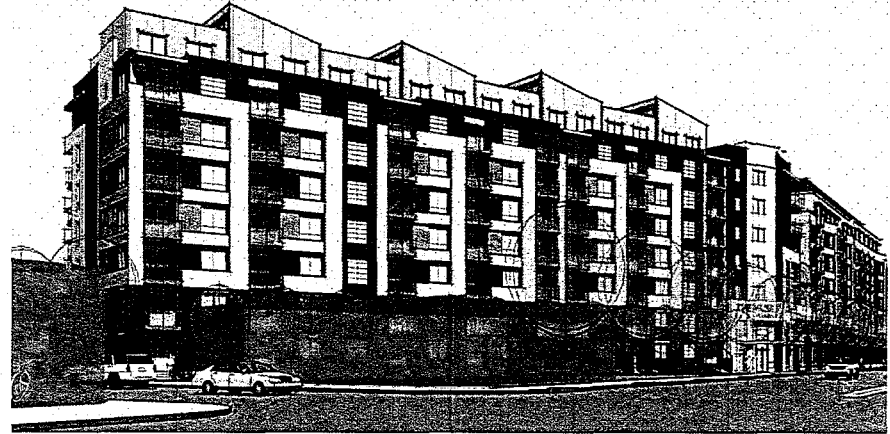
Resident:	Ratio	Total
Resident	417 1:20	21
Comm.:	21,961 1:2,000	11
Office:	6,140 1:20,000	1
<b>Subtotal Residential:</b>		<b>33</b>

**Short Term Bike Parking Provided:**

Ground Level:	<b>33</b>
---------------	-----------



1. VIEW TO LEASING OFFICE (NORTH-EAST) ELEVATION



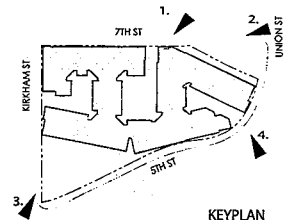
2. VIEW TO 7TH STREET ELEVATION LOOKING WEST



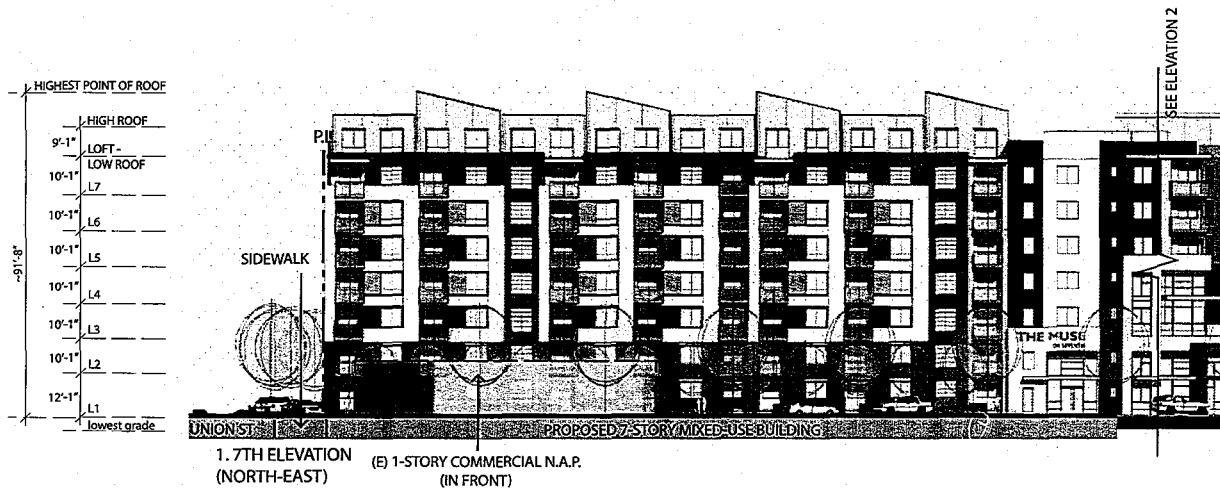
3. VIEW TO BART (SOUTH-WEST) ELEVATION



4. VIEW TO COURTYARD OVERLOOKING UNION STREET



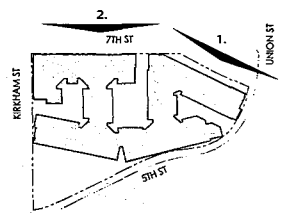
KEYPLAN



1. 7TH ELEVATION (NORTH-EAST) (E) 1-STORY COMMERCIAL N.A.P. (IN FRONT)



2. 7TH ELEVATION CONT. (NORTH)



SCALE: 1/16" = 1'-0"  
 0' 16' 32' 48'

KEYPLAN  
 PAGE 13

500 KIRKHAM  
 Oakland, CA  
 HPA# 15483

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CONCEPT ELEVATIONS  
 April 11, 2016

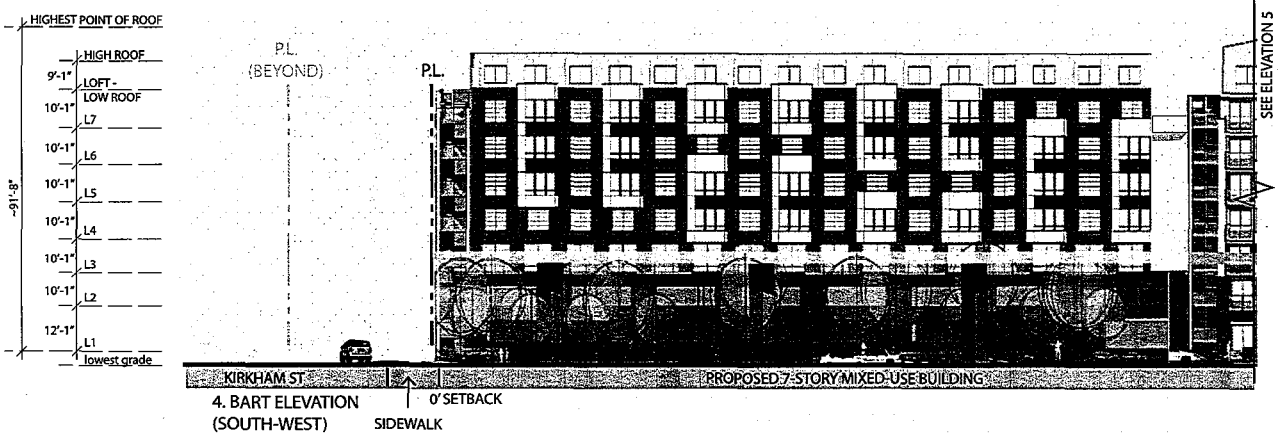
Tim Lewis  
 ARCHITECT

HUMPHREYS & PARTNERS ARCHITECTS, L.P.  
 5339 Alpha Rd., Suite 300, Dallas, TX 75240 | 972.701.9636 | www.humphreys.com

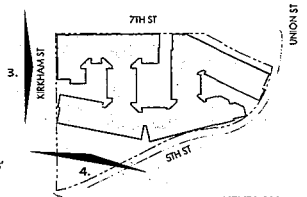
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3. KIRKHAM ELEVATION (WEST)



4. BART ELEVATION (SOUTH-WEST)

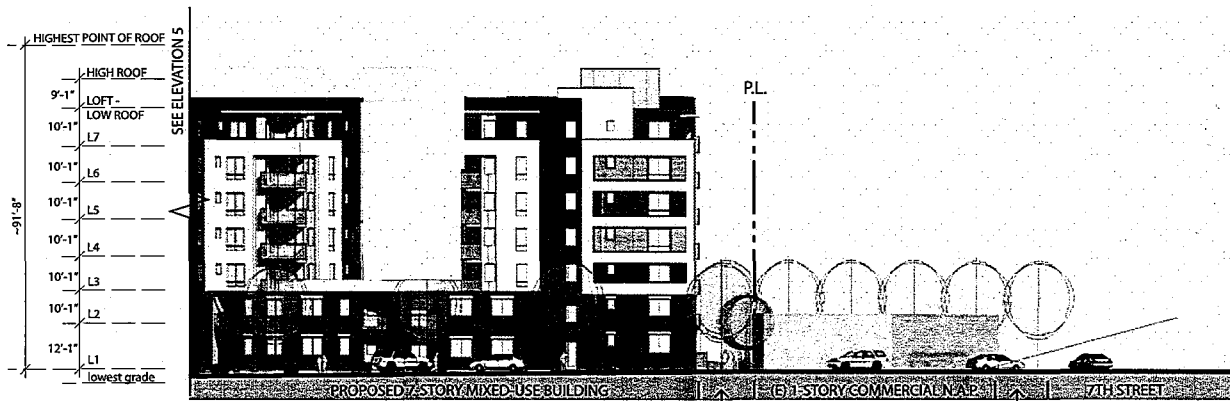


SCALE: 1/16" = 1'-0"  
0' 16' 32' 48'

KEYPLAN



5. 5TH ELEVATION  
(SOUTH)

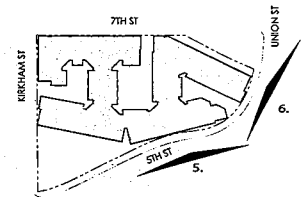


6. UNION ELEVATION  
(SOUTH-EAST)

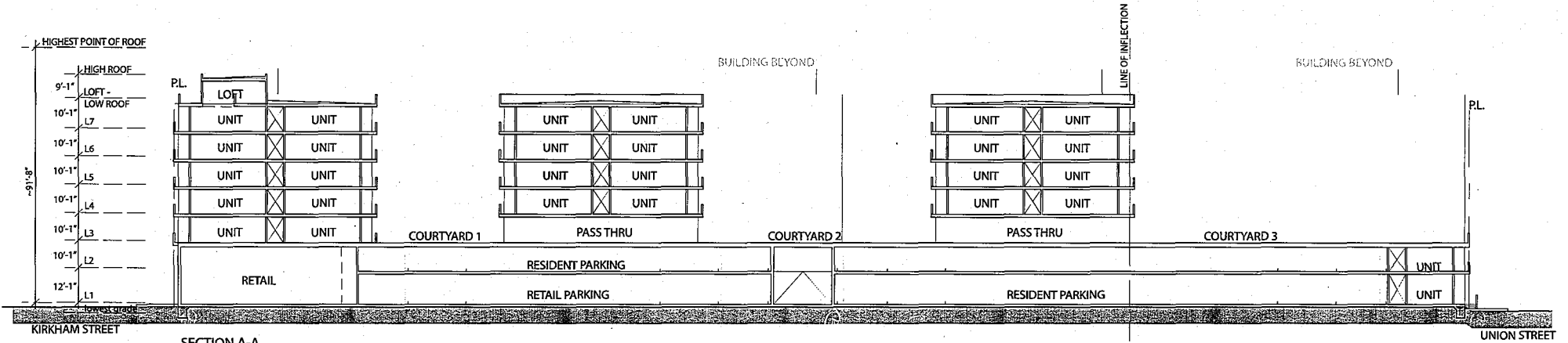
15' SETBACK

SIDEWALK

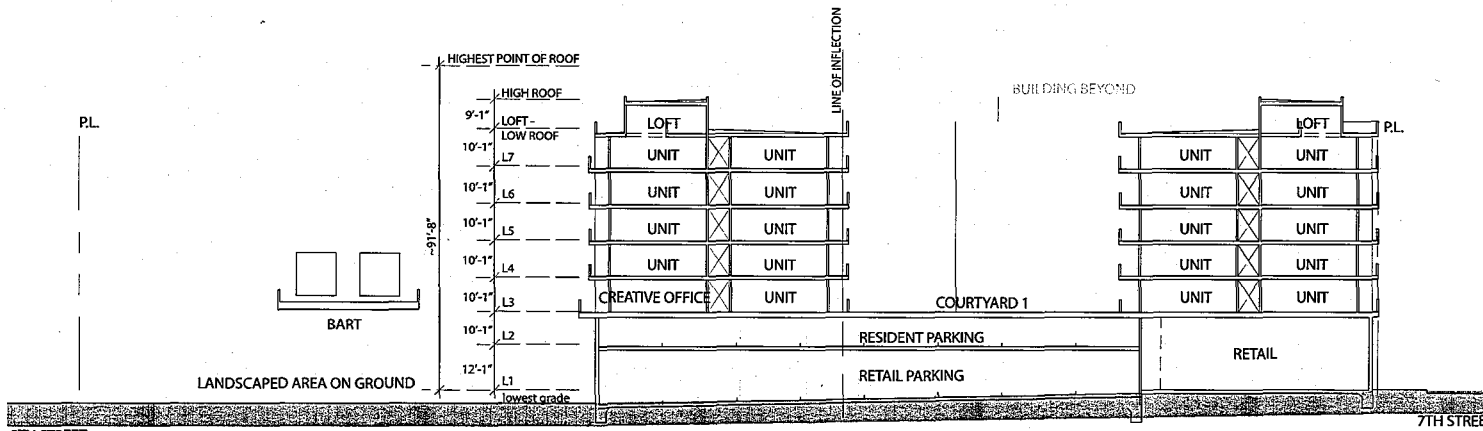
SCALE: 1/16" = 1'-0"  
0' 16' 32' 48'



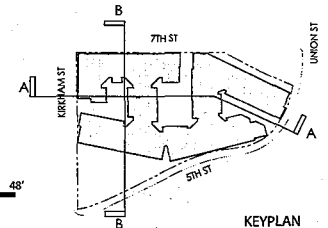
KEYPLAN



SECTION A-A  
(LOOKING NORTH)



SECTION B-B  
(LOOKING WEST)



KEYPLAN

SCALE: 1" = 16'  
0' 16' 32' 48'

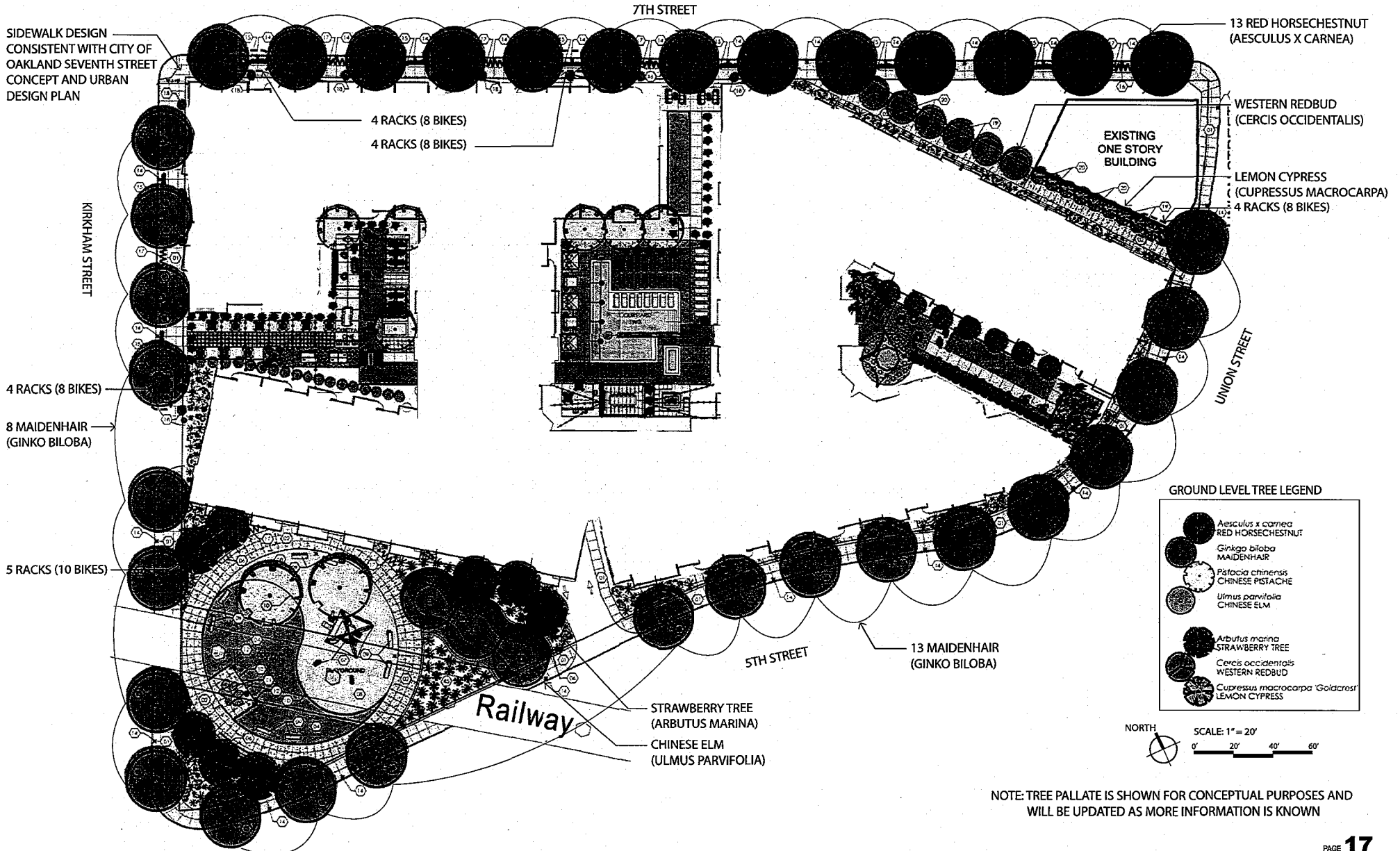
500 KIRKHAM  
Oakland, CA  
HPAR 15483

h Humphreys and Partners Landscape Architecture, Inc.  
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BUILDING SECTIONS  
April 11, 2016

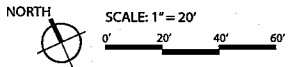
Tim Lewis  
ARCHITECTS

HUMPHREYS & PARTNERS ARCHITECTS, L.P.  
5338 Alpha Rd., Suite 300, Dallas, TX 75240 | 972.701.9636 | www.humphreys.com



GROUND LEVEL TREE LEGEND

- Aesculus x carnea  
RED HORSECHESTNUT
- Ginkgo biloba  
MAIDENHAIR
- Pistacia chinensis  
CHINESE PISTACHE
- Ulmus parvifolia  
CHINESE ELM
- Arbutus marina  
STRAWBERRY TREE
- Cercis occidentalis  
WESTERN REDBUD
- Cupressus macrocarpa 'Goldcrest'  
LEMON CYPRESS



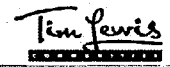
NOTE: TREE PALLETTE IS SHOWN FOR CONCEPTUAL PURPOSES AND WILL BE UPDATED AS MORE INFORMATION IS KNOWN

500 KIRKHAM  
Oakland, CA  
HPAR 15463

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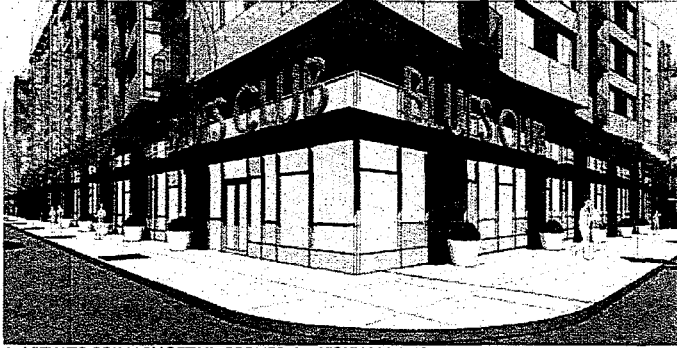
CONCEPT LANDSCAPE PLAN

April 11, 2016



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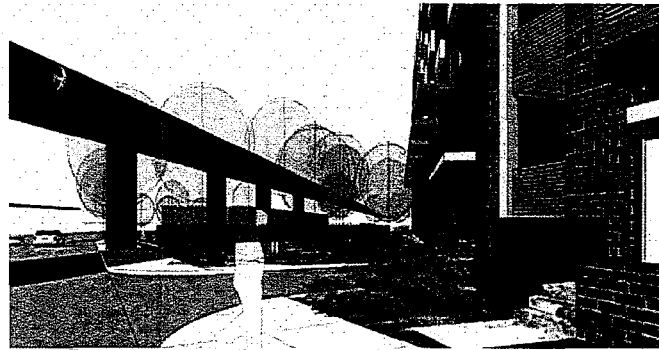
1. VIEW TO PRIMARY RETAIL CORNER ON KIRKHAM AND 7TH.



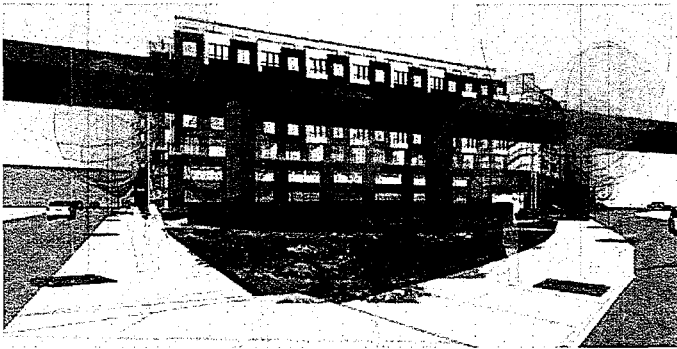
2. PEDESTRIAN MEWS IN BETWEEN BUILDINGS (LOOKING FROM 7TH STREET EAST)



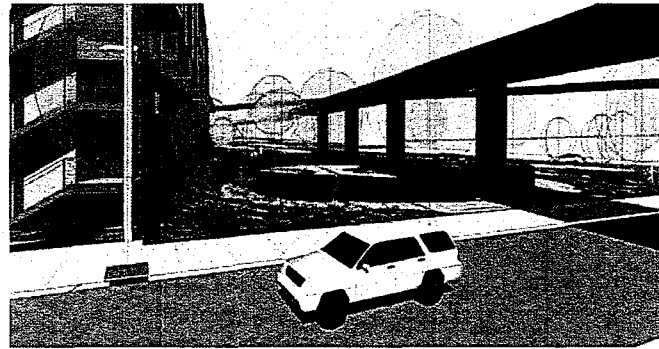
3. VIEW TOWARDS BART ON 5TH ST.



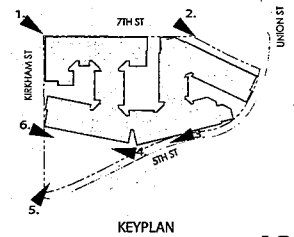
4. VIEW TO DOG PARK PARALLEL TO BART FROM 5TH ST TOWARDS KIRKHAM.



5. VIEW OF DOG PARK, BART, AND BUILDING FROM CORNER OF 5TH AND KIRKHAM.

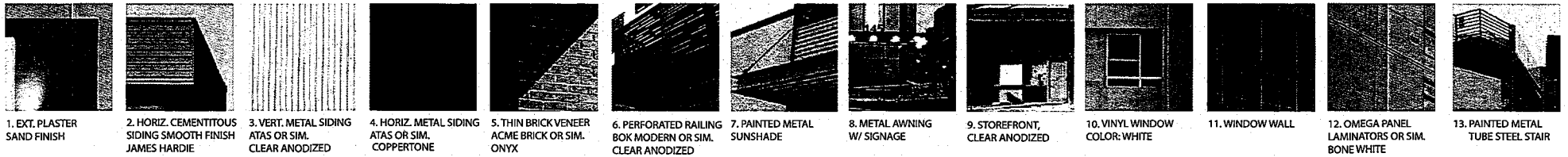


6. AERIAL PERSPECTIVE OF DOG PARK FROM KIRKHAM TOWARDS 5TH ST.

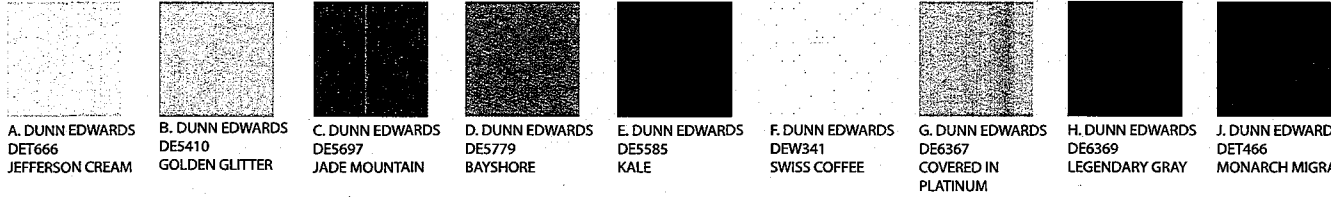


KEYPLAN



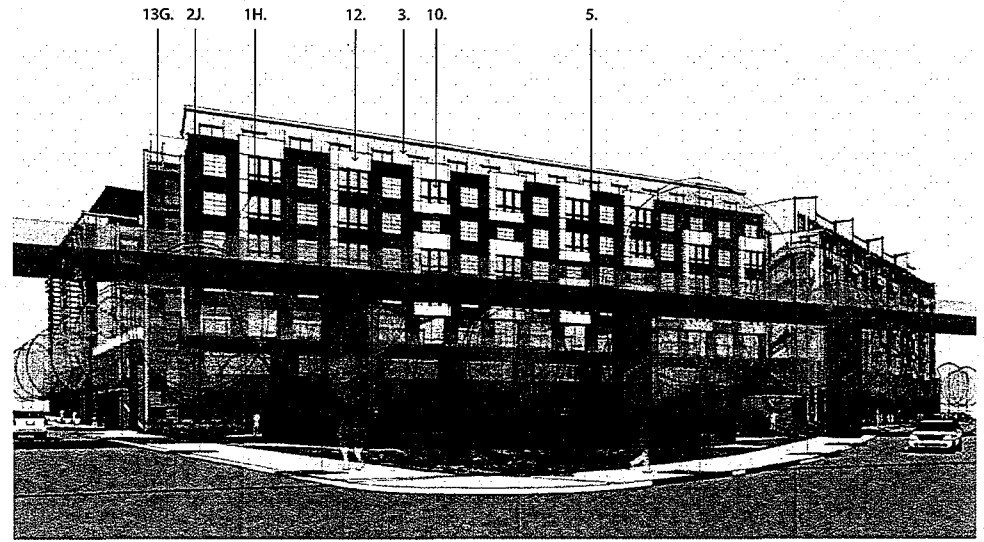
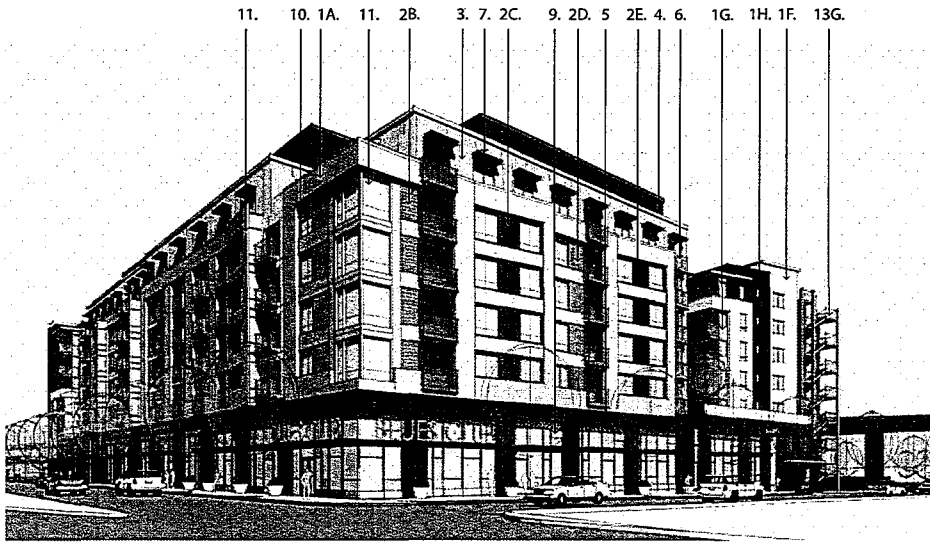


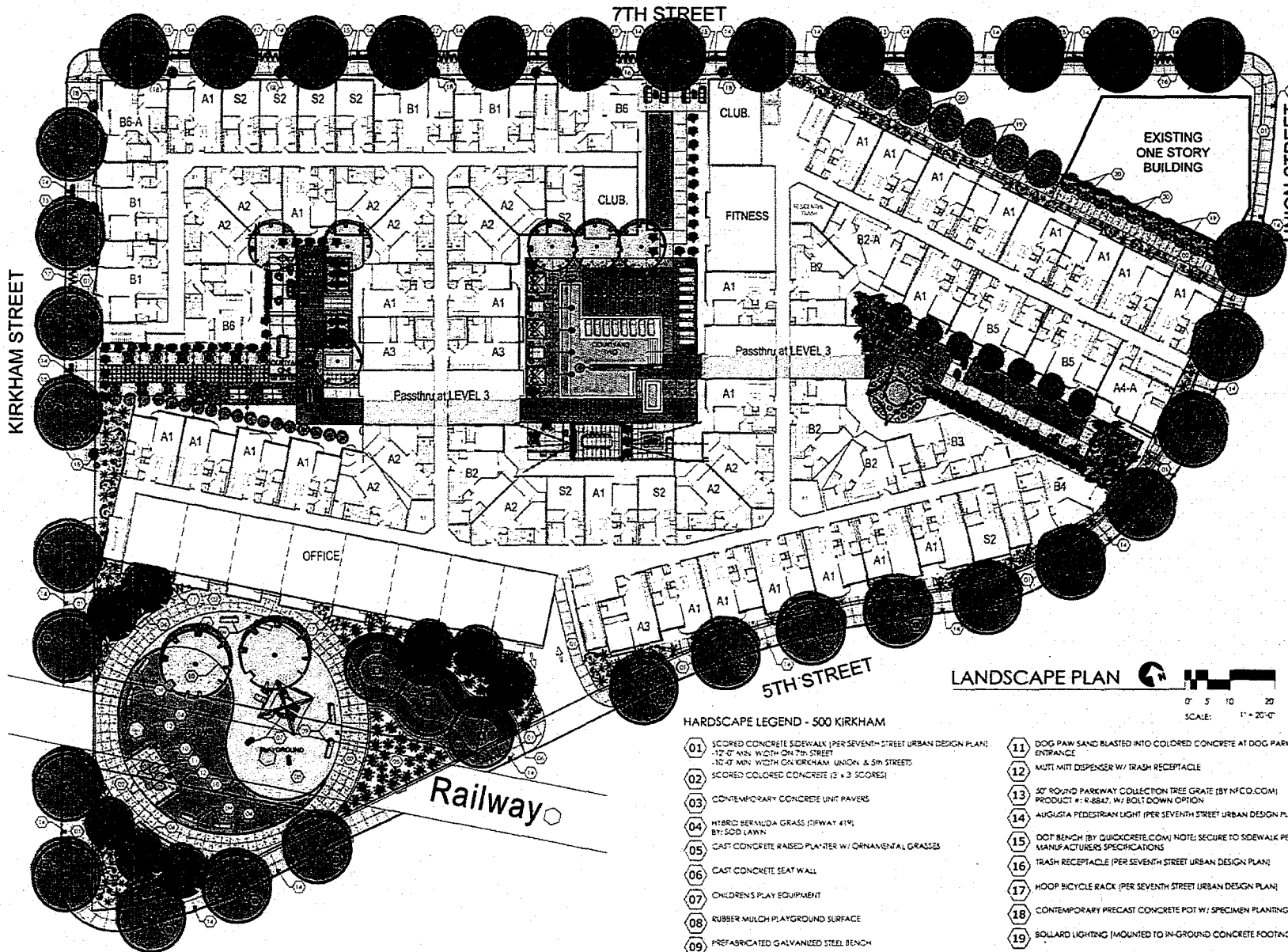
1. EXT. PLASTER SAND FINISH  
 2. HORIZ. CEMENTITIOUS SIDING SMOOTH FINISH JAMES HARDIE  
 3. VERT. METAL SIDING ATAS OR SIM. CLEAR ANODIZED  
 4. HORIZ. METAL SIDING ATAS OR SIM. COPPERTONE  
 5. THIN BRICK VENEER ACME BRICK OR SIM. ONYX  
 6. PERFORATED RAILING BOK MODERN OR SIM. CLEAR ANODIZED  
 7. PAINTED METAL SUNSHADE  
 8. METAL AWNING W/ SIGNAGE  
 9. STOREFRONT, CLEAR ANODIZED  
 10. VINYL WINDOW COLOR: WHITE  
 11. WINDOW WALL  
 12. OMEGA PANEL LAMINATORS OR SIM. BONE WHITE  
 13. PAINTED METAL TUBE STEEL STAIR



A. DUNN EDWARDS DET666 JEFFERSON CREAM  
 B. DUNN EDWARDS DES410 GOLDEN GLITTER  
 C. DUNN EDWARDS DE5697 JADE MOUNTAIN  
 D. DUNN EDWARDS DE5779 BAYSHORE  
 E. DUNN EDWARDS DE5585 KALE  
 F. DUNN EDWARDS DEW341 SWISS COFFEE  
 G. DUNN EDWARDS DE6367 COVERED IN PLATINUM  
 H. DUNN EDWARDS DE6369 LEGENDARY GRAY  
 J. DUNN EDWARDS DET466 MONARCH MIGRATION

NUMBERS DENOTE MATERIAL  
 LETTERS DENOTE COLOR  
 ALL MATERIALS AS SHOWN OR APPROVED EQUAL





**PLANT PALETTE - 500 KIRKHAM**

CANOPY TREES	
NAME	SIZE/QUANTITY
Aesculus x cornia RED HORSECHESTNUT	4' Cal/Single Trunk Qty: 13
Ginkgo biloba MAIDENHAIR	4' Cal/Single Trunk Qty: 21
Parthenocle chinensis CHINESE FOSTAICHE	2-3' Cal/Single Trunk Qty: 02
Ulmus parviflora CHINESE ELM	2-3' Cal/Single Trunk Qty: 03

ORNAMENTAL UNDERSTORY TREES	
NAME	SIZE/QUANTITY
Arbutus menziesii STRAWBERRY TREE	Multi Trunk Qty: 06
Cercis occidentalis WESTERN REDBUD	2' Cal/Single Trunk Qty: 04
Cupressus macrocarpa LEMON CYPRESS	2' Cal/Single Trunk Qty: 10

SHRUBS	
NAME	SIZE
Freemontodendron californicum	5 Gal
CAULIFLORA FLANNIE BUSH	5 Gal
Nandina domestica HEAVENLY BANBOG	5 Gal
Sonchella	5 Gal
SALVIA (SPECIES)	5 Gal
Teucrium chamaedrys CREANWORTS	5 Gal
Westringia fraxinea COAST ROSEMARY	5 Gal
Ononis	5 Gal
CAULIFLORA LILAC	5 Gal
Anemone hepatica BLUE HEBUSCUS	5 Gal
Correa Dusty Bell	5 Gal
AUSTRALIAN FUCHSIA	5 Gal
Heteromeles arbutifolia TOYON	5 Gal
Loasella laetevirens MEXICAN BUSH LOBELIA	5 Gal
Lupinus chamosensis SILVER DUNE LUPINE	5 Gal
Rhus copallina INDIAN HAWTHORN	5 Gal
Ribes cereum GOLDEN CURRANT	5 Gal
Cupressus governiana ssp. governiana GOWEN CYPRESS	5 Gal

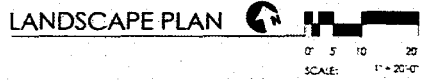
GROUND COVERS	
NAME	SIZE
Artemisia Plover Catch	1 Gal
SILVER SAGE	1 Gal
Aster crispus	1 Gal
CALIFORNIA ASTER	1 Gal
Ceanothus glaucus	1 Gal
POINT YEW'S CEANOTHUS	1 Gal
Dryas octopetala	1 Gal
HARDY ICEPLANT	1 Gal
Liatris scariosa PARROT'S BEAK	1 Gal
Thymus serpyllifolius PRAIRIE THYME	1 Gal
Thymus serpyllifolius CREEPING ROSEMARY	1 Gal
Thymus serpyllifolius WOLLY THYME	1 Gal
Thymus x Archer's Gold Lemon	1 Gal
Archer's Gold Lemon Thyme	1 Gal
Dymalis margaritacea SILVER CAPELET	1 Gal

ACCENTS	
NAME	SIZE
Agave attenuata	5 Gal
FOXTAIL AGAVE	1 Gal
Aloe 'Johnnys Hybrid'	5 Gal
JOHNSONS HYBRID ALOE	5 Gal
Coronilla	1 Gal
Coronilla Electric Pink	1 Gal
PINK CORONILLA	1 Gal
Dianella isomandra variegata VARIEGATED FLAX LILY	1 Gal
Festuca gracilis	1 Gal
COMMON BLUE FESCUE	1 Gal
Euphorbia myrsinites	5 Gal
MYRTLE SPURGE	5 Gal
Senecio lindenianus BUTTERFLY GUARA	5 Gal
Libertia pedunculata	5 Gal
ORANGE LIBERTIA	5 Gal
Muhlenbergia frutescens LINDBERGERS MUEHLER	5 Gal
Panicum Tulew Agave	5 Gal
NEW ZEALAND FLAX	5 Gal
Echinum cordatum	5 Gal
Primo of Modesto	5 Gal
Sphaeralcea	5 Gal
MEXICAN FEATHER GRASS	5 Gal
Lymnopus arenarius 'Blue Dune'	5 Gal
BLUE LYME GRASS	5 Gal
Panicum semipervirens BLUE OAT GRASS	5 Gal

**HARDSCAPE LEGEND - 500 KIRKHAM**

- 01 SCORED CONCRETE SIDEWALK (PER SEVENTH STREET URBAN DESIGN PLAN); 12" MIN. WIDTH ON 7TH STREET; 10" MIN. WIDTH ON KIRKHAM, UNION, & 5TH STREETS
- 02 SCORED COLORED CONCRETE (3 x 3 SQUARES)
- 03 CONTEMPORARY CONCRETE UNIT PAVERS
- 04 HYBRID BERMUDA GRASS (SPWAT #1); BY: SOB LAWN
- 05 CAST CONCRETE RAISED PLANTER W/ ORNAMENTAL GRASSES
- 06 CAST CONCRETE SEAT WALL
- 07 CHILDRENS PLAY EQUIPMENT
- 08 RUBBER MULCH PLAYGROUND SURFACE
- 09 PREFABRICATED GALVANIZED STEEL BENCH
- 10 GALVANIZED VERTICAL POLE FENCING (4" DIA. x 42" HEIGHT); REFER TO ELEVATION A

- 11 DOG PARK SAND BLASTED INTO COLORED CONCRETE AT DOG PARK ENTRANCE
- 12 MULTI MITT DISPENSER W/ TRASH RECEPTACLE
- 13 50' ROUND PARKWAY COLLECTION TREE GRATE (BY N.F.C.O.COM); PRODUCT #: R-8847, W/ BOLT DOWN OPTION
- 14 AUGUSTA PEDESTRIAN LIGHT (PER SEVENTH STREET URBAN DESIGN PLAN)
- 15 DOG BENCH (BY QUICKCRETE.COM); NOTE: SECURE TO SIDEWALK PER MANUFACTURERS SPECIFICATIONS
- 16 TRASH RECEPTACLE (PER SEVENTH STREET URBAN DESIGN PLAN)
- 17 HOOP BICYCLE RACK (PER SEVENTH STREET URBAN DESIGN PLAN)
- 18 CONTEMPORARY PRECAST CONCRETE POT W/ SPECIMEN PLANTING
- 19 BOLLARD LIGHTING (MOUNTED TO IN-GROUND CONCRETE FOOTINGS)
- 20 SPLITTING ON TREES ALONG PASEO



**500 KIRKHAM**  
Oakland, CA  
HP#A-15463

**humphreys and partners** landscape architecture, llc  
5330 Alpha Rd., Suite 300, Dallas, TX 75240  
P 214.269.9100 | F 972.701.9636 | www.hpastudio.com

**OVERALL LANDSCAPE PLAN**  
April 7, 2015

**TIM LEWIS**  
COMMUNITIES

**HUMPHREYS & PARTNERS ARCHITECTS, L.P.**  
5330 Alpha Rd., Suite 300, Dallas, TX 75240 | 972.701.9636 | www.humphreys.com

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2016 APR 14 PM 5:37

Approved as to Form and Legality

**DRAFT**

Deputy City Attorney

## OAKLAND CITY COUNCIL

ORDINANCE NO. \_\_\_\_\_ C.M.S.

**ORDINANCE (1) AUTHORIZING THE PURCHASE OF 500 KIRKHAM STREET IN WEST OAKLAND (THE "PROPERTY") FROM CALTRANS, (2) AUTHORIZING A DISPOSITION AND DEVELOPMENT AGREEMENT WITH TL PARTNERS V, L.P., OR A RELATED ENTITY, FOR THE SALE AND DEVELOPMENT OF THE PROPERTY FOR A MIXED-USE PROJECT, AND (3) MAKING CEQA FINDINGS FOR THIS ACTION**

**WHEREAS**, the California Department of Transportation (Caltrans) owns approximately 2.85 acres of excess land that was the site of the former Cypress Freeway on the block bounded by 5th Street, 7th Street, Kirkham Street and Union Street, commonly known as 500 Kirkham and identified by Caltrans as Director's Deed number 009579-01-01 (the "Property"); and

**WHEREAS**, State procedures for sale of excess property (per California Transportation Commission Resolution G-98-28) authorizes Caltrans to sell excess land to public agencies at fair market value without calling for competitive auction bids upon a determination that the intended uses are for a public purpose, such as a transit oriented development (TOD); and

**WHEREAS**, Caltrans offered the Property for lease or sale to a public agency for a public purpose; the City responded to the offer with a request to purchase the Property for development as a transit-oriented mixed-use project; and the City negotiated a sales price with Caltrans for the Property in the amount of \$3,271,325, if 325 residential units are entitled, plus an additional \$10,681 per unit entitled above 325, the Property's fair market value; and

**WHEREAS**, Charter section 219(6) and Section 2.41.020 of the Oakland Municipal Code authorize the City to acquire real property by ordinance; and

**WHEREAS**, the City Council authorized an Exclusive Negotiating Agreement (ENA) in April 2013 between the City and West Oakland Development Group (WODG) for the purposes of developing a project proposal for the Property, completing California Environmental Quality Act (CEQA) review, and negotiating the terms and conditions of a Disposition and Development Agreement (DDA) (Resolution No. 84309 C.M.S.); and

**WHEREAS**, on October 14, 2014, under the authority of the ENA, the City and Caltrans entered into an Option to Purchase Agreement ("Option") to lock in the Property's price and facilitate the transfer of the Property for a TOD project, for a term that expires on June 10, 2016; and

**WHEREAS**, WODG satisfied all the requirements of the ENA, including identifying a qualified developer partner who has experience and success with vertical developments to lead DDA negotiations, close on the land transfer, and get the project financed and built; and

**WHEREAS**, WODG assigned their position for the purchase of the Property to TL Partners V, L.P. ("TLC"); and

**WHEREAS**, TLC is offering the City the funds necessary to exercise the Option to acquire the Property from Caltrans and immediately convey to TLC via a double escrow sale; and

**WHEREAS**, TLC proposes to build an eight-story mixed-use building with approximately 417 residential units, approximately 21,961 square feet of ground floor retail, approximately 264 parking spaces and approximately 72,354 square feet of open space (the "Project"); and

**WHEREAS**, Section 2.42.140, et seq., of the Oakland Municipal Code authorizes the City to sell or lease real property for development by ordinance; and

**WHEREAS**, since the Property is being sold for development for a particular use to promote the economic development, housing, environmental, and community development goals of the City, and has never been in City use, the Property is not "surplus" property of the City; and

**WHEREAS**, the DDA will set forth the terms and conditions under which the City will sell the Property to TLC or its related entities or affiliates, and by which TLC will construct improvements on the Property; and

**WHEREAS**, the City Council adopted a Resolution in December 2014 to establish a general policy to lease rather than sell City property (Resolution No. 85324 C.M.S.); and

**WHEREAS**, staff is recommending a sale of the Property instead of a ground lease in this case because a sale is necessary to promote the economic development and housing goals of the City for the reasons set forth in the Agenda Report for this item; now, therefore,

The Council of the City of Oakland does ordain as follows:

**SECTION 1.** The City Council hereby authorizes the purchase of the Property from Caltrans for the purchase price established under the terms of the Option, its fair market value.

**SECTION 2.** The City Council hereby authorizes the sale of the Property to TL Partners V, L.P., or an affiliated entity approved by the City Administrator, for a price equal to the City's purchase price from Caltrans.

**SECTION 3.** The City Council hereby finds, pursuant to Resolution No. 85324 C.M.S., that it is in the best interests of the City to sell rather than lease the Property for the reasons described in the Agenda Report for this item.

**SECTION 4.** The City Council, pursuant to Oakland Municipal Code Section 2.42.170(B), hereby waives a competitive Notice of Development Opportunity (NODO) process for disposition of the Property, and finds and determines that disposition of the Property without a competitive NODO process is in the best interest of the City because TLC has the experience, capacity and other qualifications, as well as demonstrated interest in developing a project on the site to achieve the City's goals for development of the Property, and the disposition through a competitive NODO process would have been impractical because it would take considerable City resources to undertake a NODO process to identify a developer with experience and qualifications similar to those already offered by TLC before the expiration of the Option.

**SECTION 5.** The City Council hereby finds and determines that, based on the appraisal conducted by two Caltrans-approved appraisers, that the Property is being conveyed at its fair market value, and that the City is not granting any economic development subsidy to the Project.

**SECTION 6.** The City Council hereby authorizes the City Administrator or his/her designee, without returning to the City Council to: (1) exercise the Option to purchase the Property from Caltrans relying solely on developer funds and without any expenditure of City funds, and (2) negotiate and execute a Disposition and Development Agreement and related documents with TLC, or an affiliated entity approved by the City Administrator, for the sale and development of the Property for the Project consistent with the terms of this Ordinance, as well as negotiate and execute grant deeds and any other agreements or documents as necessary to convey the Property upon the satisfaction of any pre-conveyance conditions imposed by the City Administrator or her designee. The terms and conditions of the DDA shall be consistent with the term sheet attached as Exhibit A to this Ordinance, with such other additions, amendments or other modifications to the term sheet that the City Administrator, in consultation with the City Attorney's Office, determines are in the best interests of the City, do not materially increase the obligations or liabilities of the City, and are necessary or advisable to complete the transactions contemplated by this Ordinance. The City Administrator or his or her designee is further authorized to execute documents, accept funds, and take whatever other actions are necessary with respect

to the Property and the Project consistent with this Ordinance and its basic purposes, and the Council hereby appropriates funds as needed to effectuate the transaction set forth in this Ordinance.

**SECTION 7.** All agreements associated with the Property and the Project shall be reviewed and approved as to form and legality by the City Attorney's Office prior to execution by the City, and shall be placed on file with the City Clerk.

**SECTION 8.** The City Council finds and determines that the anticipated environmental effects of the Project have been evaluated by the West Oakland Specific Plan Final Environmental Impact Report (Final EIR) (certified June 2014) and, as supported by substantial evidence in the record, no further environmental review is required for the purchase and sale of the Property and the development of the Project. As separate and independent bases, the purchase and sale of the Property and development of the Project are categorically exempt from CEQA pursuant to Section 15332 of the State CEQA Guidelines (in-fill exemption), Section 15183 of the State CEQA Guidelines (projects consistent with a Community Plan, General Plan or Zoning), Section 15183.5 of the State CEQA Guidelines (transit priority projects), and Section 15183.3 of the State CEQA Guidelines (streamlining for infill projects). The City Administrator or his/her designee is hereby authorized to file a notice of determination with the Office of the Alameda County Recorder and the State Office of Planning and Research, and to take any other action necessary in furtherance of the Project, consistent with this Ordinance and its basic purposes.

**SECTION 9.** The record before this Council relating to this Ordinance includes, without limitation, the following:

- A. All staff reports, decision letters and other documentation and information produced by or on behalf of the City, including without limitation the Planning Commission Report and all notices relating to this Ordinance and the DDA;
- B. All oral and written evidence received by City staff and the City Council before and during the consideration of this Ordinance, including without limitation the Planning Commission consideration of general plan conformity; and
- C. All matters of common knowledge and all official enactments and acts of the City, such as (1) the General Plan; (2) the Oakland Municipal Code, without limitation, the Oakland real estate regulations; (3) the Oakland Planning Code; (4) other applicable City policies and regulations; and (5) all applicable state and federal laws, rules and regulations.

**SECTION 10.** The custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council's decision is based are respectively (a) the Project Implementation Division, 250 Frank Ogawa Plaza, 5<sup>th</sup> Floor, Oakland, CA; (b) Planning and Building Department, 250 Frank Ogawa Plaza, 3<sup>rd</sup> Floor, Oakland, CA; and (c) the Office of the City Clerk, 1 Frank Ogawa Plaza, 1<sup>st</sup> Floor, Oakland, CA.

**SECTION 11.** The recitals contained in this Ordinance are true and correct and are an integral part of the Council's decision.

**SECTION 12.** This Ordinance shall be in full force and effect immediately upon its passage as provided by Section 216 of the City Charter if adopted by at least six members of Council, or upon the seventh day after final adoption if adopted by fewer votes

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_ 2016

**PASSED BY THE FOLLOWING VOTE:**

AYES – BROOKS, CAMPBELL WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID, and  
PRESIDENT GIBSON McELHANEY

NOES -

ABSENT -

ABSTENTION –

ATTEST: \_\_\_\_\_  
LaTonda Simmons  
City Clerk and Clerk of the Council  
of the City of Oakland, California

ORDINANCE (1) AUTHORIZING THE PURCHASE OF 500 KIRKHAM STREET IN WEST OAKLAND (THE "PROPERTY") FROM CALTRANS, (2) AUTHORIZING A DISPOSITION AND DEVELOPMENT AGREEMENT WITH TL PARTNERS V, L.P., OR A RELATED ENTITY, FOR THE SALE AND DEVELOPMENT OF THE PROPERTY FOR A MIXED-USE PROJECT, AND (3) MAKING CEQA FINDINGS FOR THIS ACTION

EXHIBIT A

TERM SHEET

*(attached)*



# Exhibit A

## DDA TERM SHEET

### 500 KIRKHAM

City Response – April 11, 2016

Note- This nonbinding term sheet shall serve as the basis for the negotiations of a detailed final Disposition and Development Agreement (“DDA”) between City staff and the developer. The terms hereof are not binding on the City unless and until the developer and the City Administrator, pursuant to City Council authorization within Council’s sole legislative discretion, have executed a mutually acceptable DDA for the proposed project.

<b>1</b>	<b>CURRENT OWNER</b>	State of California (Caltrans)
<b>2A</b>	<b>DEVELOPER</b>	TL Partners V, L.P., a limited partnership or a related entity controlled by TL Partners V, L.P.
<b>2B</b>	<b>COMPLETION GUARANTY</b>	<p>Developer to provide City a completion guaranty as a condition to closing under the DDA. Guarantor must be a financially strong entity with significant assets, pursuant to criteria set forth in the DDA and acceptable to the City in its sole and absolute discretion. The guarantor shall guarantee project completion, as determined by City.</p> <p>A “Form of Guaranty” will be included as an attachment to DDA and will need to be executed by the City-approved guarantor at close of escrow.</p>
<b>3</b>	<b>PROPERTY</b>	An approximately 2.85 acre vacant lot bounded by 7 <sup>th</sup> Street to the north, 5 <sup>th</sup> Street to the south, Kirkham Street to the west and Union Street to the east. Although commonly referenced as “500 Kirkham,” the Property actually consists of various contiguous parcels that were assembled for use as the former Cypress Street section of the original Interstate 880 freeway. The Property is dissected near its 5 <sup>th</sup> St boundary by overhead BART tracks. The Property is currently owned by Caltrans and is identified as DD-009579-01-01.
<b>4</b>	<b>PROJECT DESCRIPTION</b>	The Project will consist of residential and commercial development per the following minimum unit/square footage amounts: 325 residential units; 30,000 sq. ft. of commercial space including retail, the work portion of live-work, incubator space, etc.
<b>5</b>	<b>PURCHASE PRICE</b>	<p>Per Option Agreement between City and Caltrans, the purchase price shall be \$3,271,325 (\$26/sqft.). If the City entitles more than 325 units to be developed on the property, then the purchase price shall increase by a per unit value of \$10,681.</p> <p>By way of example, the purchase price to build a 417 unit development would be \$4,253,977 or (\$34/sqft).</p>

## Exhibit A

<b>6</b>	<b>TERMS OF PAYMENT/CLOSING</b>	<p>Purchase price to be due and payable in cash submitted into escrow 3 business days before close of escrow. Escrow to close in accordance with the schedule of performance contained herein (Item 12)</p> <p>The property is currently owned by Caltrans and will be sold by Caltrans directly to the City for immediate transfer to Developer via a double escrow sale and simultaneous close.</p>
<b>7</b>	<b>TITLE INSURANCE</b>	Developer to secure title insurance policy, if desired, at its own cost and expense.
<b>8</b>	<b>CLOSING COSTS</b>	Developer to pay all escrow fees and closing costs including, without limitation, city and any other county taxes.
<b>9</b>	<b>LIMITATIONS ON PROPERTY RIGHTS</b>	<p>Developer accepts and acknowledges that Property is subject to deed restrictions and a recorded covenant to restrict use of Property, as contained in the DDA.</p> <p>Developer to comply with provisions of 1) the West Oakland Redevelopment Plan and nondiscrimination provisions of redevelopment law, and 2) the West Oakland Specific Plan.</p>
<b>10</b>	<b>CONDITION OF PROPERTY AT DELIVERY</b>	Developer agrees to accept the Property "as is" in its current condition without warranty express or implied by the City, including without limitation, with respect to the presence of hazardous materials known or unknown on or near the Property.
<b>11</b>	<b>GOOD FAITH DEPOSIT</b>	Upon executing the DDA, Developer will provide a \$50,000 good faith deposit. Except as otherwise provided herein below, such good faith deposit shall be credited against the purchase price at closing. If Developer fails to fulfill the conditions or meet the obligations set forth in the DDA as reasonably determined by the City, the City may exercise its option to terminate the DDA and retain the good faith deposit as liquidated damages, as well as pursue other remedies.

## Exhibit A

12	SCHEDULE OF PERFORMANCE -	DDA Schedule of Performance	Deadline
<p>Note: Option expires on 6/10/2016 but Caltrans may be agreeable to extending until 12/10/2016 for additional fee.</p> <p>Schedule assumes (1) Planning Commission approval of Planning Application, including CEQA determination, Conditional Use Permits, and other discretionary approvals, (2) no appeal of the Planning Commission's approval is filed with the City Council, and (3) DDA term sheet is approved by the City Council. Note: DDA approval, which is subject to the sole and absolute discretion of the City Council, will likely require at least one closed session meeting of City Council; at least one meeting at CED Committee (Community and Economic Development); and at least two meetings of City Council</p>		1. Developer submits 2 years of audited financial statements for each principal and joint venture partner for City review and approval.	3 months after DDA approval; submit updates prior to close of escrow
		2. Developer submits updated and refined Project Proforma (Development Budget & Operating Cash Flow) for City review and approval.	3 months after DDA approval; submit updates prior to close of escrow
		3. Developer submits Financial Plan, including evidence of funds/equity commitments for land acquisition for City review and approval.	4 months after DDA approval; submit updates prior to close of escrow
		4. Conveyance/Close of Escrow, Execution of Completion Guarantee	Before June 10 <sup>th</sup> or Dec 10 <sup>th</sup> 2016, depending on term of Caltrans option
		5. Developer submits Schematic Designs, Development Designs and Construction Designs	8, 13 and 18 months respectively, after DDA Approval
		6. Developer has a "Construction Pre-Application Meeting" and a draft "Compliance Matrix" submitted to Bureau of Building (i.e. start building permit application process)	18 months after DDA approval (Developer allowed 1 month extension)
		7. Developer submits "Construction Permit Application" including Construction Drawings to Bureau of Building	19 months after DDA approval (Developer allowed 1 month extension)
		8. Developer finalizes Project Financing: submit evidence of construction financing and copy of a construction contract; payment and performance bonds; and other sources (which may include equity commitments from the investors in Developer).	24 months after DDA approval (Developer allowed 1 month extension)
		9. Developer submits approved Construction Permits	Within 30 days after receiving final building permit approvals from the City of Oakland
		10. Commence construction (Site Improvements)	By the later of 60 days after submittal of approved Construction permits, or 60 days after final DTSC approvals, but not later than 36 months after close of escrow
		11. Complete construction	Within 36 months of construction commencement

## Exhibit A

<p><b>13</b></p>	<p><b>REPURCHASE OPTION</b></p>	<p>In addition to all other City remedies for Developer default, and subject to the notice and cure rights described below, if (i) construction on the Project does not start by the latter of 36 months after close of escrow, or (ii) the Developer does not diligently continue construction thereafter, or (iii) the Developer does not complete construction within the time period required under the DDA (subject in each case to extension for force majeure), the City will have the option to repurchase the Property (the "Option"). If the Option is exercised prior to the commencement of construction, the repurchase price will be equal to the Purchase Price. If the repurchase option is exercised after the commencement of construction, the City may at its option a) require the Developer at its sole cost to demolish any improvements on the Property and repurchase the Property for the Purchase Price, or b) repurchase the Property with any improvements constructed thereon by the Developer for the Purchase Price plus the fair market value of the improvements. The appraisal process to determine fair market value of the improvements will be set forth in the DDA. Prior to close of escrow, if force majeure individually or cumulatively exceeds 12 months, either party shall have the right to terminate the agreement. Developer shall deposit an executed reversionary grant deed into escrow at close with instructions to deliver reversionary grant deed to City if City exercises the Option.</p> <p>City's Option is assignable or transferable in its sole and absolute discretion.</p> <p>There will be a 30-day notice and cure process for any such default, and the cure period will be extended if the default cannot reasonably be cured within such 30-day period and the Developer has commenced and is proceeding diligently with efforts to cure the default; subject, however, to an maximum cure date deadline to be negotiated by the parties.</p> <p>The City will execute and record such instruments as Developer may reasonably request to terminate the Option, at such time as the Option is no longer exercisable in accordance with its terms.</p>
<p><b>14</b></p>	<p><b>OFF-SITE IMPROVEMENTS</b></p>	<p>Developer to be responsible for the cost of any required off-site improvements in connection with the Project.</p>

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15	<b>ENVIRONMENTAL REMEDATION</b>	<p>The City gives notice of environmental reports as follows:</p> <ol style="list-style-type: none"> <li>1) 500 Kirkham - Phase I Report, prepared by Northgate Environmental Management, Inc. for the City of Oakland, dated June 6, 2011. Available on City's website: <a href="http://www2.oaklandnet.com/oakca1/groups/pwa/documents/report/oak032703.pdf">http://www2.oaklandnet.com/oakca1/groups/pwa/documents/report/oak032703.pdf</a></li> <li>2) 500 Kirkham - Phase II report, prepared by Northgate Environmental Management, Inc. for the City of Oakland, dated Dec 16, 2011 Available on City's website: <a href="http://www2.oaklandnet.com/Government/o/PWA/o/FE/s/BAC/OAK026274">http://www2.oaklandnet.com/Government/o/PWA/o/FE/s/BAC/OAK026274</a></li> <li>3) 500 Kirkham - Site Mitigation Cost Estimate, prepared by Northgate Environmental Management, Inc. for the City of Oakland, dated October 17, 2011</li> <li>4) 500 Kirkham – Preliminary Site Investigation Report, prepared by Geocon Consultants, Inc. for Caltrans, dated July 2013</li> <li>5) DTSC Letter dated May 20, 2014 – response to 500 Kirkham site investigation reports</li> <li>6) Northgate Letter dated Sept 29, 2014 – response to DTSC May 20 Letter, prepared for the City of Oakland</li> </ol> <p>Developer should be working directly with DTSC now to negotiate and finalize a remediation plan for implementation.</p>
16A	<b>INDEMNIFICATION</b>	Developer to indemnify, hold harmless and defend City and its employees, officers, directors, shareholders, and agents from any claims, actions or liabilities arising from the Project.
16B	<b>ENVIRONMENTAL INDEMNIFICATION</b>	Developer to indemnify and defend the City for any liability or actions arising from environmental conditions on the Property, including preexisting conditions.
16C	<b>POLLUTION INSURANCE</b>	<p>Developer to secure pollution legal liability insurance policy at is sole expense covering pre-existing condition with a 10 year term that names the Developer as the named insured and the City as an additional insured.</p> <p>Minimum coverage: \$10,000,000 per claim and in aggregate</p> <p>Maximum deductible: \$100,000</p> <p>Perils covered including: Pollution Legal Liability, On-site and off-site clean-up costs; non-owned disposal site; in-bound and out-bound contingent transportation; legal defense expense; and business interruption for Developer including soft costs and construction delay.</p> <p>Proof of pollution insurance shall be provided before transfer of Property.</p>
17	<b>DEVELOPER MAINTENANCE</b>	Upon close of escrow, Developer is responsible for all maintenance of the Property, excluding any land that is deeded or dedicated to the City of Oakland.

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18	<b>NO COMMISSION</b>	City shall not pay or be liable for any commissions or brokerage fees. The parties shall hold each other harmless and defend against any claims for commissions or brokerage.
19	<b>SIGNAGE</b>	Developer may not install or place signage on any existing City street outside the Property or in the public corridor. Developer may install and place signage on the remaining Property in compliance with City codes, or other applicable codes or regulations.
20	<b>STANDARD OF PROPERTY</b>	Developer to maintain the Property and Project in first-class condition and will ensure that at no time does the Property violate the City Blight Ordinance. This obligation will be memorialized in the DDA, grant deed and/or recorded covenants.
21	<b>FINAL CONSTRUCTION PLANS</b>	<p>Developer and its design consultants must meet or exceed requirements of City's Green Building Ordinance as it pertains to this project.</p> <p>The Final Construction Plans shall include a plan and schedule to incorporate public art into the Project pursuant to Project's Condition of Approvals and Oakland Municipal Code Section 15.70. Pursuant to the foregoing, the total amount of the obligation shall be calculated as follows:</p> <ol style="list-style-type: none"> <li>1. 1% of "building development costs" allocated to the nonresidential portion of the Project; plus</li> <li>2. 0.5% of the "building development costs" allocated to the residential portion of the Project.</li> </ol> <p>"Building development costs" shall be equal to the aggregate construction costs declared on the building permit applications for the Project (building, plumbing, mechanical and electrical) and accepted by the Building Official.</p>
22	<b>PAYMENT &amp; PERFORMANCE BONDS</b>	Developer shall obtain payment and performance bonds, each in an amount not less than 100% of the cost of construction of the Project pursuant to the Construction Contract to be executed by Developer.
23	<b>RIGHT OF ENTRY</b>	<p>Developer to have the right to enter onto the Property prior to transfer to conduct any investigation, testing, appraisals and other studies, at Developer's cost, required as part of its due diligence. Developer shall be required to provide City with indemnity and evidence of insurance (in form and amounts to be further described in an exhibit to the DDA) and meet other standard City conditions to entry.</p> <p>City to have right of entry onto the Property from close of escrow until construction is completed, to inspect the Property and the Project during standard operating hours and upon required notice except for emergencies; this provision does not otherwise limit City's right to enter under its separate regulatory authority.</p>
24	<b>FINANCING</b>	DDA will include an objective standard (experience, size, etc.) of what an "Approved Lender" is, subject to administrative approval. The DDA shall include customary mortgagee protections in favor of any Approved Lender.

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25	<b>PERMITTED TRANSFERS</b>	<p>Prior to Project completion, Developer shall not have the right to assign or transfer all or any portion of its rights and obligations under the DDA, other than an Affiliate Transfer, without the prior written consent of the City, in the City's sole and absolute discretion</p> <p>An Affiliate Transfer shall not require consent, but shall require prior notice and documentation related to the Affiliate Transfer to the City, and shall mean a transfer to an entity or entities controlled by TL Partners V, L.P..</p>
26	<b>STANDARD CONDITIONS</b>	<p>DDA to include standard City conditions, including without limitation: executed completion guaranty, provision of payment and performance bonds, City approval of financing plan, restrictions on assignment and transfer prior to completion of construction, default and cure provisions, termination provisions, and requirements for submission of copies of all required regulatory approvals and insurance policies..</p>
27	<b>CITY EMPLOYMENT PROGRAMS</b>	<p>Does not apply to this Project.</p>
28	<b>PROHIBITION OF GENERATION OF CONDOMINIUM CONVERSION RIGHTS</b>	<p>The DDA shall include an acknowledgement and agreement by Developer that the Project shall not generate, and the Developer shall not assert, condominium "conversion rights" under Chapter 16.36 of the Oakland Municipal Code. Nothing in the DDA shall limit the Developer's right to create apartment or condominium units on the Project. However, the Developer shall agree that, in the event that Project includes rental apartments, the Developer shall not at any time sell any "conversion rights" to another property within the City of Oakland.</p>
29 A	<b>AFFORDABLE HOUSING - City impact fee</b>	<p>If the City adopts an affordable housing impact fee either following or before the Effective Date of this Agreement (an "AH Requirement") that applies to the Project, any payment by Developer of an affordable housing impact fee pursuant to an AH Requirement would be credited against any amount to be paid under Item 29B.</p> <p>If City's adopted AH Requirement includes an option to provide affordable units onsite, the number of affordable units required by Item 29B shall be reduced by the number of units provided onsite at the same affordability level to meet the AH Requirement.</p>

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<p><b>29 B</b></p>	<p><b>AFFORDABLE HOUSING</b></p>	<p>A. Developer to set aside 7.5% of residential units onsite as work force housing, affordable to moderate income households (3.75% at 100% of AMI and 3.75% at 120% of AMI), subject to a recorded Regulatory Agreement with an affordability term of 55 years and will remain rental when the other units are sold as condominiums. The Developer will not seek City funding assistance for the affordable units.</p> <p style="text-align: center;">AND</p> <p>B. Developer to pay \$3,150,000 to the City of Oakland Affordable Housing Trust Fund. This payment will be due at the time impact fees would be due.</p>
<p><b>30</b></p>	<p><b>ADDITIONAL COMMUNITY BENEFITS</b></p>	<p>1. Developer to provide a total payment of \$1,000,000 to provide job training for local residents to the City of Oakland or an entity to-be named by the City of Oakland. This payment will be due at the time of building permit application. This payment would be in-lieu of any prevailing wage obligations or Project Labor Agreements.</p> <p>2. Developer to build and maintain +/-19,500 square feet of open space at the corner of 5<sup>th</sup> and Kirkham to be made available to the public. Developer values the construction of this open space at approximately \$307,125.</p>



**ORDINANCE (1) AUTHORIZING THE PURCHASE OF 500 KIRKHAM STREET IN WEST OAKLAND (THE "PROPERTY") FROM CALTRANS, (2) AUTHORIZING A DISPOSITION AND DEVELOPMENT AGREEMENT WITH TL PARTNERS V, L.P., OR A RELATED ENTITY, FOR THE SALE AND DEVELOPMENT OF THE PROPERTY FOR A MIXED-USE PROJECT, AND (3) MAKING CEQA FINDINGS FOR THIS ACTION**

**NOTICE AND DIGEST**

This Ordinance authorizes the purchase of real property located at 7<sup>th</sup> Street and Kirkham Street in Oakland from Caltrans, and authorizes the sale of the property to TL Partners V, L.P. for the amount of the purchase price with Caltrans. This Ordinance also authorizes the City Administrator to negotiate and enter into a Disposition and Development Agreement with TL Partners V, L.P. for the sale and development of the property as a mixed-use project, and makes associated findings with respect to the California Environmental Quality Act (CEQA) and other matters.