



January 19, 2016

Keith Nowell, PG, CHG
Hazardous Materials Specialist
Alameda County Environmental Health
1131 Harbor Bay Parkway
Alameda, California 94502



Re: Case Closure Request
Case RO#2914
988 Broadway (Former 910 Broadway)
Oakland, California 94607

Dear Mr. Nowell:

CIM/Oakland Downtown L.P. is submitting the attached report prepared by Northgate Environmental Management, Inc., summarizing environmental conditions at 988 Broadway (formerly identified as 910 Broadway) in Oakland, California, as requested during a meeting between Northgate and Alameda County Environmental Health on December 22, 2015.

I declare, under penalty of perjury, in my capacity only as the Vice President of CIM Urban REIT GP I, LLC, the general partner of CIM/Oakland Downtown L.P., that the information and/or recommendations contained in the attached document or report is true and correct to the best of my knowledge.

Sincerely,

CIM/Oakland Downtown L.P.
a Delaware limited partnership

By: CIM Urban REIT GP I, LLC,
a Delaware limited liability Company,
its general partner

By: 
Name: Eric Rubenfeld
Title: Vice President



January 13, 2016

Keith Nowell, PG, CHG
Hazardous Materials Specialist
Alameda County Environmental Health
1131 Harbor Bay Parkway
Alameda, California 94502

RE: Case Closure Request
Case RO#2914
988 Broadway (Former 910 Broadway)
Oakland, California 94607
Project No. 1279.05

Dear Mr. Nowell:

Northgate Environmental Management, Inc. (Northgate) is submitting this letter on behalf of CIM/Oakland Downtown L.P. to summarize the environmental conditions at 988 Broadway (formerly identified as 910 Broadway) in Oakland, California (the Site; Figure 1), as requested during a meeting between Northgate and Alameda County Environmental Health (the County) on December 22, 2015. Given that primary and secondary contaminant sources have been stopped or removed to the extent practicable and residual petroleum impacts at the Site pose a low threat to human health, safety, and the environment, we are requesting that the open regulatory oversight case for this Site be closed.

BACKGROUND

Previous Investigations and Evaluation

Historical subsurface investigations performed at the Site, where the Courtyard Marriott hotel was constructed in 2003, indicated the presence of total petroleum hydrocarbons (TPH) in soil and groundwater (Tables 1 and 2). Soil samples collected in 1993¹, 1998², and 1999³ showed TPH as gasoline (TPH-G) at up to 2,000 milligrams per kilogram (mg/kg), TPH as diesel (TPH-

¹ Harding Lawson Associates, Preliminary Soil Characterization, Oakland Broadway Block, Chinatown Redevelopment Project Area, 9th Street and Broadway, Oakland, California, Consultant's report prepared for City of Oakland Redevelopment Agency, November 11, 1993.

² SECOR, Summary Report for Limited Soil and Groundwater Investigation at 9th Street and Broadway in Oakland, California, Consultant's report prepared for City of Oakland Redevelopment Agency, April 27, 1998.

³ Harding Lawson Associates, Results of Soil and Groundwater Investigation, 9th Street and Broadway, Oakland, California, Consultant's report prepared for City of Oakland Redevelopment Agency, September 29, 1999.

D) at up to 1,600 mg/kg, and TPH as motor oil (TPH-MO) at up to 1,200 mg/kg. The soil also contained low levels of benzene, toluene, ethylbenzene, and xylenes (BTEX), a small number of fuel-related volatile organic compounds (VOCs) and poly-cyclic aromatic hydrocarbons (PAHs), and a small number of heavy metals. Groundwater samples contained TPH-G, TPH-D, a small number of PAHs, low levels of dissolved metals, and low levels of VOCs such as BTEX, tetrachloroethene (PCE), 1,2-dichloroethane (1,2-DCA), and chloroform. The TPH and associated contaminants originated from leaking underground storage tanks (USTs) at the adjacent 1000 Franklin Street property.

Contaminants of potential concern (COPCs), potential receptors, and exposure pathways were identified, and an exposure assessment was performed as part of a Risk-Based Corrective Action (RBCA) evaluation completed for the Site in 1999.⁴ The risk assessment determined that the risk to commercial and construction workers from soil ingestion, dermal contact, dust inhalation, and inhalation of vapors from subsurface soil and groundwater in indoor and outdoor air, based on the concentrations of contaminants measured in soil and groundwater at the Site. This tiered risk assessment determined that no unacceptable carcinogenic risks and non-carcinogenic health effects are likely to occur for commercial land use receptors (including construction workers) potentially exposed to residual contaminants remaining in soil and groundwater at the Site.

There was no evidence of active or former USTs at the Site, nor were any other ongoing sources of contamination identified during Site investigations. However, eight electromagnetic anomalies (e.g., potential sites of USTs or other metallic debris) were identified during a geophysical survey in 1993¹ (shown as items A through H on Figure 1); of these, five were recommended for further investigation via potholing (A, C, D, E, and G) and one additional anomaly was detected during a subsequent anomaly investigation in 2000⁵ (I).

Previous Oversight Case Closure

Based on the data collected and evaluations performed through 1999, and given that there were no active or former USTs at the Site, the County indicated⁶ that it was prepared to issue a closure letter for the original oversight case (RO#2673) once the following activities were completed: (1) abandonment of Site monitoring wells MW-7, MW-20, and MW-21; (2) performance of a limited investigation in the areas of electromagnetic anomalies detected at the Site; and (3) preparation of a site management plan to be used as guidance for the management and disposal

⁴ Harding Lawson Associates, Risk-Based Corrective Action (RBCA) Evaluation, 9th Street and Broadway, Oakland, California, Consultant's report prepared for the City of Oakland Public Works Agency, October 25, 1999.

⁵ Harding Lawson Associates, Anomaly Investigation, 9th Street and Broadway, Oakland, California, Consultant's report prepared for Mark Gomez, City of Oakland, March 1, 2000.

⁶ Letter from Barney Chan, Alameda County Environmental Health, to Mark Gomez, City of Oakland, Re: City of Oakland Parking Lot, 9th and Broadway, Oakland, California 94607, December 8, 1999.



of soil excavated from the Site during future construction. Contaminant concentrations in groundwater were stable, low, and decreasing at the time that the County requested that the on-Site monitoring wells be abandoned. No dissolved plume was present and only trace levels of a few VOCs were detected in the wells, at concentrations two to three orders of magnitude below groundwater vapor intrusion Environmental Screening Levels (ESLs).

In accordance with the County's request, the following additional activities were performed:

(1) As authorized by the County, the Site groundwater monitoring wells were abandoned on January 10, 2000.⁷

(2) Geophysical and potholing investigations of the electromagnetic anomalies were performed on February 14 and 22, 2000 (respectively)⁵ and no USTs or evidence of USTs were discovered. The results of the anomaly investigations are summarized as follows (see Figure 1 for anomaly locations):

- Anomaly A: Potholed; no evidence of a UST or associated piping was observed;
- Anomaly B: Geophysicist concluded anomaly unlikely to represent a UST; eliminated from further investigation unless USTs found at other locations;
- Anomaly C: Geophysicist concluded anomaly unlikely to represent a UST; potholed; no evidence of a UST or associated piping was observed;
- Anomaly D: Geophysicist concluded anomaly unlikely to represent a UST; potholed; no evidence of a UST or associated piping was observed;
- Anomaly E: Geophysicist concluded anomaly unlikely to represent a UST; eliminated from further investigation due to location beneath existing City sidewalk;
- Anomaly F: Geophysicist concluded anomaly unlikely to represent a UST; eliminated from further investigation due to location beneath existing City sidewalk;
- Anomaly G: Potholed; no evidence of a UST or associated piping was observed;
- Anomaly H: Geophysicist concluded anomaly unlikely to represent a UST; eliminated from further investigation because if a UST were present it would have been detected during geotechnical trenching at this location; and
- Anomaly I: Potholed; no evidence of a UST or associated piping was observed.

⁷ OGISO Environmental, Well Destruction Report, 9th and Broadway, Oakland, California, Consultant's report prepared for Mark Gomez, City of Oakland, March 8, 2000.



(3) A Soil Management Plan⁸ was prepared, and all documentation was submitted to the County on March 28, 2000 with a request for regulatory case closure.⁹

Following completion of these activities, the County granted No Further Action at the Site on April 13, 2000.¹⁰ Site closure was granted based on the completion of the requested activities, groundwater and soil data collected between 1993 and 1999 (Tables 1 and 2), and the RBCA evaluation results.

Oversight Case Reopened

After the issuance of the April 13, 2000 closure letter, the entire western and southern portions of the Site were excavated to depth of 7 to 13 feet below the ground surface, regraded, and re-compacted to form a uniform building pad for construction of the Courtyard Marriott hotel. The remainder of the Site was regraded for a new pool and parking lot. The subsurface excavation plan is attached as Exhibit 1. During the excavation activities, a small area measuring roughly 7 feet by 3 feet by 9 feet deep located near the southern end of the Site along 9th Street was found to contain visibly contaminated soil which was excavated and removed from the Site. Available documentation for this excavation is attached as (Exhibit 2). Soil was sampled and analyzed from excavation sidewalls, bottom, and the resulting stockpile on May 25, 2000.^{11,12,13,14} Soil removed from the Site during construction was characterized for waste disposal by collecting six 4-point composite stockpile samples on June 12, 2000.¹⁵ Test results for these samples are summarized in Table 3. Approximately 3,500 cubic yards of soil excavated from the Site was off-hauled and disposed offsite. While the results indicated that the soil was characteristic of a California hazardous waste based on the waste extraction test (WET) analysis for lead, the

⁸ Harding Lawson Associates, Soil Management Plan, 9th Street and Broadway Redevelopment, Oakland, California, Consultant's report prepared for City of Oakland Public Works Agency, March 27, 2000.

⁹ Document transmittal from Mark Gomez, City of Oakland, to Barney Chan, Alameda County Environmental Health, Re: 9th Street and Broadway, Oakland, California, March 28, 2000.

¹⁰ Letter from Barney Chan, Alameda County Environmental Health, to Mark Gomez, City of Oakland, Re: No Further Action for City of Oakland Parking Lot, 9th and Broadway, Oakland, CA 94607, April 13, 2000.

¹¹ Facsimile Transmission from Jim McCarty, Harding Lawson Associates, to Barney Chan, Alameda County Environmental Health, Re: 9th and Broadway Sample Results, Lab Results for the Soil at the 9th and Broadway Site, May 31, 2000.

¹² Facsimile Transmission from Jim McCarty, Harding Lawson Associates, to Barney Chan, Alameda County Environmental Health, Re: 9th and Broadway Sample Results, 8260 Results from Sample 4, May 31, 2000.

¹³ Facsimile Transmission from Jim McCarty, Harding Lawson Associates, to Barney Chan, Alameda County Environmental Health, Re: 9th and Broadway Sample Results, June 5, 2000.

¹⁴ Facsimile Transmission from Jim McCarty, Harding Lawson Associates, to Barney Chan, Alameda County Environmental Health, Re: 9th and Broadway Sample Results, June 12, 2000.

¹⁵ Letter from James McCarty and Stephen Osborne, Harding Lawson Associates, to Barney Chan, Alameda County Environmental Health, Re: Stockpile Soil Sampling, Garden Hotel Project, 9th Street and Broadway, Oakland, California, July 17, 2000.



material was profiled as a federal hazardous waste and disposed as such between July 5 and 13, 2000.¹⁵

Available information indicates that a second oversight case for the Site (RO#2914) was opened shortly after these May and June 2000 excavation and stockpile sampling activities occurred. Correspondence in the County case file for the Site indicates that the second oversight case was opened based on the soluble lead concentrations¹⁶ and “*the presence of contaminants having concentrations exceeding those on which the original closure was based.*”¹⁷

CASE CLOSURE REQUEST

Based on our review of all available historic Site information and reports, Northgate is requesting that the oversight case for this property re-opened in 2000 now be closed. This closure request is based on the following:

- Our review indicates that none of the chemical test results from samples collected after the initial case closure was issued indicate a different or greater risk than the data used in the original 1999 RBCA evaluation, upon which the first case closure was granted;
- No new data have come to light to indicate that Site conditions have changed significantly since the Site was redeveloped;
- Geophysical anomalies on Site property were sufficiently investigated to confirm the absence of USTs on or adjacent to the Site;
- The property was developed in full accordance with the approved Soil Management Plan; and
- The presence of residual contamination at the Site is documented in original Disposition and Development Agreement appended to the deed for the property. A copy of the document is attached as Exhibit 3.

The reasons cited for the current oversight case for the Site included: (1) soluble lead concentrations in stockpiled soil, (2) presence of contaminants exceeding levels presented in the original closure request, and (3) uninvestigated geophysical anomalies. However, the available Site information indicates that each of these issues has been appropriately addressed. The lead concentrations detected in the 2000 excavation and stockpile samples were in fact similar to or

¹⁶ Facsimile Transmission from Jim McCarty, Harding Lawson Associates, to Barney Chan, Alameda County Environmental Health, Re: 9th and Broadway Stockpile Sample Result, July 18, 2000.

¹⁷ Phone call record by Keith Nowell, Alameda County Environmental Health, Re: RO2673/2914 City of Oakland Parking Lot, July 27, 2012.



lower than the lead concentrations in soil samples presented in the original closure request. Concentrations of TPH detected in the 2000 excavation and stockpile samples were similar to and of the same order of magnitude as the concentrations considered in 1999 during the RBCA evaluation and first case closure request. Concentrations of VOCs in the 2000 excavation and stockpile samples were significantly lower than those presented in the original closure request. The only additional chemical detected in 2000 was chlorobenzene, however, concentrations of this chemical did not exceed the current ESL for direct contact by a commercial or construction worker. Although chlorobenzene in soil exceeded the current Tier 1 ESL for groundwater leaching concerns, the chemical was never detected in any of the groundwater samples collected at the Site. Furthermore, the lead, TPH, and chlorobenzene were detected in soil material that was subsequently excavated and off-hauled and disposed offsite. Finally, the geophysicist who conducted the anomaly investigation concluded that anomalies E and F located offsite beneath the City sidewalk and within the City's right-of-way these anomalies were, in his profession opinion, unlikely to represent USTs. The County agreed in 2000 that these anomalies were located offsite. The Site has now been developed as a Courtyard Marriott hotel since 2003. Based on the information summarized in this letter, Northgate is requesting closure of the open case file for this Site.

CLOSING

We appreciate this opportunity to resolve the outstanding documentation issues at the Site. Please feel welcome to contact Dennis at (510) 839-0688, ext. 202, or via e-mail at dennis.laduzinsky@ngem.com should you have any questions.

Sincerely,
Northgate Environmental Management, Inc.



Dennis Laduzinsky, CEG
Principal



L. Maile Smith, PG
Principal

Enclosures: Figure 1
Tables 1-3
Exhibits 1-3

cc: Ellen Rose, CIM Oakland Downtown
Daniel Ross



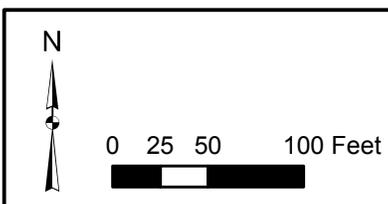
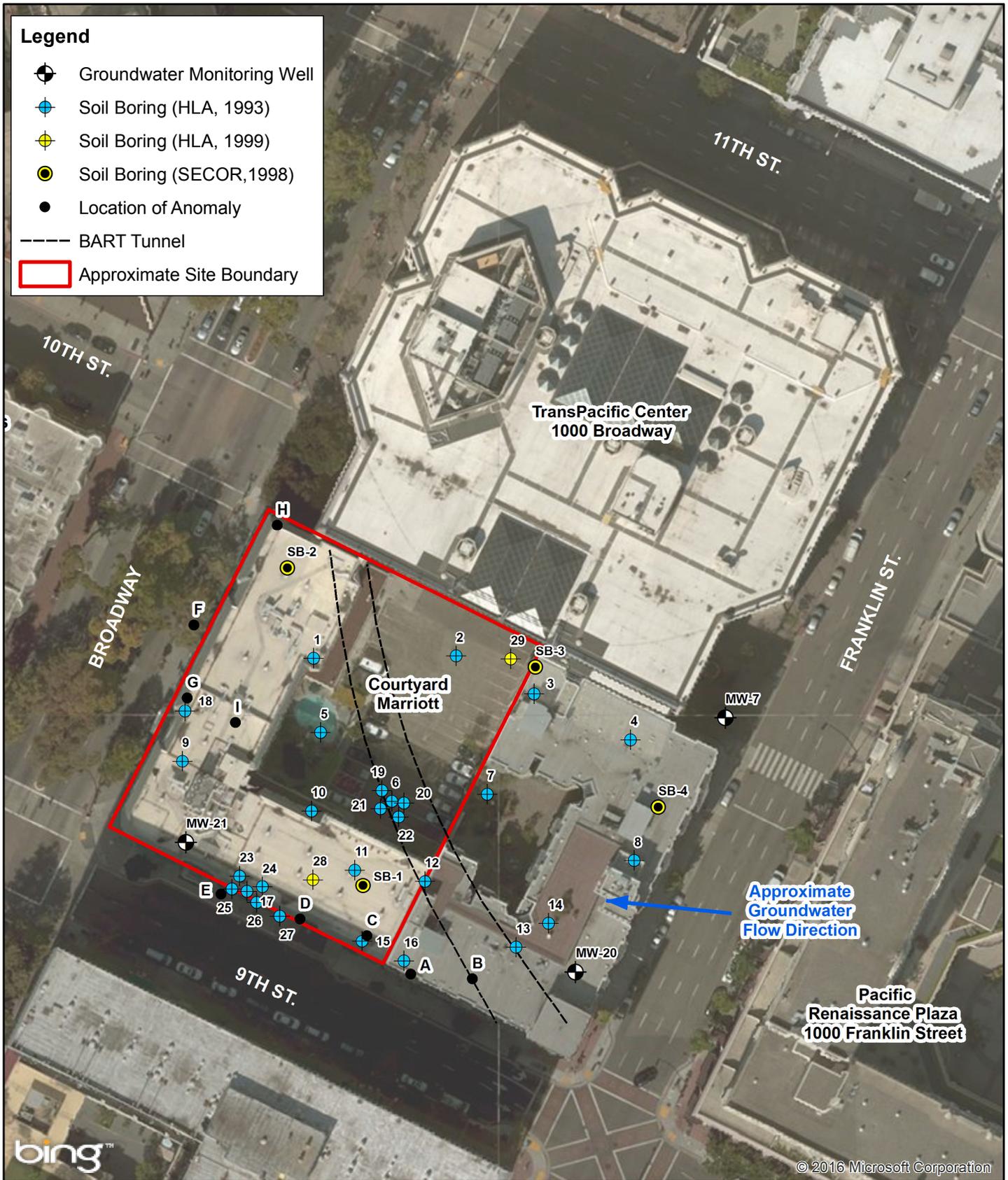


FIGURE 1
Soil and Groundwater Sample Locations

TABLE 1A
Analytical Results Summary: Soil

Sample Location	Sample Depth (feet bgs)	Sample Date	Source	TPH (mg/kg)			Metals (mg/kg)																
				TPH as Gasoline	TPH as Diesel	TPH as Motor Oil	Antimony	Arsenic	Barium	Beryllium	Cadmium	Chromium	Cobalt	Copper	Lead	Mercury	Molybdenum	Nickel	Selenium	Silver	Thallium	Vanadium	Zinc
SB-1	1.5	1/19/1993	HLA, 1993	ND<1	23	---	ND<10	3.0	170	ND<2	4.5	35	14	27	50	ND<0.1	ND<5	55	ND<0.5	ND<2	ND<20	32	48
SB-2	2.0	1/19/1993	HLA, 1993	ND<1	ND<1	---	ND<10	1.3	46	ND<2	4.2	44	7.3	18	11	ND<0.1	ND<5	40	ND<0.5	55	ND<20	28	26
SB-2	20	1/19/1993	HLA, 1993	ND<1	ND<1	---	ND<10	0.8	28	ND<2	3.4	37	5.9	14	1.7	ND<0.1	ND<5	31	ND<0.5	ND<2	ND<20	24	21
SB-3	5.0	1/19/1993	HLA, 1993	ND<1	65	---	ND<10	1.3	61	ND<2	4.1	42	7.2	19	7.5	ND<0.1	ND<5	32	ND<0.5	ND<2	ND<20	30	33
SB-3	25	1/19/1993	HLA, 1993	ND<1	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
SB-4	1.5	1/19/1993	HLA, 1993	ND<1	68	---	ND<10	2.0	85	ND<2	4.1	37	6.9	17	17	ND<0.1	ND<5	30	ND<0.5	ND<2	ND<20	28	33
SB-4	10	1/19/1993	HLA, 1993	ND<1	21	---	ND<10	1.1	42	ND<2	4.3	44	6.8	18	17	ND<0.1	ND<5	35	ND<0.5	ND<2	ND<20	28	23
SB-4	25	1/19/1993	HLA, 1993	ND<1	---	---	ND<10	0.6	36	ND<2	3.3	36	5.8	14	1.6	---	ND<5	38	ND<0.5	ND<2	ND<20	26	22
SB-5	15	1/20/1993	HLA, 1993	ND<1	ND<1	---	ND<10	ND<0.5	34	ND<2	3.8	53	9.2	16	2.3	ND<0.1	ND<5	39	ND<0.5	ND<2	ND<20	32	21
SB-6	1.5	1/21/1993	HLA, 1993	ND<1	1600	---	ND<10	2.4	82	ND<2	4.6	28	8.1	26	230	0.23	ND<5	25	ND<0.5	ND<2	ND<20	28	69
SB-7	2.0	1/19/1993	HLA, 1993	ND<1	83	---	ND<10	1.7	59	ND<2	3.9	34	6.3	17	29	ND<0.1	ND<5	32	ND<0.5	ND<2	ND<20	26	49
SB-7	15	1/19/1993	HLA, 1993	ND<1	ND<1	---	ND<10	1.6	46	ND<2	4.3	48	8.9	18	2.9	ND<0.1	ND<5	32	ND<0.5	ND<2	ND<20	33	19
SB-9	10	1/21/1993	HLA, 1993	ND<1	ND<1	---	ND<10	0.6	41	ND<2	2.8	33	5.3	19	2.2	ND<0.1	ND<5	26	ND<0.5	ND<2	ND<20	23	20
SB-10	1.5	1/21/1993	HLA, 1993	ND<1	57	---	ND<10	3.6	81	ND<2	5.8	18	9.4	31	29	ND<0.1	ND<5	16	ND<0.5	ND<2	ND<20	39	67
SB-10	25	1/21/1993	HLA, 1993	ND<1	ND<1	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
SB-11	1.0	1/20/1993	HLA, 1993	ND<1	ND<1	---	ND<10	1.1	43	ND<2	2.3	27	ND<5	14	2.0	ND<0.1	ND<5	15	ND<0.5	ND<2	ND<20	21	14
SB-11	20	1/20/1993	HLA, 1993	ND<1	ND<1	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
SB-11	25	1/20/1993	HLA, 1993	1500	1000	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
SB-12	10	1/21/1993	HLA, 1993	ND<1	ND<1	---	ND<10	1.4	40	ND<2	3.6	44	6.8	21	6.3	ND<0.1	ND<5	28	ND<0.5	ND<2	ND<20	34	24
SB-13	5.0	1/21/1993	HLA, 1993	ND<1	ND<1	---	ND<10	1.9	65	ND<2	3.8	49	5.7	21	2.8	ND<0.1	ND<5	33	ND<0.5	ND<2	ND<20	32	22
SB-14	1.5	1/19/1993	HLA, 1993	ND<1	ND<1	---	ND<10	ND<0.5	49	ND<2	2.7	29	ND<5	12	2.9	ND<0.1	ND<5	16	ND<0.5	ND<2	ND<20	18	34
SB-15	1.5	1/20/1993	HLA, 1993	ND<1	ND<1	---	ND<10	1.0	42	ND<2	2.0	30	ND<5	12	5.1	ND<0.1	ND<5	12	ND<0.5	ND<2	ND<20	18	15
SB-15	20	1/20/1993	HLA, 1993	ND<1	ND<1	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
SB-15	25	1/20/1993	HLA, 1993	2000	750	---	ND<10	1.0	39	ND<2	3.2	33	5.5	15	2.1	ND<0.1	ND<5	33	ND<0.5	ND<2	ND<20	25	17
SB-16	1.5	1/21/1993	HLA, 1993	ND<1	11	---	ND<10	1.1	28	ND<2	2.6	30	ND<5	16	3.7	ND<0.1	ND<5	14	ND<0.5	ND<2	ND<20	20	33
SB-16	25	1/21/1993	HLA, 1993	ND<1	ND<1	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
SB-17	5.0	1/22/1993	HLA, 1993	ND<1	1.6	---	ND<10	ND<5	48	ND<2	7.6	3.2	ND<5	16	320	ND<0.1	ND<5	6.7	ND<0.5	ND<2	ND<20	6	17000
SB-17	25	1/22/1993	HLA, 1993	790	540	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
SB-18	3.0	5/13/1993	HLA, 1993	ND<1	ND<1	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
SB-18	8.0	5/13/1993	HLA, 1993	ND<1	ND<1	---	ND<10	1.7	---	ND<2	ND<2	58	---	9.1	ND<20	ND<0.1	---	39	ND<0.5	ND<2	ND<20	---	26
SB-18	15.5	5/13/1993	HLA, 1993	ND<1	ND<1	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
SB-19	1.5	5/13/1993	HLA, 1993	---	100	---	---	---	---	---	---	---	---	---	99	---	---	---	---	---	---	---	---
SB-20	1.5	5/13/1993	HLA, 1993	---	24	---	---	---	---	---	---	---	---	---	2.7	---	---	---	---	---	---	---	---
SB-21	1.5	5/13/1993	HLA, 1993	---	13	---	---	---	---	---	---	---	---	---	3.2	---	---	---	---	---	---	---	---
SB-22	1.5	5/13/1993	HLA, 1993	---	26	---	---	---	---	---	---	---	---	---	22	---	---	---	---	---	---	---	---
SB-23	5.0	5/13/1993	HLA, 1993	---	---	---	---	---	---	---	---	---	---	---	4.7	---	---	---	---	---	---	---	27
SB-24	5.0	5/13/1993	HLA, 1993	---	---	---	---	---	---	---	---	---	---	---	4.4	---	---	---	---	---	---	---	55

TABLE 1B
Analytical Results Summary: Soil

Sample Location	Sample Depth (feet bgs)	Sample Date	Source	VOCs (µg/kg)						PAHs (µg/kg)															
				Benzene	Toluene	Ethylbenzene	Xylenes	MTBE	Other VOCs	Naphthalene	2-Methylnaphthalene	Acenaphthylene	Acenaphthene	Anthracene	Fluorene	Fluoranthene	Phenanthrene	Pyrene	Benzo(a)anthracene	Benzo(b,k)fluoranthene	Benzo(a)pyrene	Benzo(g,h,i)perylene	Chrysene	Ideno(1,2,3-cd)pyrene	
SB-1	1.5	1/19/1993	HLA, 1993	ND<2.5	ND<2.5	ND<2.5	ND<2.5	---	ND<2	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
SB-2	2.0	1/19/1993	HLA, 1993	ND<2.5	ND<2.5	ND<2.5	ND<2.5	---	ND<2	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
SB-2	20	1/19/1993	HLA, 1993	ND<2.5	ND<2.5	ND<3	ND<3	---	ND<2	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
SB-3	5.0	1/19/1993	HLA, 1993	ND<2.5	ND<2.5	ND<3	ND<3	---	ND<2	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
SB-3	25	1/19/1993	HLA, 1993	ND<2.5	ND<2.5	ND<2.5	ND<2.5	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
SB-4	1.5	1/19/1993	HLA, 1993	ND<2.5	ND<2.5	ND<3	ND<3	---	ND<2	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
SB-4	10	1/19/1993	HLA, 1993	ND<2.5	ND<2.5	ND<3	ND<3	---	ND<2	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
SB-4	25	1/19/1993	HLA, 1993	ND<2.5	ND<2.5	ND<2.5	ND<2.5	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
SB-5	15	1/20/1993	HLA, 1993	ND<2.5	ND<2.5	ND<2.5	ND<2.5	---	ND<2	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
SB-6	1.5	1/21/1993	HLA, 1993	ND<2.5	ND<2.5	ND<2.5	ND<2.5	---	PCE: 5.4	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
SB-7	2.0	1/19/1993	HLA, 1993	ND<2.5	ND<2.5	ND<3	ND<3	---	ND<2	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
SB-7	15	1/19/1993	HLA, 1993	ND<2.5	ND<2.5	ND<3	ND<3	---	ND<2	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
SB-9	10	1/21/1993	HLA, 1993	ND<2.5	ND<2.5	ND<2.5	ND<2.5	---	ND<2	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
SB-10	1.5	1/21/1993	HLA, 1993	ND<2.5	ND<2.5	ND<2.5	ND<2.5	---	ND<2	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
SB-10	25	1/21/1993	HLA, 1993	ND<2.5	ND<2.5	ND<2.5	ND<2.5	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
SB-11	1.0	1/20/1993	HLA, 1993	ND<2.5	ND<2.5	ND<2.5	ND<2.5	---	ND<2	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
SB-11	20	1/20/1993	HLA, 1993	ND<2.5	ND<2.5	ND<2.5	ND<2.5	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
SB-11	25	1/20/1993	HLA, 1993	5100	4200	ND<2.5	15000	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
SB-12	10	1/21/1993	HLA, 1993	ND<2.5	ND<2.5	ND<2.5	ND<2.5	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
SB-13	5.0	1/21/1993	HLA, 1993	ND<2.5	ND<2.5	ND<2.5	ND<2.5	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
SB-14	1.5	1/19/1993	HLA, 1993	ND<2.5	ND<2.5	ND<3	ND<3	---	ND<2	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
SB-15	1.5	1/20/1993	HLA, 1993	ND<2.5	ND<2.5	ND<2.5	ND<2.5	---	ND<2	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
SB-15	20	1/20/1993	HLA, 1993	ND<2.5	ND<2.5	ND<2.5	ND<2.5	---	ND<2	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
SB-15	25	1/20/1993	HLA, 1993	8200	2700	4000	12000	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
SB-16	1.5	1/21/1993	HLA, 1993	ND<2.5	ND<2.5	ND<2.5	ND<2.5	---	ND<2	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
SB-16	25	1/21/1993	HLA, 1993	ND<2.5	ND<2.5	ND<2.5	ND<2.5	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
SB-17	5.0	1/22/1993	HLA, 1993	ND<2.5	ND<2.5	ND<2.5	ND<2.5	---	PCE: 22	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
SB-17	25	1/22/1993	HLA, 1993	670	950	1600	3800	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
SB-18	3.0	5/13/1993	HLA, 1993	ND<2.5	ND<2.5	ND<2.5	ND<2.5	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
SB-18	8.0	5/13/1993	HLA, 1993	ND<2.5	ND<2.5	ND<2.5	ND<2.5	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
SB-18	15.5	5/13/1993	HLA, 1993	ND<2.5	ND<2.5	ND<2.5	ND<2.5	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
SB-19	1.5	5/13/1993	HLA, 1993	---	---	---	---	---	PCE: 2.6	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
SB-20	1.5	5/13/1993	HLA, 1993	---	---	---	---	---	PCE: 7.5	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
SB-21	1.5	5/13/1993	HLA, 1993	---	---	---	---	---	ND<2	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
SB-22	1.5	5/13/1993	HLA, 1993	---	---	---	---	---	ND<2	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
SB-27	15.5	5/13/1993	HLA, 1993	ND<2.5	ND<2.5	ND<2.5	ND<2.5	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
SB-27	20.5	5/13/1993	HLA, 1993	ND<2.5	ND<2.5	ND<2.5	ND<2.5	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
SB-27	24.5	5/13/1993	HLA, 1993	ND<500	1400	1800	3900	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
SB-28	2.0	8/23/1999	HLA, 1999	ND<5	ND<5	ND<5	ND<5	ND<5	ND	ND<330	ND<330	170 J	ND<330	180 J	ND<330	870	810	1400	490	840	550	330 J	570	270 J	
SB-28	9.5	8/23/1999	HLA, 1999	ND<4.7	ND<4.7	ND<4.7	ND<4.7	ND<4.7	ND	ND<330	ND<330	ND<330	ND<330	ND<330	ND<330	ND<330	ND<330	ND<330	ND<330	ND<330	ND<330	ND<330	ND<330	ND<330	

TABLE 1B
Analytical Results Summary: Soil

Sample Location	Sample Depth (feet bgs)	Sample Date	Source	VOCs (µg/kg)						PAHs (µg/kg)															
				Benzene	Toluene	Ethylbenzene	Xylenes	MTBE	Other VOCs	Naphthalene	2-Methylnaphthalene	Acenaphthylene	Acenaphthene	Anthracene	Fluorene	Fluoranthene	Phenanthrene	Pyrene	Benzo(a)anthracene	Benzo(b,k)fluoranthene	Benzo(a)pyrene	Benzo(g,h,i)perylene	Chrysene	Indeno(1,2,3-cd)pyrene	
SB-28	26.5	8/23/1999	HLA, 1999	ND<500	ND<500	800	4080 J	ND<500	IPB: 1100 PB: 1700 1,3,5-TMB: 4200 1,2,4-TMB: 12000 s-BB: 670 p-IT: 1700 n-BB: 2300	1700 / 2300	1000	ND<330	ND<330	ND<330	ND<330	ND<330	ND<330	ND<330	ND<330	ND<330	ND<330	ND<330	ND<330	ND<330	ND<330
SB-29	2.0	8/23/1999	HLA, 1999	ND<4.8	ND<4.8	ND<4.8	ND<4.8	ND<4.8	ND	ND<670	ND<670	ND<670	ND<670	ND<670	ND<670	ND<670	ND<670	ND<670	ND<670	ND<670	ND<670	ND<670	ND<670	ND<670	ND<670
SB-29	9.5	8/23/1999	HLA, 1999	ND<4.8	ND<4.8	ND<4.8	ND<4.8	ND<4.8	ND	ND<670	ND<670	ND<670	ND<670	ND<670	ND<670	ND<670	ND<670	ND<670	ND<670	ND<670	ND<670	ND<670	ND<670	ND<670	ND<670
SB-29	27	8/23/1999	HLA, 1999	ND<4.7	ND<4.7	ND<4.7	ND<4.7	ND<4.7	ND	ND<330	ND<330	ND<330	ND<330	ND<330	ND<330	ND<330	ND<330	ND<330	ND<330	ND<330	ND<330	ND<330	ND<330	ND<330	ND<330
SB-1	7	1/21/1998	Secor, 1998	ND	ND	ND	ND	ND	ND	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
SB-1	23	1/21/1998	Secor, 1998	ND	ND	ND	ND	ND	ND	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
SB-1	27	1/21/1998	Secor, 1998	ND	ND	ND	1600	ND	ND	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
SB-2	7.5	1/21/1998	Secor, 1998	ND	ND	ND	ND	ND	ND	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
SB-2	15	1/21/1998	Secor, 1998	ND	ND	ND	ND	ND	ND	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
SB-2	29.5	1/21/1998	Secor, 1998	ND	ND	ND	ND	ND	ND	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
SB-3	7.5	1/21/1998	Secor, 1998	ND	ND	ND	ND	ND	ND	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
SB-3	15.5	1/21/1998	Secor, 1998	ND	ND	ND	ND	ND	ND	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
SB-3	25	1/21/1998	Secor, 1998	ND	ND	ND	ND	ND	ND	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
SB-4	3.5	1/21/1998	Secor, 1998	ND	ND	ND	ND	ND	ND	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Regulatory Screening Levels¹																									
Tier 1 ²				4.4E+01	2.9E+03	3.3E+03	2.3E+03	2.3E+01	PCE: 5.5+02	1.2E+03	2.5E+02	1.3E+04	1.6E+04	2.8E+03	8.9E+03	4.0E+04	1.1E+04	8.5E+04	3.8E+02	3.8E+02	3.8E+01	2.7E+04	3.8E+03	3.8E+02	
Commercial/Industrial Worker, Direct Exposure ³				3.7E+03	4.9E+06	2.4E+04	2.6E+06	1.9E+05	PCE: 2.6+03	1.5E+04	2.2E+06	NE	1.5E+07	1.7E+08	2.2E+07	2.2E+07	NE	3.3E+07	1.3E+03	1.3E+03	1.3E+02	NE	1.3E+04	1.3E+03	
Construction/Trench Worker, Direct Exposure ⁴				7.1E+04	4.3E+06	4.9E+05	2.5E+06	3.8E+06	PCE: 3.1+04	3.7E+05	5.7E+05	NE	8.6E+06	4.3E+07	5.7E+06	5.7E+06	NE	8.6E+06	8.3E+03	8.3E+03	8.3E+02	NE	8.3E+04	8.3E+03	

Notes and Abbreviations:

1 = San Francisco Bay Regional Water Quality Control Board Environmental Screening Levels (ESLs), December 2013
 2 = The lowest soil ESL addressing direct-exposure, groundwater protection, urban ecological receptors, and nuisance concerns
 3 = Table K-2 of December 2013 ESLs
 4 = Table K-3 of December 2013 ESLs
 --- = not sampled; not analyzed
 1,2,4-TMB = 1,2,4-trimethylbenzene
 1,3,5-TMB = 1,3,5-trimethylbenzene
 feet bgs = feet below ground surface
 IPB = isopropylbenzene
 J = estimated value
 µg/kg = micrograms per kilogram (parts per billion)
 mg/kg = milligrams per kilogram (parts per million)

MTBE = methyl tert butyl ether
 NA = not applicable
 n-BB = n-butylbenzene
 ND = not detected; laboratory reporting limit unspecified or ranges in value
 ND<# = not detected at or above the indicated laboratory reporting limit
 NE = not established
 PAHs = poly-cyclic aromatic hydrocarbons
 PB = propylbenzene
 PCE = tetrachloroethene
 p-IT = para-isopropyl toluene
 s-BB = sec-butylbenzene
 TPH = total petroleum hydrocarbons
 VOCs = volatile organic compounds

HLA, 1993. Preliminary Soil Characterization, Oakland Broadway Block, Chinatown Redevelopment Project Area, 9th Street and Broadway, Oakland, California, unpublished report dated November 11, 1993.
 HLA, 1999. Results of Soil and Groundwater Investigation, 9th Street and Broadway, Oakland, California, unpublished report dated September 29, 1999.
 SECOR, 1998. Summary Report for Limited Soil and Groundwater Investigation at 9th Street and Broadway in Oakland, California, unpublished report dated April 27, 1998.

TABLE 3
Analytical Results Summary: Excavated and Stockpiled Soil

Sample Location	Sample Depth (feet bgs)	Sample Date	Source	TPH (mg/kg)				VOCs (mg/kg)					Metals (mg/kg)														STLC (mg/L)	TCLP (mg/L)				
				TPH as Gasoline	TPH as Diesel	TPH as Motor Oil	TPH as Mineral Spirits	Benzene	Toluene	Ethylbenzene	Xylenes	Other VOCs	Antimony	Arsenic	Barium	Beryllium	Cadmium	Chromium	Cobalt	Copper	Lead	Mercury	Molybdenum	Nickel	Selenium	Silver	Thallium	Vanadium	Zinc	Lead	Lead	
Sample #1 (sidewall)	4.0	5/25/2000	HLA, 2000a,d	240 ¹	1200 ²	2100	ND<200	ND<0.62	ND<0.62	ND<0.62	ND<0.62	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---		
Sample #2 (sidewall)	8.0	5/25/2000	HLA, 2000a,c,d	870 ¹	2200 ²	3900	320	ND<0.62	ND<0.62	ND<0.62	ND<0.62	Chlorobenzene: 29	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---			
Sample #3 (bottom)	9.0	5/25/2000	HLA, 2000a,d	46 ¹	160 ²	300	19	ND<0.62	ND<0.62	ND<0.62	ND<0.62	Chlorobenzene: 2.7	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---			
Sample #4 (stockpile)	NA	5/25/2000	HLA, 2000a,b,d	110 ¹	1000 ²	2100	ND<200	ND<0.62	ND<0.62	ND<0.62	ND<0.62	Chlorobenzene: 3.8 Naphthalene: 0.9 PCE: 0.34	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---			
SP1(A-D) (stockpile)	NA	6/12/2000	HLA, 2000e	---	150 ²	470	---	ND	ND	ND	ND	ND	ND<2	3.4	100	ND<0.5	ND<0.5	32	6.2	22	94	0.45	ND<1	26	ND<2	ND<1	ND<1	ND<1	25	90	5.9	ND<1.0
SP2(A-D) (stockpile)	NA	6/12/2000	HLA, 2000e	---	17 ²	160	---	ND	ND	ND	ND	ND	ND<2	3	91	ND<0.5	ND<0.5	31	6.4	21	70	0.51	ND<1	27	ND<2	ND<1	ND<1	ND<1	23	200	6.5	ND<1.0
SP3(A-D) (stockpile)	NA	6/12/2000	HLA, 2000e	---	14 ²	150	---	ND	ND	ND	ND	ND	ND<2	3.1	76	ND<0.5	ND<0.5	26	4.7	21	90	0.56	ND<1	21	ND<2	ND<1	ND<1	ND<1	21	230	6.5	ND<1.0
SP4(A-D) (stockpile)	NA	6/12/2000	HLA, 2000e	---	17 ²	190	---	ND	ND	ND	ND	ND	ND<2	3.8	91	ND<0.5	ND<0.5	31	6.2	24	87	0.46	ND<1	30	ND<2	ND<1	ND<1	ND<1	25	110	6.7	ND<1.0
SP5(A-D) (stockpile)	NA	6/12/2000	HLA, 2000e	---	15 ²	150	---	ND	ND	ND	ND	ND	ND<2	3.1	92	ND<0.5	1.8	30	5.9	22	85	0.49	ND<1	26	ND<2	ND<1	ND<1	ND<1	24	460	8.0	ND<1.0
SP6(A-D) (stockpile)	NA	6/12/2000	HLA, 2000e	---	29 ²	160	---	ND	ND	ND	ND	ND	ND<2	3.6	110	ND<0.5	ND<0.5	32	7	23	76	0.38	ND<1	30	ND<2	ND<1	ND<1	ND<1	26	95	6.5	ND<1.0
Regulatory Screening Levels³																																
Tier 1⁴				1.0E+02	1.0E+02	1.0E+02	NE	4.4E+01	2.9E+03	3.3E+03	2.3E+03	Chlorobenzene: 1.5E+00 Naphthalene: 1.2E+03 PCE: 5.5+02	2.0E+01	3.9E-01	7.5E+02	4.0E+00	1.2E+01	1.0E+03	2.3E+01	2.3E+02	8.0E+01	6.7E+00	4.0E+01	1.5E+02	1.0E+01	2.0E+01	7.8E-01	2.0E+02	6.0E+02	NA	NA	
Commercial/Industrial Worker, Direct Exposure⁵				4.0E+03	1.1E+03	1.0E+05	NE	3.7E+03	4.9E+06	2.4E+04	2.6E+06	Chlorobenzene: 1.2E+04 Naphthalene: 1.5E+04 PCE: 2.6+03	4.1E+02	1.6E+00	1.9E+05	2.0E+03	1.0E+03	NE	3.0E+02	4.1E+04	3.2E+02	8.8E+01	5.1E+03	1.9E+04	5.1E+03	5.1E+03	1.0E+01	5.1E+03	3.1E+05	NA	NA	
Construction/Trench Worker, Direct Exposure⁶				2.7E+03	9.0E+02	2.8E+04	NE	7.1E+04	4.3E+06	4.9E+05	2.5E+06	Chlorobenzene: 5.0E+03 Naphthalene: 3.7E+05 PCE: 3.1+04	1.2E+02	1.0E+01	6.1E+04	1.8E+02	1.1E+02	NE	4.9E+01	1.2E+04	3.2E+02	2.7E+01	1.5E+03	6.1E+03	1.5E+03	1.5E+03	3.1E+00	1.5E+03	9.3E+04	NA	NA	

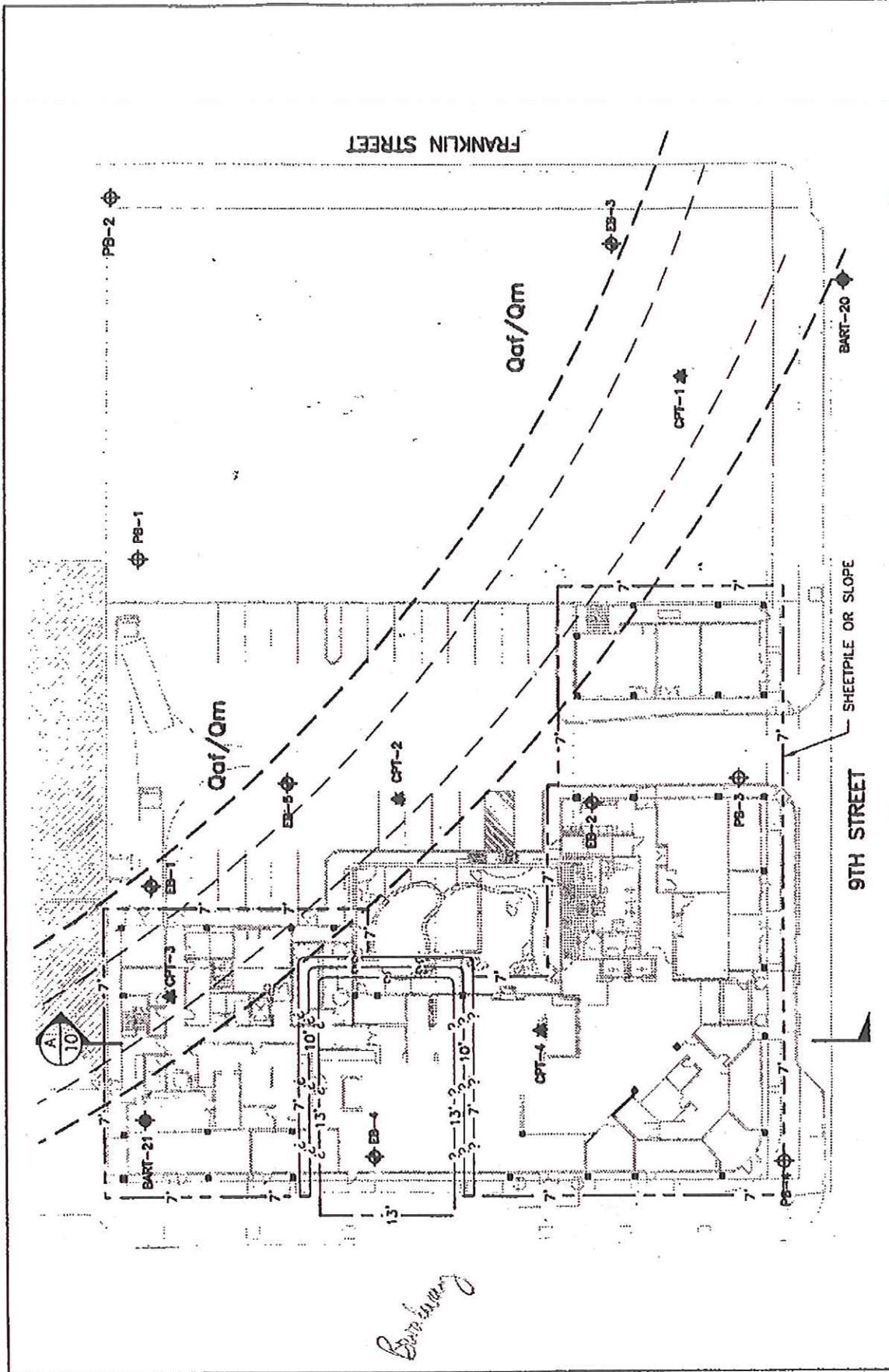
Notes and Abbreviations:

- 1 = Hydrocarbon reported did not match gasoline standard.
- 2 = Hydrocarbon reported did not match diesel standard.
- 3 = San Francisco Bay Regional Water Quality Control Board Environmental Screening Levels (ESLs), December 2013
- 4 = The lowest soil ESL addressing direct-exposure, groundwater protection, urban ecological receptors, and nuisance concerns
- 5 = Table K-2 of December 2013 ESLs
- 6 = Table K-3 of December 2013 ESLs
- = not sampled; not analyzed
- feet bgs = feet below ground surface
- mg/kg = milligrams per kilogram (parts per million)
- mg/L = milligrams per liter (parts per million)

- NA = not applicable
- ND = not detected; laboratory reporting limit unspecified or ranges in value
- ND<# = not detected at or above the indicated laboratory reporting limit
- NE = not established
- PCE = tetrachloroethene
- STLC = Soluble Threshold Limit Concentration used for California regulated hazardous waste
- TCLP = Toxicity Characteristic Leaching Procedure used for Federal regulated hazardous waste
- TPH = total petroleum hydrocarbons
- VOCs = volatile organic compounds

HLA, 2000a. Facsimile Transmission from Jim McCarty, Harding Lawson Associates, to Barney Chan, Alameda County Environmental Health, Re: 9th and Broadway Sample Results, Lab Results for the Soil at the 9th and Broadway Site, May 31, 2000.
 HLA, 2000b. Facsimile Transmission from Jim McCarty, Harding Lawson Associates, to Barney Chan, Alameda County Environmental Health, Re: 9th and Broadway Sample Results, 8260 Results from Sample 4, May 31, 2000.
 HLA, 2000c. Facsimile Transmission from Jim McCarty, Harding Lawson Associates, to Barney Chan, Alameda County Environmental Health, Re: 9th and Broadway Sample Results, June 5, 2000.
 HLA, 2000d. Facsimile Transmission from Jim McCarty, Harding Lawson Associates, to Barney Chan, Alameda County Environmental Health, Re: 9th and Broadway Sample Results, June 12, 2000.
 HLA, 2000e. Letter from James McCarty and Stephen Osborne, Harding Lawson Associates, to Barney Chan, Alameda County Environmental Health, Re: Stockpile Soil Sampling, Garden Hotel Project, 9th Street and Broadway, Oakland, California, July 17, 2000.

EXHIBIT 1



	Harding Lawson Associates Engineering and Environmental Services	PROJECT NUMBER	49600.5	DATE	2/28/00	REVISED DATE	
		DRAWN	jgm	APPROVED			

building plan by Patri Merker Architects

Proposed Garden Hotel Development
Soil Management Plan
9th Street and Broadway
Oakland, California

PLATE **3**

P/28 & Broadway/SAP

EXHIBIT 2

FACSIMILE TRANSMISSION

To: Barney Chan

Fax Number: 337-9335

From: Jim McCarty

Date: June 6, 2000

Subject: 9th and Broadway Sample Locations

Project Number: 49600-5

Number of pages (including this cover sheet): 3

Remarks:

cc: _____

Transmitted by: _____

If you do not receive all pages, please call (510) 451-1001

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 Engineering and Environmental Services
 383 Fourth Street, Third Floor
 Oakland, CA 94607 — (510) 451-1001

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Herding Lawson Associates
Engineering
and
Environmental Services

SHEET 1 OF 1

JOB NO. 49600-5

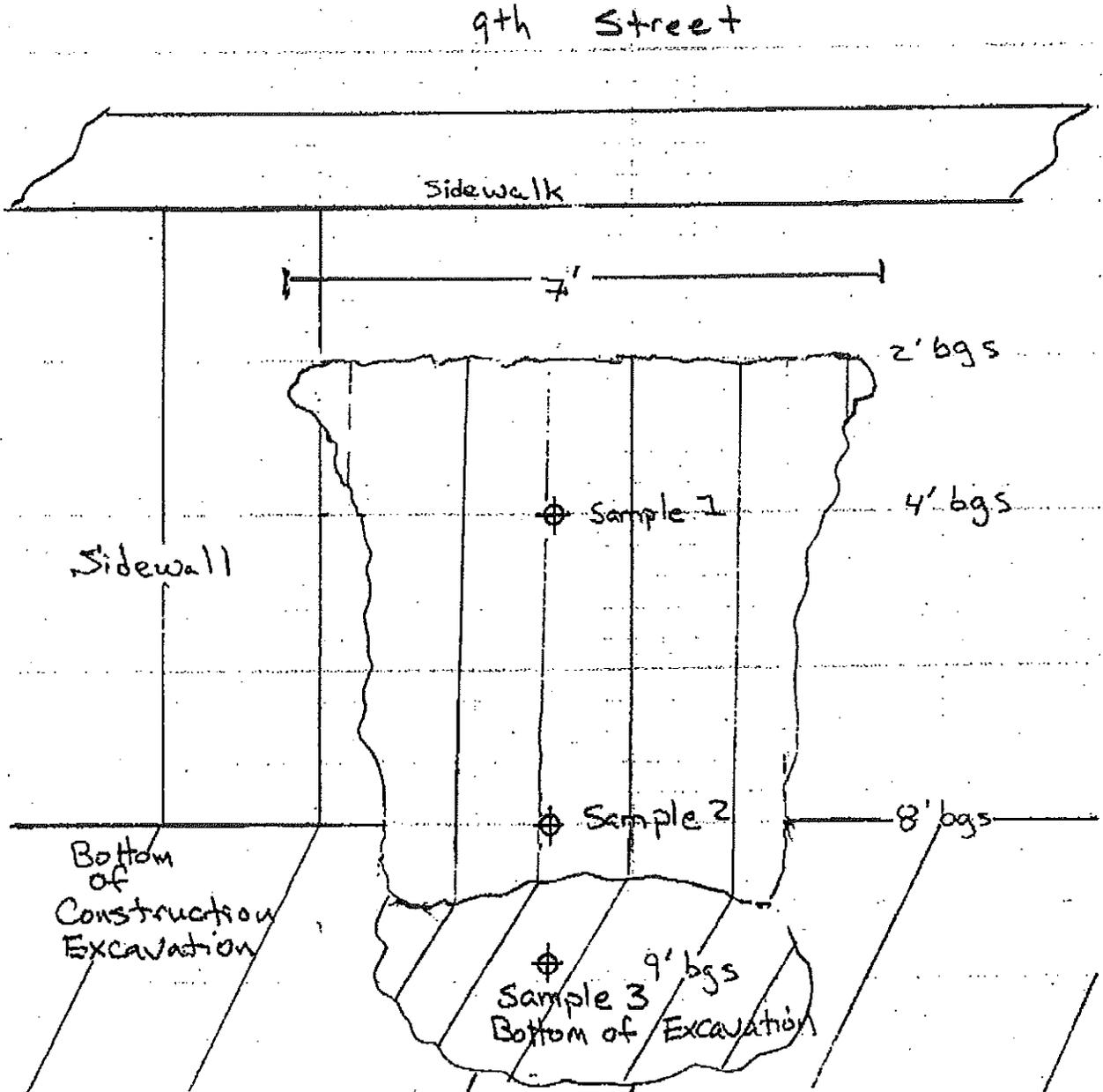
DATE 6-6-00

PROJECT 9th St. of Broadway

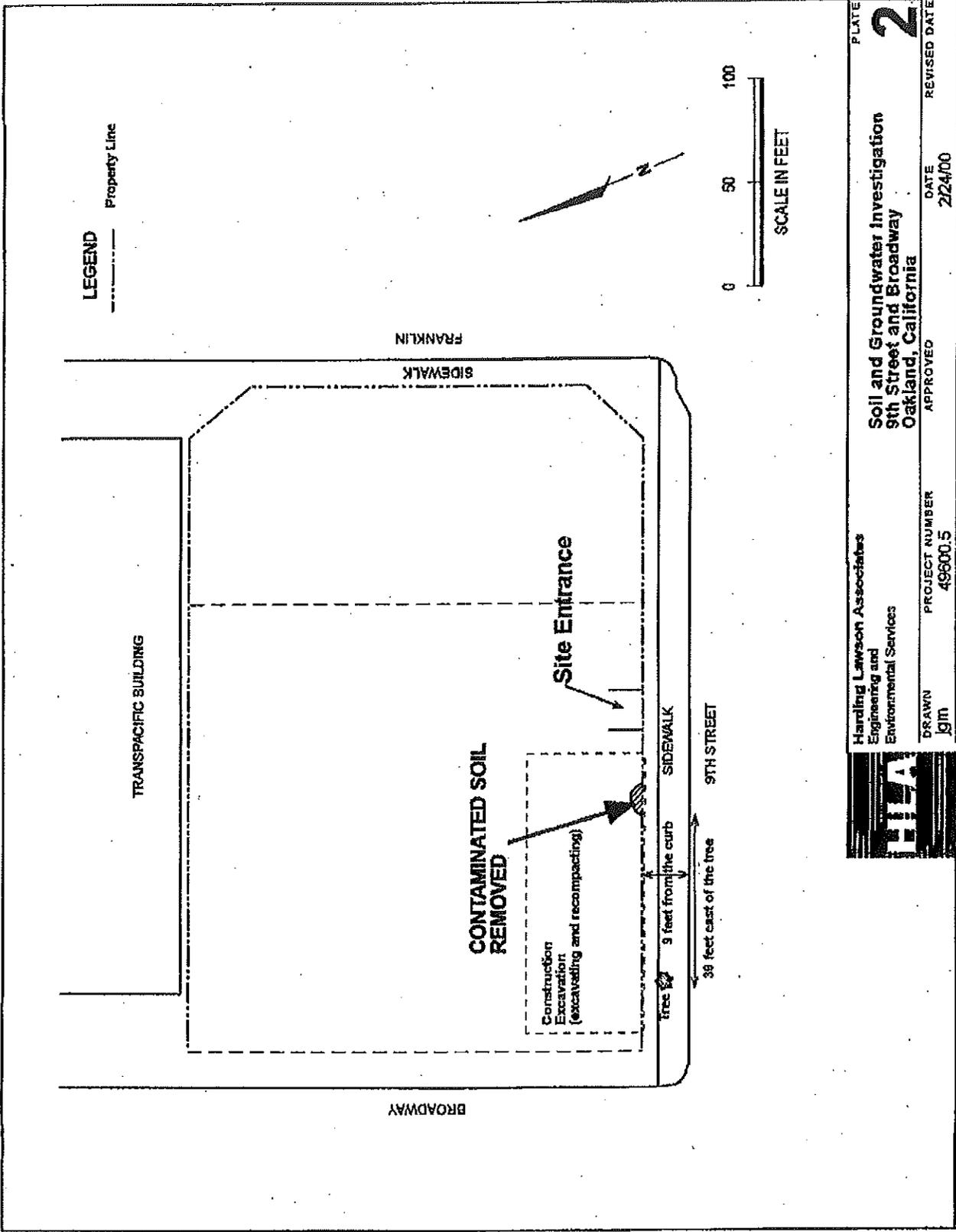
COMPUTED BY JGM

SUBJECT Soil Sample Locations

CHECKED BY _____



Note: Bottom of excavation was 1 to 1 1/2 feet below surrounding construction excavation



HLA

Harding Lawson Associates
Engineering and
Environmental Services

Soil and Groundwater Investigation
9th Street and Broadway
Oakland, California

PLATE **2**

PROJECT NUMBER 49900.5
DATE 2/24/00
REVISOR DATE

DRAWN jgm
APPROVED

PLATE 2
DATE 2/24/00
REVISOR DATE

7/27/00 & Broadway/9th/03/03

EXHIBIT 3

PLEASE COMPLETE THIS INFORMATION

RECORDING REQUESTED BY:
City of Oakland
Office of the City Attorney

WHEN RECORDED MAIL TO:

Richard Ilgen Esq.
City of Oakland
Office of the City Attorney
One Frank Ogawa Plaza 6th Floor
Oakland, California 94612



GENERAL PUBLIC
01/18/2000 10:45 A15
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ALAMEDA COUNTY
PATRICK O'CONNELL
182 PGS

182/50

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DEVELOPMENT AGREEMENT BY AND BETWEEN THE
REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND
AND
OAKLAND GARDEN HOTEL, LLC, A NEVADA LIMITED
LIABILITY COMPANY**

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Oakland, California 94612**

**Attn.: Vincent L. Jones
Deputy City Attorney**

**OAKLAND GARDEN HOTEL
DISPOSITION AND DEVELOPMENT AGREEMENT
BY AND BETWEEN**

**THE REDEVELOPMENT AGENCY OF THE
CITY OF OAKLAND
And
OAKLAND GARDEN HOTEL, LLC
A NEVADA LIMITED LIABILITY COMPANY**

JULY 23, 1999

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DISPOSITION AND DEVELOPMENT AGREEMENT

THIS DISPOSITION AND DEVELOPMENT AGREEMENT (the "Agreement") is entered into as of this 23rd day of July, 1999, by and between **THE REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND**, a public body, corporate and politic ("Agency") and **OAKLAND GARDEN HOTEL, LLC**, a Nevada limited liability company, ("Developer"). Agency and Developer are from time to time hereinafter referred to individually as a "party" and collectively as "parties".

RECITALS

WHEREAS, Agency was created, pursuant to the provisions of the Community Redevelopment Law of the State of California for the purpose of encouraging and facilitating the redevelopment, reuse and economic growth of Oakland; and

WHEREAS, Agency has adopted and amended a redevelopment plan for the Central District Urban Renewal Area, which encompasses the site of the hotel project proposed by Developer; and

WHEREAS, Developer desires to construct and operate a hotel located on the real property located at the intersection of Broadway, and 9th Street, more particularly described in **Exhibit A** hereto and made a part hereof. The real property is within the Central District Urban Renewal Area; and

WHEREAS, Agency owns the real property which has been underutilized and unproductive for many years; and

WHEREAS, Developer and Agency desire to cooperate to secure the provision of quality hotel accommodations through the development of the proposed hotel and to help effectuate the redevelopment of downtown Oakland; and

WHEREAS, the redevelopment of the real property will not occur without Developer's acquisition of the real property from Agency;

NOW THEREFORE, in consideration of the preceding recitals of fact and the mutual covenants and obligations of the parties set forth herein. Agency and Developer hereby agree as follows:

AGREEMENTS

ARTICLE 1

PURPOSES

1.1 Purpose. This Agreement sets forth the terms and conditions under which Agency shall sell to Developer, and Developer shall purchase from Agency, the Property upon which Developer shall construct and operate the Hotel (as those terms are defined in **ARTICLE 2**).

1.2 Redevelopment Plan. The parties agree that this Agreement shall be subject to the provisions of the Central District Urban Renewal Plan (the "Redevelopment Plan" or the "Plan") adopted on June 12, 1969 and most recently amended on March 27, 1990, in effect of the Execution Date and incorporated by reference into this Agreement, and shall remain subject to said Plan while the Plan remains in effect.

ARTICLE 2

DEFINITIONS

2.1 Specific Terms. The following capitalized terms used in this Agreement shall have the meanings set forth below:

2.1.1 "Act" shall mean the Community Redevelopment Law of the State of California (Health & Safety Code section 33000 *et seq.*).

2.1.2 "Affiliate" shall mean any partner, joint venturer, limited liability company, affiliate, or other entity or person which shall, by agreement or operation of law, have general liability for all or any portion of either Agency or Developer's obligations under this Agreement.

2.1.3 "Agency" shall mean the Redevelopment Agency of the City of Oakland, a public body, corporate and politic, exercising governmental functions and powers under the Community Redevelopment Law of the State of California. The principal office of Agency is One City Hall Plaza, 3rd Floor, Oakland, California 94612.

2.1.4 "Agents" shall mean, with respect to a party to this Agreement, such party officers, directors, members, partners, employees, agents, representatives, architects, engineers, consultants and contractors.

2.1.5 "CEDA" shall mean the Community and Economic Development Agency of City or any successor agency thereto.

2.1.6 "Certificate of Completion" shall mean the certificate issued by Agency in substantially the form attached to this Agreement as **Exhibit I** certifying that the Hotel has been completed in accordance with this Agreement.

2.1.7 "City" shall mean the City of Oakland, a municipal corporation.

2.1.8 "Commencement of Construction" shall mean the date that Developer or Contractor shall have commenced excavation of the Property for the foundation of the Hotel.

2.1.9 "Construction Documents" shall mean the Construction Contract described in **Section 4.6**, any other construction contracts to be executed by Developer for the Project, and any and all related documents, including but not limited to the plans and specifications and the Bonds required herein.

2.1.10 "Construction Lender" shall mean the lender or lenders providing the Construction Loan described in **Section 4.10.1**.

2.1.11 "Deed of Trust" shall mean any mortgage or deed of trust encumbrance on or other security interest in the Property, the Hotel, any personal property therein or thereon, or in any of the tangible or intangible property or interests therein.

2.1.12 "Developer" shall mean **Oakland Garden Hotel, LLC**, a Nevada limited liability company, or an entity which is approved as a transferee pursuant to **ARTICLE 11**. Any reference in this Agreement to "Developer" shall be deemed to include any permitted successors or assigns of Oakland Garden Hotel, LLC.

2.1.13 "Director" shall mean the Director of CEDA or the Director's designee.

2.1.14 "Escrow" shall mean the escrow to be opened by the parties with Escrow Agent in order to consummate the conveyance of the Property and the transactions contemplated by this Agreement.

2.1.15 "Escrow Agent" shall mean First American Title Guaranty Company, 1535 Harrison Street, Oakland, CA, 94612

2.1.16 "Execution Date" shall mean the last date on which all signatories to this Agreement have signed one or more counterparts thereof.

2.1.17 "Fair Market Value" is defined in **Section 12.8**.

2.1.18 "Final Design Development Plans" shall mean drawings and other documents that fix and describe the size and character of the Project as to its architectural, structural, mechanical and electrical systems, materials, and such other elements as may be appropriate.

2.1.19 "Force Majeure" shall mean war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, or unusually severe weather.

2.1.20 "Formation Documents" means (i) as to any corporation, its articles of incorporation, bylaws, shareholder agreements, and any other organic documents, (ii) as to any limited partnership, its Certificate of Limited Partnership and partnership agreement, (iii) as to any general partnership or joint venture, its Statement of Partnership and partnership agreement, (iv) as to any limited liability company, its articles or certificate of organization, operating agreement, and any other organic documents, and (v) as to any trust, its trust agreement and a certification of the current trustees thereof, each of the foregoing together with all supplements, amendments and modifications.

2.1.21 "Franchisor" shall mean **Marriott International, Inc.** the initial franchisor of the Hotel, or any subsequent franchisor of the Hotel as may be permitted pursuant to the provisions of this Agreement.

2.1.22 "Funding Sources" shall mean one or more lenders, and/or investors providing financing to Developer for the Project, including any construction and/or permanent financing and any equity participation.

2.1.23 "Governmental Approvals" shall mean all governmental and quasi-governmental permits, approvals, inspections and reviews necessary for development and construction of the Project in accordance with this Agreement, including, but not necessarily limited to, conditional use permit(s), building permit(s), grading, and other "pre-development permits" including shoring, seismic, obstruction, foundation permits, engineering reviews, plan checks, and environmental review and mitigation measures pursuant to the California Environmental Quality Act.

2.1.24 "Holder" is defined in **Section 14.2.**

2.1.25 "Hotel" shall mean the Hotel described in **Exhibit C** hereto, to be constructed and operated at all times in a manner that meets or exceeds all of the Ratings.

2.1.26 "Liquidated Damage Amount" is defined in **Section 4.2.**

2.1.27 "Material Changes" shall mean any material change, modification, revision, alteration or amendment of any application, agreement or other document referenced in this Agreement. A Material Change with respect to the design or construction of the Project shall be

limited to (i) a change to the Planning Commission approvals shown in Exhibit E hereto that materially alters the design of or materials used on the exterior of the Hotel in such a manner as to require new approval from the Planning Commission or the City of Oakland Planning Department, (ii) a change that reconfigures or alters the relationship of the Hotel's ground floor uses as reflected in Exhibit E, or (iii) a change that reduces the quality and characteristics of the Hotel from those provided for herein. Except as otherwise provided in this definition, Agency shall have the right to reasonably determine whether a particular change, modification, revision, alteration or amendment is a Material Change.

2.1.28 "Operator" shall mean **Park Lane Hotels International, Inc.**, the initial operator of the Hotel, or any subsequent operator of the Hotel as may be permitted pursuant to the provisions of this Agreement.

2.1.29 "Parcel Map" shall mean the map provided for in **Section 6.3**.

2.1.30 "Parcel 1" shall mean the Property, following the recordation of the Parcel Map.

2.1.31 "Parcels" shall mean the two parcels to be created by the Parcel Map.

2.1.32 "Permitted Transferee" shall have the meaning set out in **Section 11.3**.

2.1.33 "Property" shall mean the real property described in **Exhibit A** hereto and following the recordation of the Parcel Map, Parcel 1.

2.1.34 "Project" shall mean the development, construction and operation of the Hotel on the Property.

2.1.35 "Project Development Budget" shall mean a budget for the development of the Project, separately itemized to show (i) all construction related, and (ii) all non-construction related costs, including the funding sources for payment for each item.

2.1.36 "Project Milestones" shall mean the actions to be taken in connection with the Project and the dates for such actions as specified on **Exhibit D** attached hereto and incorporated herein by this reference.

2.1.37 "Ratings" shall mean the criteria and requirements established by the Franchisor for the construction, furnishing, and operation of the Hotel and the criteria and requirements established by this Agreement.

2.1.38 "Remediation Estimate" shall mean the amount as set out in **Section 8.2.1**.

2.1.39 "Remediation Fund" is defined in **Section 3.7**

2.1.40 "Remediation Work" shall mean the work described in **Section 8.2.1**.

2.1.41 "Title Company" shall mean Escrow Agent in its capacity as a title insurer.

2.1.42 "Transfer" shall mean:

a. Any total or partial sale, assignment, lease or conveyance, or (except as otherwise expressly permitted in this Agreement) hypothecation, or any transfer in any other mode or form of or with respect to the Property or the Project or any interest therein, or any contract or agreement to do any of the same;

b. Any transfer of the stock, membership interest, partnership interest, or other form of ownership interest in or to Developer or any change in voting power in Developer in excess, in either case, of fifty percent (50%) or more thereof, except to a Permitted Transferee;

c. Any assignment by Developer of all or any part of this Agreement or all or part of any other agreement executed in furtherance of this Agreement (collectively referred to herein as "Related Agreements");

d. Any change in the identity of the managing member or manager of Developer; or

e. Any merger, consolidation, sale or lease of all or substantially all of the assets of Developer, except with or to a Permitted Transferee.

2.2 Other Terms. Other capitalized terms used in this Agreement shall have the meanings specified elsewhere in this Agreement.

ARTICLE 3

PURCHASE AND SALE

3.1 Purchase and Sale. Agency agrees to sell to Developer and Developer agrees to purchase from Agency, the Property in accordance with the provisions of this Agreement. The purchase and sale of the Property shall be accomplished through the Escrow. This Agreement shall constitute preliminary Escrow Instructions to Escrow Agent. The parties shall provide Escrow Agent with Supplemental Escrow Instructions consistent with this Agreement, as appropriate.

3.2 Purchase Price. The purchase price ("Purchase Price") to be paid by Developer to Agency for the Property, shall be **One Million and Fifty Thousand Dollars (\$1,050,000)** payable in cash on or before the Closing Date defined below.

3.3 Closing for Disposition of Property. On a date (the "Closing Date") not later than fifteen (15) days after the date that all conditions in **ARTICLE 4** have been satisfied by Developer or such later date as may be mutually agreed by the parties in writing, the Property shall be conveyed by Agency to Developer and Developer shall accept such conveyance ("Close of Escrow" or "Closing"). Such conveyance shall be by a grant deed in substantially the form attached hereto as **Exhibit G** ("Grant Deed"). Possession of the Property shall be delivered to Developer at Close of Escrow. Notwithstanding any provisions in this Agreement to the contrary, if the Closing shall not have occurred for any reason whatsoever by July 31, 2001, then Agency shall have the right to terminate this Agreement by written notice to Developer.

3.4 Reversionary Grant Deed. Prior to the Closing Date, and as a condition to Closing, Developer shall deposit into Escrow a fully executed grant deed reconveying fee title to the Property from Developer to Agency, in the form attached hereto as **Exhibit H** ("Reversionary Grant Deed"). Escrow Agent is hereby instructed to hold the Reversionary Grant Deed in Escrow until Agency has provided Escrow Agent with either (a) the notice provided for in **Section 12.3.1a** or **Section 12.3.2a.(2)**, or (b) written notice from Agency instructing Escrow Agent to return the unrecorded Reversionary Grant Deed to Developer, which notice Agency shall give contemporaneously with Agency's issuance of the Certificate of Completion.

3.5 Examination and Condition of Title. Prior to the Date of Execution, Agency has caused Escrow Holder to deliver to Developer, at Agency's expense, a Preliminary Title Report for the Property together with copies of all documents underlying the exceptions to title set forth therein. Attached hereto as **Exhibit B**, is a copy of the Preliminary Title Report. Prior to Close of Escrow, Developer shall provide Agency with a listing of the exceptions accepted by Developer and of the exceptions objected to by Developer. Agency shall convey title to the Property free and clear of all title defects, liens, encumbrances, deeds of trust, covenants, conditions, restrictions, assessments, easements, leases and taxes except those exceptions which Developer has accepted in writing, and:

3.5.1 All conditions, covenants and restrictions set forth or referred to elsewhere in this Agreement;

3.5.2 All covenants, conditions and restrictions specified in the Redevelopment Plan;

3.5.3 All applicable building and zoning laws and regulations;

3.5.4 Any lien for taxes accruing subsequent to the recordation of the Grant Deed;

3.5.5 Any items imposed as a condition to the Parcel Map previously approved by Developer;

3.5.6 Any other easements approved by Developer for public utilities or improvements, such as, but not limited to, tree wells, lamps, electrification, storm drains and gas mains necessary for successful development of the Project; and

3.5.7 Such additional conditions, covenants, restrictions or easements as may be agreed upon by Developer and Agency.

Title shall be in such condition at Closing as shall enable Developer to obtain an ALTA Owner's Policy of title insurance at no cost to Agency and to enable the Construction Lender and any lenders for the Project, to obtain an ALTA Loan Policy of title insurance subject only to the exceptions set forth in the subsections above.

3.6 Closing Costs. At Close of Escrow, Agency and Developer shall pay the Closing Costs as set forth below.

3.6.1 Agency shall pay all of the following:

- a. Ad valorem taxes and assessments on the Property, if any, for any period prior to Close of Escrow even if not due until after Close of Escrow;
- b. All costs and expenses if any, necessary to place title to the Property in the condition required at Closing pursuant in this Agreement;
- c. All costs and expenses of preparing, executing, acknowledging, and delivering the Grant Deed; and
- d. One half (½) of any Escrow fees and other costs and expenses of Escrow not specifically allocated by this Agreement.

3.6.2 Developer shall pay all of the following:

- a. Alameda County documentary transfer taxes;
- b. City's real estate transfer tax;
- c. The premium for Developer's owner's policy of title insurance; and
- d. One half (½) of any Escrow fees and other costs and expenses of Escrow not specifically allocated by this Agreement.

3.7 Remediation Fund. At Close of Escrow, Escrow shall retain from any funds payable to Agency as part of the Purchase Price, an amount equal to the Remediation Estimate ("**Remediation Fund**"). The Remediation Fund shall be disbursed as provided in **Exhibit M**.

ARTICLE 4

PREDISPOSITION REQUIREMENTS

4.1 Conditions Precedent. As conditions precedent to the obligation of Agency to convey the Property to Developer, all of the conditions set forth in this **ARTICLE 4** must first be satisfied within the applicable time period set out below and in the **Exhibit D**, unless those time limits are extended in writing by mutual agreement of Developer and Agency. Developer agrees to use its best efforts to cause all of the events provided for herein to occur on or before the specified dates; provided however, that all time limits not marked with an * in **Exhibit D**, are agreed to be the earliest anticipated date for such event and the failure of such event to occur by the date set out herein shall not be a Developer default under this Agreement, unless such failure or delay arises from Developer's failure to use its best efforts to cause such event to occur by such date. Except as provided above, Developer's failure to fulfill any of its obligations under this **ARTICLE 4** shall, at Agency's option, constitute a Developer default under this Agreement, subject to the provisions of **ARTICLE 12**.

4.2 Liquidated Damage Deposit. Within ten (10) business days after the Execution Date, Developer shall have deposited with Agency the amount of **Two Hundred Thousand Dollars (\$200,000)**, which together with the **Fifty Thousand Dollars (\$50,000)** previously deposited with Agency, shall be the "Liquidated Damage Amount" and shall be held and disbursed by Agency as provided in **ARTICLE 13**.

4.3 Development Strategy and Cost Estimates. Not later than the dates specified below, Developer shall have submitted to Agency the following documents and information for Agency's review and comment:

4.3.1 Not later than ninety-one (91) days after the Execution Date, all of the following documents and Information (collectively, the "Development Strategy"):

a. A completed written "Project Information Worksheet," which shall include (i) a feasibility study prepared by an independent third party with hotel development expertise and demonstrating the financial and market feasibility of the Project; (ii) cost estimates (including costs of construction, fixtures, furnishings and equipment, construction period interest, pre-opening marketing and working capital); (iii) a sources and use of funds statement; and (iv) preliminary pro forma projections of all income and expenses anticipated by Developer from the Hotel for the first ten (10) years of its operation following completion of the Project (the "Pro Forma");

b. A written summary of the qualifications of Developer and each Developer Affiliate for developing the Project;

c. A written list of potential Funding Sources and estimated terms for construction and permanent financing;

d. A marketing plan describing preopening marketing strategy and actions to publicize the opening of the Hotel and attract guests and retail tenants to the Hotel (the "Marketing Plan").

4.3.2 Not later than two hundred-ten (210) days after the Execution Date, a cost estimate for completion of the Project as contemplated by the Development Strategy, prepared in accordance with construction industry standards.

4.4 Design Development. Developer and Agency agree that the design and development of the Project shall conform to the design approved and the requirements and conditions of approval granted and imposed by the Oakland Planning Commission on July 7, 1999, copies of which are attached hereto as **Exhibit E**. Developer acknowledges and agrees that Agency requires adequate opportunity for review and comment on Developer's Design Development Plans and other submissions for the Project by the Director and such other persons and bodies as the Director may deem appropriate. Accordingly, Developer agrees as follows:

4.4.1 Developer shall, prior to the date set out in Section 4.4.2, have submitted from time to time, draft Design Development Plans to Agency for its review, comment and approval on an informal basis to assure that submission of the Final Design Development Plans will be complete and in proper form within the time established herein for final submission.

4.4.2 Developer shall have submitted its Final Design Development Plans not later than ninety-one (91) days after the Execution Date, for Agency's review, comment and approval, which approval shall be given if the Final Design Development Plans do not reflect a Material Change not previously approved by Agency. The approval by Agency of the Final Design Development Plans shall not be relied upon by Developer or by any third parties as a warranty or representation by Agency as to the quality of the design of the Project or its compliance with the requirements of this Agreement.

4.5 Construction Plans. Developer shall have submitted its Construction Plans for construction of the Project not later than two hundred forty-six (246) days following the Execution Date, for Agency's review and comment. The term "Construction Plans" means all construction documentation upon which Developer and Contractor will rely in constructing the Project and shall include, but not necessarily be limited to, architectural drawings, landscaping plans and specifications, elevations, building plans, specifications, and a schedule for construction. Prior to submission of the Construction Plans, Developer shall consult with Agency concerning its construction plans on a regular basis. Developer shall also submit draft construction plans to Agency for its review and comment on an informal basis to assure that

submission of the Construction Plans will be complete and in proper form within the time established for final submission.

Any Material Change to the approved Construction Plans must be submitted to and approved by Agency as provided for in **Section 5.2**. If a Material Change is not approved by Agency, the latest approved Construction Plans shall continue to control development of the Project.

4.6 General Contractor; Construction Contracts. Not later than thirty (30) days prior to the Commencement of Construction, Developer shall have submitted to Agency copies of the Construction Documents for Agency's review and comment, for the purposes of determining that (i) the Contractor (defined below) has agreed to abide by all provisions of this Agreement applicable to the Contractor, and (ii) the Construction Contract (defined below) is for construction of the entire Project.

4.6.1 Developer intends to enter into one or more contracts for the construction of the Project (individually and collectively, the "Construction Contract") with a general contractor of Developer's selection ("Contractor"). The Construction Contract shall provide for the Project to be constructed pursuant to the approved Construction Plans and require that the Contractor furnish the Bonds specified in **Section 4.7** and otherwise comply with all provisions of this Agreement applicable to the Contractor. The Construction Documents shall be executed by Developer and Contractor and complete copies of the executed Construction Documents shall be provided by Developer to Agency prior to the Commencement of Construction.

4.6.2 Following the **Section 4.6** submission, no Material Changes to the Project or the Construction Contract will be made without the prior written consent of Agency as provided for in **Section 5.2**.

4.7 Performance and Payment Bonds. Not later than five (5) days prior to the Commencement of Construction, Developer shall have submitted or cause Contractor to submit to Agency for its review and comment, the following bonds for the Project (collectively, the "Bonds"), to be issued by one or more licensed sureties and naming the Construction Lender as an additional beneficiary:

4.7.1 A performance bond in an amount not less than one hundred percent (100%) of the cost of construction of the Project, based upon the total maximum contract price for the Project specified in the Construction Contract approved by Agency (the "Total Contract Price"), as security for the faithful performance of such construction and all other obligations of Contractor under the Construction Contract (the "Performance Bond"); and

4.7.2 A labor and materials payment bond in an amount not less than one hundred percent (100%) of the cost of construction of the Project, based upon the Total Contract Price, as

security for payment to persons performing labor or furnishing materials, in connection with construction of the Project (the "Payment Bond").

4.8 Prevailing Wage/ Local Employment. The Construction Contract shall provide for the following:

4.8.1 Contractor's employees and Contractor's subcontractors' employees, shall be compensated in an amount no less than the general prevailing rate of per diem wages as determined by the California Department of Industrial Relations under California Labor Code Sections 1770, et seq.;

4.8.2 Contractor and Contractor's subcontractors shall comply with all reporting and record keeping requirements of the applicable prevailing wage statutes and regulations;

4.8.3 A statement that Contractor is aware of and shall comply with all provisions of Agency's prevailing wage requirements contained in Resolution No. 87-4 C.M.S., passed on January 20, 1987, a copy of which is on file with Agency;

4.8.4 A requirement that Contractor and Contractor's subcontractors shall comply with Agency's Local Employment Program (a copy of which Program is on file with Agency) for providing employment at the Project for qualified and licensed (if licensing is required by law) Oakland residents; and

4.8.5 The requirement that Contractor and Contractor's subcontractors shall comply with Agency's Local/Small Business Enterprise Program (a copy of which Program is on file with Agency) for participation of small Oakland businesses in Project construction and professional services.

4.9 Firm Commitment - Franchise and Operator. Developer acknowledges and agrees that the quality of the Hotel franchise and Hotel operator are significant elements of the consideration which Agency is receiving for the Property and Agency's covenants and obligations under this Agreement. Based thereon, Developer further covenants to Agency as set forth in this **Section 4.9.**

4.9.1 Prior to the Close of Escrow, Developer shall provide Agency with a copy of the fully executed Franchise Agreement and any related agreements between Developer and Franchisor (the "Franchise Agreement"). Prior to the date of this Agreement, Developer submitted to Agency for its review, a letter of interest from Marriott International, Inc. with respect to the development of the Hotel as a "Courtyard by Marriott Hotel" and Agency hereby consents to the Hotel being developed in that manner. Subject to the provisions of this **Section 4.9.1 and Section 11.3.5**, Developer agrees that it shall maintain its franchise with Franchisor for the Hotel for a period of not less than seven (7) years from the date Hotel opens for business. Developer may not enter into a franchise agreement with a franchisor other than Franchisor

except for a valid business purpose and then only with a franchisor of the same or greater stature and financial stability and with the same or greater name recognition as that of the then current Franchisor. Agency's prior consent, which shall not be unreasonably withheld, of any new franchise agreement during said seven (7) year period shall be required. If Agency does not consent to the proposed franchise agreement or any provisions thereof, Agency shall provide written notice thereof to Developer, which notice shall include a statement of reasons and any proposed revisions and may include recommendation for a different proposed franchisor, within ten (10) days following Agency's receipt of the proposed franchise agreement. Agency shall be entitled to withhold consent to the franchise agreement on the basis that the Hotel would thereafter be operated subject to Ratings which are less than those applicable prior thereto or that the proposed franchisor has insufficient financial ability to support the Hotel. Following receipt of the Agency's notice, Developer shall use good faith best efforts to revise the proposed franchise agreement in accordance with Agency's notice, negotiate in good faith with any prospective franchisor recommended by Agency, or attempt to identify another substitute Franchisor; provided, however, that if Developer is unable, notwithstanding its good faith best efforts, to comply with the Agency's requests, and satisfy Agency's objections, Developer may enter into the new franchise agreement on terms and conditions acceptable to Developer so long as the Ratings with respect to the new franchise are at least as good as the Ratings of the immediately preceding Franchisor approved by the Agency.

4.9.2 Management Agreement. Prior to the Close of Escrow, Developer shall provide to Agency copies of the fully executed Management Agreement (as defined below) and any related agreements between Developer and Operator (as defined below). Developer has advised Agency that it intends to enter into a contract with Park Lane Hotels International, Inc. ("Operator") for the management of the Hotel ("Management Agreement") and Agency hereby consents to such Operator. Developer agrees that it shall engage Operator as the Hotel operator for a period of not less than seven (7) years from the date the Hotel opens for business. Developer may not enter into a Management Agreement with an operator other than Operator except for a valid business purpose and then only with an operator of the same or higher stature and financial stability as the then current Operator and then only with the prior written consent of Agency, which shall not be unreasonably withheld. Developer may not enter into a new contract for the operation of the Hotel during such seven (7) year period without prior written consent of Agency, which shall not be unreasonably withheld. If Agency does not consent to the proposed contract or any provisions thereof, Agency shall provide written notice thereof to Developer, including a statement of reasons and any proposed revisions, within ten (10) days following Agency's receipt of the proposed Management Agreement. Agency shall be entitled to withhold consent to the Management Agreement on the basis of that the Hotel would thereafter be operated subject to Ratings which are less than those applicable prior thereto; provided, however, that if Developer is unable, notwithstanding its good faith best efforts, to comply with the Agency's requests, Developer may enter into the new Management Agreement on terms and conditions acceptable to Developer.

4.10 Firm Commitment-Financing.

4.10.1 Not later than sixty (60) days prior to the Close of Escrow, Developer shall have provided to Agency for its review and comment, the following (collectively, the "Financing Plan"):

a. Written evidence in form and substance satisfactory to Agency, that Developer has obtained one hundred percent (100%) of the financing commitments necessary for Developer to construct and permanently finance the Project in accordance with the provisions of this Agreement. At a minimum, this evidence will be in the form of "Commitment Letter(s)" from one or more Funding Sources for one hundred percent (100%) of the financing commitments necessary for Developer to construct the Project ("Construction Loan") and for the permanent financing thereof. Such Commitment Letter(s) shall include business terms and critical dates for financing decisions and shall be in such form and content as is typically furnished by commercial lenders for hotel projects. Copies of such Commitment Letter(s) shall be certified by Developer to be true and correct. As used herein the term "one hundred percent (100%) of the financing commitments necessary for Developer to construct" shall mean the projected cost estimate for construction of the Project as reflected on Developer's most recent Project Development Budget.

b. A certified financial statement or other financial statement in such form reasonably satisfactory to Agency evidencing sources of capital sufficient to demonstrate that Developer has adequate funds available and is committing such funds to cover the difference, if any, between the aggregate cost reflected on the Project Development Budget and the amount demonstrably available from any Funding Sources.

Any Material Change to the approved Financing Plan must be first submitted to and approved by Agency. If such change is not approved, the latest approved Financing Plan shall continue to control development of the Project. For purposes of this paragraph, a Material Change shall include but not be limited to a change in Funding Sources, a refinancing of a loan, or any change in a Funding Source's Commitment Letter or loan plan.

4.10.2 Not later than sixty (60) days prior to the Close of Escrow, Developer shall have provided a ten (10) year cash flow projection for the Project.

4.10.3 At least five (5) days prior to Close of Escrow, Developer shall have provided copies of the loan agreement, promissory note, deed of trust and other documents related to the Construction Loan; provided, however, that Agency will approve such documents if they are consistent with the Commitment Letter(s) previously approved by Agency pursuant to **Section 4.9**. The Construction Loan shall close concurrently with the Close of Escrow.

4.11 Governmental Approvals. Developer shall have applied for and diligently pursued the issuance of all Governmental Approvals for the Project. Agency shall use reasonable efforts to

assist Developer as needed to obtain such Governmental Approvals. Prior to the Execution Date, Developer has received the approvals set out in **Exhibit E** attached hereto. Certified copies of all Governmental Approvals shall be submitted by Developer to Agency immediately upon receipt by Developer, subject to the timely review by and issuance of permits from City. Receipt of all Governmental Approvals, other than building, permits, is a condition precedent to Agency's obligation to transfer the Property to Developer. Developer shall be responsible for payment of all City fees associated with the Governmental Approvals and construction of the Project, including but not limited to fees associated with the conditional use permit(s), building and grading permit fees, engineering-review fees, inspection fees and plan check fees.

4.12 Pro Forma Title Policy. Developer shall have caused Escrow Agent to deliver to Agency, not later than fifteen (15) days prior to Close of Escrow, a pro forma of the owner's policy of title insurance proposed to be issued to Developer at Closing.

4.13 No Developer Default. Developer shall not be in breach of any covenant, representation or warranty made by Developer under this Agreement and shall not otherwise be in default of any of its obligations under this Agreement.

ARTICLE 5

AGENCY REVIEW CRITERIA

5.1 Agency Review of Developer Submissions. If each of the Development Strategy, the Financing Plan, the Final Design Development Plans, the Construction Plans, and the Construction Contract, are initially submitted by Developer (individually, a "Submission" and collectively, "Submissions") within the time periods specified in **ARTICLE 4**, conform to the provisions of this Agreement, and contain no Material Change not previously approved by Agency, Agency shall approve in writing each such Submission and no further filings by Developer or approvals by Agency thereof shall be required for such Submission(s). Agency may approve those portions of a Submission that conform to the provisions of this Agreement and reject those portions that do not conform. Agency also may approve all or a portion of a Submission subject to conditions requiring further submission for Agency review and approval.

5.1.1 Resubmittal. If a Submission is rejected by Agency in whole or in part because it contains a Material Change, or approved subject to conditions requiring further submissions, Developer shall submit a new or revised Submission within fifteen (15) days of written notification of Agency's rejection or conditional approval and the reasons therefor. If a resubmitted Submission is rejected by Agency in whole or in part or approved subject to conditions requiring further resubmissions, Developer shall submit new or revised Submissions within thirty (30) days of written notification of Agency's rejection or conditional approval and the reasons therefor. If the new or revised Submission is rejected by Agency, Agency or Developer may then terminate this Agreement pursuant to **Section 12.1** below. Developer and Agency

hereby expressly waive any and all claims against each other and each other's Agents in relation to and as a result of any such ten-termination.

The time limits set forth in this Agreement for the submittal to Agency of Developer's submissions and for Agency's review thereof are exclusive and supplant any time periods which might otherwise apply including any time periods under the Permit Streamlining Act (California Govt. Code §§65920 et seq.).

5.2 Agency Review of Subsequent Developer Submissions. Once the Submissions specified in Section 5.1 have been submitted by Developer and approved by Agency, if Developer makes any Material Changes to any Submissions (individually, a "Subsequent Submission" and collectively, the "Subsequent Submissions"), Agency shall review and comment in writing upon each such Subsequent Submission to evidence its acceptance and approval thereof or to evidence rejection and disapproval thereof. If Agency approves the Material Change, no further filings by Developer shall be required with respect to such Subsequent Submission, except with respect to any subsequent Material Change to the contents of such Subsequent Submission. If the Agency rejects or disapproves the Material Change or otherwise provides comments to Developer within such fifteen (15) day period, Developer shall use its best efforts to modify the Material Change or take other appropriate actions to mitigate any Agency concerns raised by its comments.

ARTICLE 6

PROPERTY CONDITION

6.1 Due Diligence. Developer acknowledges that prior to the Execution Date, it has with due diligence and reasonable efforts completed its own review of the condition of the Property and the feasibility of the Project, including, but not limited to preparing preliminary site plans and elevations, performing preliminary soils testing, engineering studies and environmental site assessments, assuring adequate parking for Hotel guests and users, and developing Project cost estimates.

6.2 Physical Conditions. Without limiting the provisions of Section 6.1 or ARTICLE 8, Developer further acknowledges that, prior to the execution of this Agreement, it has conducted and completed any additional studies or tests, including soils analysis and hazardous materials investigations, which Developer deems appropriate in connection with the Project. Developer has received and reviewed copies of the following reports or documents (collectively, the "Environmental Documents") described in Exhibit MADD-3 to Exhibit M. Developer has found that the Property is substantially in the same condition described in the Environmental Documents. Developer shall promptly provide to Agency copies of all tests, studies, reports and investigations prepared by or on behalf of Developer with respect to the environmental or other physical condition of the Property.

6.3 Parcel Map. The Agency shall, no later than one hundred-twenty (120) days prior to the Close of Escrow, cause to be prepared, a subdivision or parcel map and any other documents required by law or necessary and appropriate to divide the real property into two legal parcels (Parcel 1 and Parcel 2) ("Parcel Map"). The Parcel Map shall be subject to Developer's reasonable prior approval to confirm that (i) the exterior boundaries of Parcel 1 are consistent with exterior boundaries of the property shown on the **Exhibit E** Planning Commission approvals, (ii) Parcel 1 is the Property, and that (iii) Parcel 1 is not subject to any conditions, easements, or restrictions, other than those expressly provided for in this Agreement or otherwise approved in writing by Developer.

6.3.1 The Parcel Map shall be filed and recorded at Close of Escrow or at such earlier date as Agency shall decide. In connection with the filing and recording of the Parcel Map, the Agency shall pay all applicable fees (including in-lieu fees) to the City of Oakland or the County of Alameda.

6.4 "AS IS" Purchase. Developer represents and warrants that it is an experienced purchaser and developer of properties similar to the Property and the Project, and that Developer is relying exclusively upon its own expertise and due diligence in determining to proceed with the Project and the transactions contemplated herein. Except as expressly set forth in this Agreement, Agency does not make, and hereby disclaims, any warranty, express or implied, with respect to the Project or the fitness or condition of the Property. Subject to the specific provisions of **Section 8.2**, the Property shall be conveyed by Agency to Developer in "AS IS, WHERE IS AND WITH ALL FAULTS" condition. Without limiting the preceding provisions of this **Section 6.4**, but subject however, to **ARTICLE 8**, the parties acknowledge and agree that Agency is not in any way responsible for the soil or other surface or subsurface conditions of the Property or for removing, relocating or otherwise altering any surface or subsurface construction on the Property, including, without limitation, any underground or above-ground utilities, facilities or improvements. Except as otherwise expressly provided herein, it shall be solely the obligation of Developer, at its cost, to: (a) take such action as may be necessary to place and maintain the Property in all respects in a condition entirely suitable for the development described in this Agreement; and (b) take such action to remove, relocate or otherwise accommodate any utility facilities or improvements (both above-ground and underground) including, without limitation, any gas, electric, telephone or cable lines, as required by the appropriate governmental or public utility entity as a condition for vacating.

6.5 Developer's Rights of Access. During the period from the Execution Date to Close of Escrow, Developer and its Agents shall have the right to enter upon the Property in accordance with the provisions of this **Section 6.5** in order to perform any inspections, surveys or appraisals of the Property reasonably necessary in connection with the Project. In order to effect any such entry, Developer shall, as applicable, request Agency to arrange for such entry, and upon receipt of such request, Agency shall make good faith and diligent efforts to obtain entry to the Property as requested by Developer. Prior to any entry upon the Property by Developer or its agents, Developer shall deliver, or cause to be delivered, to Agency evidence, reasonably acceptable to

Agency that the party entering upon the Property is carrying a commercial general liability insurance policy with a financially responsible insurance company admitted in California covering the activities of such person or company upon the Property and the indemnity obligations of Developer set forth in this **Section 6.5**. Such insurance shall have a per occurrence limit and an aggregate limit of at least **Two Million Dollars (\$2,000,000)** shall name Agency as an additional insured, and shall be primary and noncontributing with any other insurance available to Agency, and shall otherwise comply with the requirements of **Section 15.12**. In addition, Developer shall be liable for and shall indemnify, defend and hold harmless Agency and Agency's Agents from and against any and all claims, demands, actions, proceedings, liabilities, damages, losses, fines, penalties, costs and expenses (including but not limited to attorneys' fees and costs) (for purposes of this **Section 6.5**, collectively, "claims"), including but not limited to any claims for death or bodily injury, damages to property, or construction delay damages, resulting or arising from any such entry or any acts or omissions of Developer or Developer's Agents while on the Property; provided, however, that Developer's indemnity obligation shall not extend to any such claims to the extent resulting or arising from the gross negligence of Agency or Agency's Agents. The provisions of the foregoing sentence shall survive Close of Escrow or termination of this Agreement.

6.6 Agency's Right of Access. Following Close of Escrow and prior to completion of construction of the Hotel, Agency and its Agents shall have the right to enter upon the Property to inspect the Property and the Project at reasonable times, upon giving notice, to determine that development of the Project is in conformance with this Agreement. Agency shall be liable for and shall indemnify, defend and hold harmless Developer and Developer's Agents from and against any and all claims, demands, actions, proceedings, liabilities, damages, losses, fines, penalties, costs and expenses (including but not limited to attorneys' fees and costs) (for purposes of this **Section 6.6**, collectively, "claims"), including but not limited to any claims for death or bodily injury, damages to property, or construction delay damages, resulting or arising from any such entry or any acts or omissions of Agency or Agency's Agents while on the Property; provided, however, that Agency's indemnity obligation shall not extend to any such claims to the extent resulting or arising from the gross negligence of Developer or Developer's Agents. The provisions of the foregoing sentence shall survive Close of Escrow or termination of this Agreement.

6.7 Agency's Abandonment of Improvements. Prior to Close of Escrow, Agency shall cause to be removed from the Property all equipment, improvements, or physical structures thereon or therein Agency wishes to retain. Any improvements, equipment or physical structures remaining on the Property following Close of Escrow shall be deemed to have been abandoned by Agency and Developer may dispose of them at its discretion. Agency shall also relocate or reroute all utility connections now serving both Parcel 1 and Parcel 2 so that following Close of Escrow, Parcel 2 will be served by utilities that do not go through Parcel 1.

ARTICLE 7

PARCEL 2 MATTERS

7.1 Parcel 2 Development. Agency proposes to develop or cause Parcel 2 to be developed as a mixed use project consisting of a parking structure, retail, and or other uses. Agency acknowledges that the Hotel will be effected by any structure erected on Parcel 2 and agrees to consult and cause anyone proposing to perform any development on Parcel 2, to consult with Developer with respect to the design and operation of any structure to be erected on Parcel 2. The specific issues on which such consultation shall take place, include but are not limited to the following:

7.1.1 Architectural treatment of all vertical surfaces along the common boundary line of Parcels 1 and 2 so as to minimize the visual impact of the Parcel 2 development on the user's of Parcel 1. It is the intent of Agency and Developer to protect the views from the Hotel's guest and rooms and swimming pool, to the extent practical.

7.1.2 Acoustical and odor treatment of the Parcel 2 structure so as to eliminate to the extent practical, noise and odor from Parcel 2 intruding on the users of Parcel 1;

7.1.3 Night-time light emanation from Parcel 2 on to Parcel 1; and

7.1.4 Access and Security issues with respect to the control of any access between Parcels 1 and 2.

7.2 Staging Area

7.2.1 For the period beginning with Commencement of Construction and terminating upon issuance of a temporary certificate of occupancy for the Hotel, Developer shall have a license for the exclusive use of Area A shown on **Exhibit N** hereto, for the purpose of staging construction equipment and materials to be used in the construction of the Hotel and a non-exclusive right to use Area B shown on **Exhibit N**, for the purpose of ingress and egress of trucks and material to the Property (collectively the "Staging Area"). Developer shall pay Agency an amount per month agreed upon by Agency and Developer prior to the Close of Escrow, in advance on the first day of each month, for the use of the Staging Area. This license shall not create any easement or real property interest in Parcel 2 except as set forth herein.

7.2.2 Developer shall comply with all regulations of use designated by the Parcel 2 parking lot operator or Agency and shall use care not to damage Parcel 2. Developer shall ensure that materials and equipment located in the Staging Area are properly secured in a safe and clean manner. Developer shall further ensure that the Staging Area and all areas of Parcel 2 over which Developer transports materials or equipment is cleaned as appropriate, including hosing down of such areas with water upon the request of Agency or the Parcel 2 parking lot operator. Developer

shall further ensure that use of, and ingress and egress to and from, the Staging Area shall not interfere with the operation of the Parcel 2 parking lot use by other permitted users. Upon termination of the license, Developer shall at its expense remove from Parcel 2, all equipment, vehicles and supplies placed thereon by Developer or Contractor and shall restore the Staging Area to the condition that existed as of the commencement of Developer's or its Contractor's use thereof. Developer shall keep Parcel 2 free from mechanics', materialmen's and any other liens arising out of Developer's use of the Staging Area. Developer shall promptly pay and discharge all claims on which such liens are based. Agency shall have the right, but not the obligation, to take any action necessary to remove or discharge any such liens.

7.2.3 Developer shall be solely responsible for materials, equipment and personnel placed in or about the Staging Area, and neither Agency nor the Parcel 2 parking lot operator shall have any responsibility or liability for death, injury, loss of or damage to, or any other matter concerning such materials, equipment or personnel. Developer shall also comply with the insurance requirements set forth in **Section 15.12** and any additional insurance requirements reasonably imposed by Agency. Nothing contained in this **Section 7.2** shall in any way limit Developer's indemnification obligation as set forth in **Section 15.10**.

7.3 Parking License. Prior to the Close of Escrow, Developer and Agency shall enter into a recordable agreement with respect to Developer's use of sixty-six (66) parking spaces in the Parcel 2 parking lot or in any other parking structure erected thereon, on the terms and conditions set forth in the Parking License Terms attached hereto as **Exhibit F** (the "Parking License Terms").

ARTICLE 8

HAZARDOUS MATERIALS

8.1 Hazardous Materials. Agency and Developer acknowledge that prior to the Execution Date, there has been a release of hazardous substances on the Property and Agency agrees, subject to the provisions of **Section 8.2** below, that to the maximum extent permitted by law, to indemnify Developer, its directors, officers, shareholders, employees, and agents, and their respective successors, heirs, personal representatives, and assigns (individually and collectively the "Indemnified Party") from liability actually imposed upon the Indemnified Party by applicable law for:

8.1.1 Any and all costs of removal or remedial action incurred by the Developer, the United States Government or a state in connection with the national contingency plan under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. Section 9601 et seq. (the "National Contingency Plan");

8.1.2 Any other necessary costs of response incurred by any other person consistent with the National Contingency Plan;

8.1.3 Damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release;

8.1.4 All damages, including full and total costs of response and damages under CERCLA, and any and all punitive damages imposed on any Indemnified Party for failure to provide removal or remedial action when such Indemnified Party has made a demand on the Agency to take such removal or remedial action; and

8.1.5 All costs, expenses or damages arising under any provision of state or federal law, including common law, which prohibits or regulates the release of any hazardous substance or which requires removal or remedial action as well as the costs of removal or remedial action for such hazardous substance, whether such costs or expenses are incurred by Developer, the federal government or others.

The Agency's indemnification shall not apply to any and all costs or damages as set forth in Subsections 8.1.1 through 8.1.4 above, caused by any Indemnified Party's own act or negligence.

8.2 Remediation Work.

8.2.1 Agency has estimated that the cost of the Remediation Work is \$ 56,500 ("Remediation Estimate"). Notwithstanding such estimate, however Agency acknowledges that it is solely responsible for the cost of all Remediation Work as set out in the Hazardous Materials Construction Funding Agreement ("Remediation Funding Agreement") attached as **Exhibit M**, which the Parties agree generally reflects an acceptable structure for the payment of the Remediation Work.

8.2.2 Prior to Commencement of Construction, Agency and Developer shall (i) agree upon the identification of the Agency's Consultant, as defined in the Remediation Funding Agreement, (ii) negotiate in good faith with the Contractor with respect to the Hazardous Materials Costs as defined therein, and (ii) enter into the Remediation Funding Agreement in substantially the form attached, or in such other form as may be required by the Construction Lender, provided that the economic terms and Agency's and Developer's respective obligations are not thereby altered.

8.2.3 Agency shall pay all costs of Agency's Consultant and all of its other costs relating to the Remediation Work and no portion of such costs shall be paid from or charged against the Remediation Fund.

8.3 Developer's Environmental Release. Following the completion of the Remediation Work, Developer for itself, its lessees, successors, assigns and every successor in interest to the Property ("collectively "Developer and its Successors") releases the Agency and the City of Oakland, and their officers, employees and agents from any claims, demands, administrative actions, litigation, liabilities, investigative costs, response costs, remediation costs and penalties, including costs of legal proceedings and reasonable attorneys' fees, that Developer and its successors may incur as a consequence of or arising out of the presence of any Hazardous Substances on, at, or near the Property. Developer expressly waives the benefits of Section 1542 of the California Civil Code, which provides as follows:

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

Developer shall obtain a release similar in form and substance from (i) its agents and contractors who perform work of any kind on the Property, including testing, and (ii) its successor in interest

8.4 Agency's Environmental Release. Following the completion of the Remediation, Agency for itself, its lessees, successors, assigns and every successor in interest to the Property (collectively "Agency and its Successors") releases the Developer and its officers, employees and agents from any claims, demands, administrative actions, litigation, liabilities, investigative costs, response costs, remediation costs and penalties, including costs of legal proceedings and reasonable attorneys' fees, that Agency and its successors may incur as a consequence of or arising out of the presence of any Hazardous Substances on, at, or near the Property. Agency expressly waives the benefits of Section 1542 of the California Civil Code, which provides as follows:

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

Agency shall obtain a release similar in form and substance from (i) its agents and contractors who perform work of any kind on Parcel 2, including testing, and (ii) its successor in interest to Parcel 2.

ARTICLE 9

PERMITS FOR AND CONSTRUCTION OF THE PROJECT

9.1 Building Permits and Other Governmental Approvals. In addition to those permits set forth in **ARTICLE 4**, Developer shall apply for and diligently pursue the issuance of all other building permit(s) and other required Governmental Approvals necessary for the construction and development of the Project. Agency will use reasonable efforts to assist Developer, as needed, to obtain such governmental Approvals. Certified copies of all required permits and other governmental Approvals necessary to construct the Project pursuant to this Section shall be submitted to Agency immediately upon receipt by Developer, but in no event more than five (5) days prior to the Commencement of Construction. Developer shall be responsible for payment of City fees associated with construction of the Project.

9.2 Commencement of Construction. Developer shall cause Commencement of Construction of the Project to occur not later than sixty (60) days after Close of Escrow. If Developer is unable to commence construction by such date due to Force Majeure, Developer shall provide Agency with written notice within five (5) days after the commencement of such Force Majeure describing the delay, the reason for the delay and the projected date for commencement of construction. Within five (5) days after receipt of such notice, Agency will provide Developer with written notice of Agency's acceptance or rejection of the reason for the delay and/or the proposed new commencement date. If Agency rejects such reason or new date, Agency shall specify in the written notice the new commencement date which shall apply, which date shall be not more than fifteen (15) days subsequent to the date of Agency's notice. In any event, Agency may provide a written notice to Developer certifying the date of commencement of construction of the Project and the required Completion Date pursuant to **Section 9.6**, which dates shall be deemed conclusive and binding on the parties. Notwithstanding the provisions of **Section 9.6**, Developer, in any event, shall cause Commencement of Construction to occur not later than the third (3rd) anniversary of the Execution Date.

9.3 Construction Pursuant to Plans. Construction of the Project shall be in accordance with the approved Construction Plans. Developer shall be solely responsible for all aspects of Developer's conduct in connection with the Project, including, but not limited to, the quality and suitability of the Construction Plans, the supervision of construction work, and the qualifications, financial conditions, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Agency is under no duty to review or approve the Construction Plans or to inspect construction of the Project. Any review, approval or inspection undertaken by Agency shall not be relied upon by Developer or by any third parties as a warranty or representation by Agency as to the quality of the design or construction of the Project or its compliance with the requirements of this Agreement. Approval of the Construction Plans by Agency also shall not constitute any representation or warranty by Agency as to compliance with state or local building codes.

9.4 Material Changes in Construction Plans. Following Commencement of Construction, if Developer wishes to make any Material Change in the Construction Plans then in effect, Developer shall first submit the proposed change to Agency for its written approval. If the Construction Plans, as modified by any proposed Material Change, conform to the requirements of this Agreement, Agency shall approve the change by notifying Developer in writing within five (5) business days following submission by Developer. If any such Material Change is rejected by Agency within that time period, the previously approved Construction Plans shall remain in effect.

9.5 Change Orders. Subject to the provisions of Sections 5.1 and 5.2, Developer shall provide to Agency a fully executed copy of any change orders that involve a Material Change, prior to the execution of such change order by Developer and Contractor. Developer's notice shall include the nature of the change and the associated change in cost and impact, if any, on the estimated date of completion of construction. Nothing herein shall be construed to waive any provision of Section 9.3. Agency shall respond to such Material Change Order as provided for in Section 5.2.

9.6 Completion of Project. Developer agrees that it will diligently and continuously prosecute the construction of the Project to completion and it will take all necessary actions to complete construction of the Project, place the Hotel in a condition ready for occupancy, and open for business by the date that is more than twenty-four (24) months following Commencement of Construction of the Project. In fulfillment of this obligation, Developer shall:

9.6.1 Administer construction contracts and supervise and coordinate the work of the Contractor;

9.6.2 Provide necessary on-site Project inspection;

9.6.3 Prepare and execute change orders, subject to approval by Agency with respect to any Material Change, as set forth herein;

9.6.4 Prepare and administer a punch list inspection; and

9.6.5 File a Notice of Completion following the Completion Date.

The Completion Date may be extended due to Force Majeure in accordance with the provisions of Section 15.6; provided, however, that in any event, and notwithstanding the provisions of Section 15.6, Developer shall complete construction by, and the Completion Date shall be not later than December 31, 2003.

9.7 Progress Reports.

9.7.1 From and following the Execution Date and until completion of construction of the Project, Developer shall provide monthly reports to Agency, in such detail as may be reasonably

required by Agency, as to the actual progress of the Project. Each such report shall include, at a minimum, updates on Developer's performance of each obligation under this Agreement, including without limitation, updates on Developer's efforts to (i) obtain financing for the Project; (ii) obtain letters of commitment from the Franchisor and letters of intent from prospective Project users, lessees and tenants; (iii) design the Project (including any alterations thereto); (iv) develop the Project Information Worksheet, a financing package for presentation to potential lenders and investors, and any pro forma projections developed for the Project, together with any revisions to any of the foregoing; and (v) completion of any other documents required to be prepared by Developer under this Agreement.

9.7.2 For a period of seven (7) years following the opening of the Hotel for business, Developer shall submit to Agency no later than April 1st of each year, a certification that the Hotel is being operated in compliance with the terms of this Agreement.

9.8 Certificate of Completion. Promptly after completion of construction of the Project in full accordance with the terms of this Agreement, Agency shall furnish Developer with a Certificate of Completion, which Certificate shall not be unreasonably withheld or delayed.

9.9 No Waiver. Neither the approval by Agency of any Submittal nor the issuance of a Certificate of Completion shall be deemed a waiver by Agency or City of any obligation of Developer under this Agreement unless such approval or certificate expressly states that it constitutes such a waiver.

ARTICLE 10

POST CONSTRUCTION OBLIGATIONS AND OTHER COVENANTS

10.1 Restrictions on Use and Operation. Developer covenants for itself, its lessees, its Permitted Transferees, successors, assigns and every successor in interest to the Property (collectively "Developer and its Successors") that Developer and its Successors shall following the date that the Certificate of Completion is issued:

10.1.1 Operate the Project and Property in conformance with the requirements of the Redevelopment Plan; and

10.1.2 Restrict the use of the Project and Property to a hotel and related uses as permitted under this Agreement.

10.2 Nondiscrimination. Developer and its Successors covenant (i) that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, creed, sex, sexual preference, marital status, ancestry, national origin, AIDS or AIDS-related complex, or disability in the sale, lease, sublease, transfer, use, occupancy, tenure or

enjoyment of the Project, nor (ii) shall there be established or permitted any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Project. Developer and its Successors shall ensure that language substantially similar to the above is incorporated into any leases.

10.3 Environmentally Sustainable Project. Developer shall make a good faith effort to design, develop, construct and operate the Project to be environmentally sustainable. An environmentally sustainable project might include the following: use of materials and products ensuring long life, durability and recyclability; reuse and salvage of demolition materials based on availability of local markets; selection of building systems, including heating, ventilation and air conditioning, which are energy efficient; proper maintenance of systems to maintain efficiency; selection of energy efficient lighting fixtures; use of occupancy sensors; installing windows which comply with current Title 24 requirements; ensuring adequate fresh air ventilation; use of light-sensitive outdoor lights; use of solar powered outdoor lights; use of fluorescent lamps in lieu of incandescent lamps; use of water-saving shower heads and toilets; proper insulation; use of nonphosphate liquid detergents; use of oxygen based bleach; education of staff to use environmental friendly products; use of low VOC (volatile organic compounds) products such as paints, furnishings, office supplies and cleaning products whenever possible; use of recycled paper products, purchase of products with less packaging; use of refillable containers; use of placards and signs to inform guests of environmentally sustainable choices available to them; use of green-sealed carpet padding; and such other methods and materials which may subsequently become available.

10.4 Maintenance of Project. Developer shall, at its cost, maintain the Project, including without limitation the Hotel and all landscaping and other beautification, in good condition and repair, suitable for Hotel use in accordance with this Agreement, in conformance with generally accepted maintenance standards for hotels with ratings at least equal to the Ratings for the Hotel, and in compliance with all applicable laws.

10.5 Covenants Regarding Retail Space. Following the issuance of a Certificate of Completion, Developer or its successor in interest to the Property shall diligently use reasonable efforts to lease the Retail Space. Developer covenants for Developer and its Successors and lessees, that except as otherwise provided in this Agreement, the Retail Space shall be restricted to Retail Use of a character and quality consistent with the retail uses in the surrounding neighborhood.

10.5.1 "Retail Use" shall include any retail store, shop or food service enterprise and private service businesses including business, mail and duplicating services, exercise and fitness facilities, travel, medical and financial services, but shall not include any establishment selling or displaying pornographic materials, including the sale of adult books or videos; pool hall; dance hall; massage parlor; game room or video arcade; bowling alley; second-hand store (or similar store selling factory rejects, bankruptcy merchandise, fire sale items or damaged or used goods),

variety store; flea market; dry cleaning establishment or laundry (provided, however, that this prohibition shall not extend to on-site services limited only to Hotel guests or providing pick-up and delivery services to the ultimate consumer); any facility for the sale or repair of motor vehicles; "fast food restaurant" (as defined as of the date of this Agreement in City of Oakland Zoning Ordinance No. 17.10.190); reading room; mortuary or funeral parlor; beauty or barber college; or tattoo parlor, or any similar use, or any use not permitted under then current zoning and other applicable law; provided however, Developer shall use its best efforts to attract high-end retail users of the Retail Space and shall work with Agency with respect to Agency's goal of elevating the nature and quality of the retail uses in the immediate area of the Hotel.

10.6 Window Facade Program. Owner shall develop, fund and implement a window facade program (attached hereto and incorporated herein as **Exhibit J**) for any un-leased retail space store fronts or otherwise finish the exterior so as not to present a vacant store front appearance for un-leased retail space.

The parties agree that the remedy for material breach of this window facade program obligation shall include, but not be limited to specific performance.

10.7 Pre-Opening Marketing. Beginning no later than eighteen (18) months prior to the scheduled opening of the Hotel, Developer shall undertake and diligently pursue marketing efforts to publicize the opening of the Hotel and attract guests, and retail tenants to the Hotel pursuant to the Marketing Plan.

10.8 Reserve. For a period of not less than seven (7) years following issuance of the Certificate of Completion, Developer shall maintain a fully funded reserve account (the "Reserve Account") to be used for and in an amount required by the Franchise Agreement or any lender with a security interest in the Property.

10.9 No Resubdivision. Developer agrees that there shall be no subdivision of all or any part of the Property for a period of thirty-seven and one-half (37½) years following Close of Escrow, provided however, that a conversion of the Hotel into a hotel condominium or time share units shall not be deemed a resubdivision so long as the Hotel continues to be principally used as a transient hotel.

10.10 First Source. Under the Agency's First Source Employment Referral Program ("First Source"), the Agency obtains commitments from employers to allow the Agency to first refer Oakland residents to fill job vacancies in a company before advertising to the general public. Following completion of construction of the Project and during the term of this Agreement, Developer shall: (i) use the referral resources of First Source for any job openings that arise at the Project site before making such openings available to the general public; (ii) provide First Source staff with the job specifications for all such openings and all applications and forms for such employment; (iii) meet with First Source staff to explain the job descriptions and its employment

needs; and (v) provide placement information, comments, and evaluation of First Source services to staff as requested.

10.10.1 The requirements of Section 10.10 shall apply to all businesses (including nonprofits) occupying the Hotel, including without limitation all business tenants, subtenants, and licensees of Developer and any successors-in-interest to the Property. Developer shall ensure that all First Source requirements are incorporated into any leases, licenses, or conveyancing agreements with any businesses occupying the Project site during the term of this Agreement.

10.10.2 The Agency, through First Source staff, shall: (i) recruit Oakland applicants through its consortium of employment and job training providers to be referred for employment to Developer and other Project occupants; (ii) assist in assessing all applicants prior to referral to ensure that applicants meet the minimum qualifications set forth in the job specifications; (iii) prescreen job applications to ensure completeness; (iv) provide facility accommodations to Developer and other Project occupants for recruitment and interviewing; and (v) provide all First Source services free of charge to Developer and other Project occupants.

ARTICLE 11

TRANSFERS AND CHANGES IN DEVELOPER

11.1 Purpose of Transfer Restrictions. Developer represents and warrants that its purchase of the Property and its other undertakings pursuant to this Agreement, are for the purpose of timely redevelopment of the Property as a Hotel and not for speculation in landholding. Developer further recognizes that, in view of the following factors, the qualifications of Developer are of particular concern to the community and Agency:

11.1.1 The importance of redevelopment of the Property to Agency's interest in the surrounding properties to be developed as part of the Redevelopment Plan, and to the general welfare of the community, with particular reference to the community's objectives of the elimination of structural and environmental blight and the establishment of an appropriate level of economic development, property utilization, and visual appearance of the Redevelopment Plan;

11.1.2 The reliance by Agency upon the unique qualifications and ability of Developer to serve as the catalyst for development of the Project and upon the continuing interest which Developer will have in the Project to assure the quality of the use, operation and maintenance deemed critical by Agency in the development of the Property;

11.1.3 The fact that a change in ownership or control of Developer or any other act or transaction resulting in a change in ownership or the identity of the parties in control of Developer is for practical purposes a transfer or disposition of the Property; and

11.1.4 The fact that the Property is not to be acquired or used for speculation, but only for development and operation by Developer in accordance with this Agreement.

Developer further recognizes that it is because of such qualifications and identity that Agency is entering into this Agreement with Developer. No voluntary or involuntary successor in interest to Developer shall acquire any rights or powers under this Agreement except as expressly set forth herein.

11.2 Prohibited Transfers. Except as expressly permitted in Section 11.3 below, Developer represents and agrees that it has not made, and shall not make or permit prior to the date which is seven (7) years after the Hotel opens for business, any Transfer, either voluntary or by operation of law, without the prior written consent of Agency in its sole discretion. Any Transfer in contravention of this Section 11.2 shall be null and void and shall be deemed to be a Developer default under this Agreement whether or not Developer knew of or participated in such Transfer.

11.3 Permitted Transfers. The following Transfers shall be permitted (collectively, "Permitted Transfers"), provided that Developer and the transferee ("Permitted Transferee") comply with all of the requirements set forth below:

11.3.1 The granting of easements or permits to facilitate the development of the Project;

11.3.2 The granting of a Deed of Trust, subject to the following conditions:

- a. no Deed of Trust shall be recorded against the Property prior to the Closing;
- b. all Deeds of Trust shall be subject and subordinate to this Agreement and; and
- c. prior to the opening of the Hotel for business, only a Deed of Trust provided for by the Financing Plan shall be permitted;

11.3.3 A Transfer to an entity such as a joint venture, limited liability company, partnership or corporation which includes Developer, which is created for the purpose of Project financing and development of the Project, and that is approved in writing by Agency ("Development Entity"). Agency approval of any Development Entity shall be granted if Developer can show to Agency's satisfaction that (i) Developer remains fully responsible to Agency under this Agreement, (ii) the proposed Development Entity has the financial and other necessary capabilities to carry out its obligations under this Agreement, and (iii) allowing a Transfer to the proposed Development Entity would not result in any diminution of Agency's rights under this Agreement. Developer shall submit to Agency the Formation Documents for the proposed Development Entity and such other information about it and its participants as shall be reasonably necessary for Agency to determine compliance with the conditions for approval set forth in this Section 11.3, including, without limitation, information about the identity, business background and experience, and financial capability of each participant therein;

11.3.4 Any Transfer, provided such Transfer does not result in a transfer of fifty percent (50%) or more of the stock, membership interest, or other form of ownership interest in or to Developer, or of the voting power in or to Developer (whether such transfer occurs as the result of one or more transfers); and

11.3.5 For a period of ten (10) years after the date the Hotel opens for business, a Transfer to any third party which has, in Agency's reasonable judgment, the demonstrated financial ability, business reputation and relevant experience to own and operate the Hotel in accordance with all requirements of this Agreement; provided, however, that the foregoing criteria shall not be exclusive, and Agency, in exercising its reasonable judgment, may also consider such other criteria reasonably determined by Agency, including, but not necessarily limited to consideration of whether the proposed Transfer constitutes speculation or excess profit taking under the Act.

11.3.6 Commencing with the eleventh (11th) year after the Hotel opens for business, a Transfer to any third party selected by Developer.

No Transfer permitted by this Section 11.3 (but excluding Transfers permitted by Sections 11.3.1 or 11.3.2) shall be effective unless, at the time thereof, Developer is not in default under this Agreement and the Transferee executes and delivers to Agency an Assumption Agreement in the form attached hereto as **Exhibit K**.

Except as expressly set forth in the Assumption Agreement, no Permitted Transfer shall be deemed to relieve Developer or any Transferee from any obligation under this Agreement.

11.4 Notice of Transfers. Subject to the preceding provisions of this **ARTICLE 11**, Developer shall give to Agency written notice of any Transfer within ten (10) days after such Transfer occurs. The giving of such notice shall not in any way cure any Developer default resulting from any Transfer not in accordance with the provisions of this **ARTICLE 11** or result in any waiver of any rights or remedies of Agency.

ARTICLE 12

DEFAULT AND REMEDIES

12.1 Termination for Failure to Obtain Governmental Approvals or Receive Agency Approval. Either party to this Agreement may terminate this Agreement by written notice to the other party and recordation of such notice, if Developer submits evidence to Agency that Developer, despite good faith diligent efforts and in compliance with this Agreement, (a) has nevertheless failed to obtain the Governmental Approvals necessary to commence construction by the date set forth in **Section 9.1** or (b) a Subsequent Submission has been rejected by Agency pursuant to **Section 5.2** and either Agency or Developer has exercised its option to terminate.

12.1.1 Upon any such termination,

a. If the Closing has occurred, Agency may, upon the payment by Agency to Developer of an amount equal to the Purchase Price (as defined in **Section 3.2**), instruct Escrow Agent to record the Reversionary Grant Deed in the real property records of Alameda County, whereupon Escrow Agent shall promptly so record the Reversionary Grant Deed and upon such recordation, Agency may reenter and repossess the Property;

b. if the Closing has not occurred, Agency shall release the entire Liquidated Damage Amount to Developer and Developer shall execute such documents as are reasonably requested by Agency to evidence Developer's release of all interest in the Property.

12.2 Agency Default. Provided that such failure is not caused by the default or act or omission of Developer, if Agency:

12.2.1 Fails to convey the Property to Developer in the manner and within the time period set forth in **ARTICLE 3**, provided that all conditions precedent to such conveyance have been met; or

12.2.2 breaches any other provisions of this Agreement,

then, Developer shall first notify Agency in writing of the purported breach, whereupon Agency shall have thirty (30) calendar days from receipt of such notice to cure such breach; provided, however, that if such cure cannot reasonably be completed within thirty (30) days, Agency shall not be in default if Agency commences such cure within such thirty (30) day period and diligently pursues such cure to completion. If Agency does not within the time period specified cure or begin to cure the breach and diligently pursue such cure to completion, Developer may pursue any and all remedies available to it under this Agreement, or at law or in equity.

12.3 Developer Default. Provided that such failure is not caused by the default or act or omission of Agency, the following shall be a Developer Default:

12.3.1 Default by Developer Prior to Commencement of Construction. Any default under this Agreement occurring prior to the commencement of construction of the Project, including but not limited to the failure to commence construction as provided for herein, for any reason other than (i) a failure under **Section 12.1** of (ii) or an enforced delay under **Section 15.6**. In the event of such default other than a failure to commence construction in accordance with **Section 9.2** (in which case no notice or right to cure shall apply), Agency shall notify Developer and all Holders in writing of the breach or failure by Developer, whereupon Developer and all Holders, collectively, shall have thirty (30) calendar days from receipt of such notice to cure such breach; provided, however, that if such breach cannot reasonably be cured within thirty (30) days, Developer shall not be in default if Developer or Holders commences such cure within such thirty

(30) day period and diligently pursues such cure to completion. If Developer or Holders does not within the time period specified cure or begin to cure the breach and diligently pursue such cure to completion, Agency may pursue any and all remedies available to it under this Agreement, or at law or in equity; provided, however, that nothing herein and no notice provided pursuant to this **Section 12.3.1** shall be construed to modify or extend the time for Commencement of Construction set forth in **Section 9.2**.

a. In the event Developer or any Holder does not cure or begin a cure within the time period set forth above and diligently prosecute the same to completion, then

- (1) Agency shall be entitled to retain the Liquidated Damage Amount together with any interest accrued thereon as liquidated damages as set forth in **Section 13.1**; and
- (2) If the Closing has occurred, Agency shall (x) deposit with Escrow an amount equal to the Purchase Price and (y) provide written notice to Escrow Agent, with a copy to Developer that (i) a default has occurred under **Section 12.3.1** and (ii) instruct Escrow Agent to record the Reversionary Grant Deed in the real property records of Alameda County contemporaneously with its payment of the amount of the Purchase Price to Developer, and (iii) upon such recordation, Agency may reenter and repossess the Property.

12.3.2 Default Following Commencement of Construction. If, following Commencement of Construction of the Project and prior to completion (as evidenced by Agency's issuance of the Certificate of Completion in accordance with **Section 9.8**, Developer fails to diligently prosecute the construction to completion as provided for herein or fails to meet any of its material obligations under this Agreement within the appropriate time period, then, Agency shall notify Developer and any Holder in writing of the breach or failure by Developer, whereupon Developer and Holder(s), collectively shall have thirty (30) calendar days from receipt of such notice to cure such breach; provided, however, that if such breach cannot reasonably be cured within thirty (30) calendar days, Developer shall not be in default if Developer or Holder(s) commences such cure within such thirty (30) calendar day period and diligently pursues such cure to completion.

a. In the event Developer or any Holder does not within the time period set forth above cure or begin a cure and prosecute the same to completion, then:

- (1) Agency shall be entitled to retain the Liquidated Damage Amount together with any interest accrued thereon as liquidated damages as set forth in **Section 13.1**; and

- (2) Agency may either:
- (a) elect by written notice to Developer to require Developer to, and Developer shall demolish, at Developer's sole cost, all improvements on the Property made by Developer and return the Property to the condition existing at Close of Escrow ("Developer's Demolition Obligation"), in which event it shall deposit with Escrow an amount equal to the Purchase Price and provide written notice to Escrow Agent, with a copy to Developer, that (i) a default has occurred under **Section 12.3.2**, (ii) Agency has elected to exercise its **Section 12.3.2a.(2)** rights, and (iii) instruct Escrow Agent to record the Reversionary Grant Deed in the real property records of Alameda County contemporaneously with its payment of the amount of the Purchase Price to Developer, and upon such recordation, Agency may reenter and repossess the Property, or
 - (b) provide written notice to Escrow Agent, with a copy to Developer, that (x) a default has occurred under **Section 12.3.2**, and (y) that Agency has elected to exercise its **Section 12.3.2a.(2)** rights to purchase the Property and all improvements located thereon at their Fair Market Value, and instruct Escrow Agent to record in the real property records of Alameda County the Reversionary Grant Deed contemporaneously with its payment to Developer of such amount, whereupon Escrow Agent shall promptly upon payment by Agency to Developer of such amount record the Reversionary Grant Deed and upon such recordation, Agency may enter and possess the Property.

12.3.3 Defaults Following Completion of Construction. If following completion of construction of the Project (as evidenced by Agency's issuance of the Certificate of Completion), Developer fails to open the Hotel for business as required by **Section 9.6**, Agency shall notify Developer and any Holder(s) in writing of the breach or failure by Developer, whereupon Developer and all Holders(s), collectively, shall have thirty (30) calendar days from receipt of such notice to cure such breach; provided, however, that if such breach cannot reasonably be completed within such thirty (30) calendar day period, Developer shall not be in default if

Developer or any Holder(s) commences such cure within thirty (30) calendar days and diligently pursues such cure to completion.

a. In the event Developer or any Holder does not within the time periods set forth in **Section 12.3.3**, cure or begin a cure and prosecute the same to completion, then Agency shall be entitled to (i) retain the Liquidated Damage Amount together with any interest accrued thereon as liquidated damages as set forth in **Section 13.1**, but the Agency shall have no right of reverter, and (ii) exercise any of the remedies provided by **Section 12.5** other than an action for damages for such default.

12.4 Other Defaults. Without limiting any other provision of this Agreement, the occurrence of any of the following at any time prior to the opening of the Hotel for business shall also constitute a default by Developer under this Agreement:

12.4.1 Developer's interest in this Agreement or in all or a part of the Project is taken by process of law directed against Developer, or becomes subject to any attachment at the instance of any creditor of or claimant against Developer, and such attachment is not discharged within thirty (30) days;

12.4.2 Developer voluntarily or involuntarily undertakes or attempts to undertake a Transfer in violation of this Agreement; or

12.4.3 Developer shall make a general assignment of this Agreement, for the benefit of creditors;

12.4.4 The filing by or against Developer, of any proceeding under any bankruptcy or insolvency law, unless (in the case of an involuntary proceeding) the proceeding is dismissed within sixty (60) days;

12.4.5 The appointment of a trustee or receiver to take possession of all or substantially all the assets of Developer, unless possession is unconditionally restored to Developer, within thirty (30) days and the trusteeship or receivership is dissolved; or

12.4.6 Any execution or other judicially authorized seizure of all or substantially all the assets of Developer, or of Developer's interest in this Agreement, unless that seizure is discharged within thirty (30) days.

12.4.7 Failure by Developer to observe and perform any provision of this Agreement to be observed and performed by Developer, where such failure is not curable.

12.4.8 Any default by Developer under the Franchise Agreement or Management Agreement where such default is not curable.

12.5 Remedies For Developer's Other Defaults. In the event of a Developer Default under Section 12.4, or with respect to any Developer Default under this Agreement not specifically otherwise addressed in this ARTICLE 12, Agency shall have the following rights and remedies, which shall not be exclusive:

12.5.1 Provided Agency is not entitled to Liquidated Damages under any provision of this Agreement, Agency may prosecute such action as Agency deems appropriate to recover from Developer all of the damages caused by such default;

12.5.2 Agency may institute an action for specific performance of the terms of this Agreement to the extent that such action is available at law or in equity with respect to such default;

12.5.3 Agency shall be entitled to all other remedies permitted by law or this Agreement.

12.6 Reversionary Rights. In the event that title to the Property reverts to Agency, Developer shall be released, held harmless, and indemnified by Agency and City from any and all damages, liabilities or obligations arising from or related to the existence of any Hazardous Materials on the Property, except if such damages, liabilities or obligations are due to the exacerbation of Hazardous Materials existing on the Property prior to Close of Escrow or unless such Hazardous Materials were released, placed on the Property or caused by or on behalf of Developer. Notwithstanding the foregoing or any other provision of this Agreement, such reversionary rights of the Agency and any vesting of title as a result thereof shall be subject to and limited by, and shall not defeat, render invalid, or limit in any way (i) the lien of any Deed of Trust authorized by this Agreement, and (ii) any rights or interests provided in this Agreement for the protection of the Holders on the Default of Developer.

12.6.1 In the event that title to the Property shall revert in the Agency in accordance with the provisions of this Agreement, the Agency shall, pursuant to its responsibilities under the Act, use its best efforts to resell the Property, subject to any Deed of Trust, as soon and in such manner as the Agency shall find feasible and consistent with the objectives of the Act and this Agreement, to a qualified and responsible party or parties, as determined by the Agency in its sole discretion, who will assume the obligation of making or completing the Hotel or such other improvements in their stead as shall be satisfactory to the Agency and in accordance with the uses specified in this Agreement. Upon such resale of the Property, the proceeds thereof shall be applied:

a. First, (i) to reimburse Agency on its own behalf or on behalf of City, for all costs and expenses incurred by Agency, including but not limited to salaries of personnel, in connection with the recapture, management and resale of the Property or part thereof, but less any income derived by Agency from the Property or part thereof in connection with such management; (ii) all taxes, assessments, and water and sewer charges with respect to the Property or part thereof or, in the event the Property is exempt from taxation or assessment or such charges during the period of ownership thereof by Agency, an amount equal to such taxes, assessments, or charges,

as determined by the City assessing official, as would have been payable if the Property were not so exempt; (iii) any payments made or necessary to be made to discharge any encumbrances or liens existing on the Property or part thereof at the time of revesting of title thereto in Agency or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults, or acts of Developer, its successors or transferees; (iv) any expenditures made or obligations incurred with respect to the making or completing of the Hotel or any part thereof; (v) any amounts paid to or otherwise owing the Agency by the Developer, its successor or transferee; and (vi) the Purchase Price paid to Developer; and

b. Second, to reimburse Developer, its successor or transferee up to the amount equal to (1) the cash actually invested by Developer with respect to the Project, less (2) any gains or income withdrawn or made by it from this Agreement or the Property; and

c. Third, any balance remaining after such reimbursements shall be retained by Agency as its property.

12.7 Development or Permit Fees. In the event that this Agreement is terminated for any reason pursuant to this **ARTICLE 12**, Agency and City shall be entitled to retain any fees, including development or permit fees, paid by Developer in connection with the Project.

12.8 Fair Market Value. If Agency elects to exercise its option to purchase the Project pursuant to **Section 12.3.2a.(2)**, Agency shall provide written notice to Developer. Agency shall within sixty (60) days thereafter provide Developer with written notice of Agency's determination of Fair Market Value.

12.8.1 If Developer disputes Agency's determination of the Fair Market Value as contained in Agency's notice, Developer shall notify Agency in writing within ten (10) days of its receipt of Agency's determination, which notice shall set forth Developer's determination of the Fair Market Value. Should Developer timely notify Agency as aforesaid. Agency and Developer shall attempt to resolve their differences within ten (10) days following Agency's receipt of Developer's notice.

12.8.2 If Agency and Developer cannot agree on Fair Market Value during such ten (10) day period, Agency and Developer shall each appoint an appraiser who shall be an M.A.I. and a California licensed appraiser experienced in appraising commercial real estate and hotels in the county in which the Premises are located and experience in appraising projects under construction, if applicable, and give notice of such appointment to the other within ten (10) days after the foregoing ten (10) day period. Such appraisers shall, within thirty (30) days after the appointment of the last of them to be appointed, complete their written determinations of Fair Market Value and furnish the same to Agency and Developer. Each party shall pay the fees and costs of the appraiser appointed by it. If the valuations vary by ten percent (10%) or less of the higher value, the Fair Market Value shall be the average of the two valuations.

12.8.3 If the valuations vary by more than ten percent (10%) of the higher value, the two appraisers shall, within ten (10) days after submission of the last appraisal report, appoint a third disinterested appraiser who shall be an M.A.I. and a California licensed appraiser with the experience described in the preceding paragraph. If the two appraisers shall be unable to agree in a timely manner on the selection of the third appraiser, then either appraiser, on behalf of both, may request appointment of such third disinterested M.A.I. appraiser by the presiding judge of the superior court of the county in which the Premises are located. Such third appraiser shall, within fifteen (15) days after appointment, make a determination of Fair Market Value by selecting one of the prior appraisals. The third appraiser shall have no right to select a Fair Market Value other than as determined by one of the prior appraisals.

12.8.4 For purposes of this **Section 12.8** the Fair Market Value shall mean the purchase price that an unrelated party negotiating at arm's length would pay to purchase such Project Site taking into account all then current market factors, including without limitation the quality, design, condition and location of the Project Site including the extent and condition of construction completed to date the terms and conditions of the Agreement, the amount of any and all liens against the parcel and the value of the existing improvements to such party.

12.8.5 Upon determination of the Fair Market Value, Agency shall have the right to withdraw its exercise of its option by giving Developer notice of withdrawal within fifteen (15) days of Agency's receipt of notice of the determination. In the event Agency does withdraw its option exercise, Agency shall pay all appraisal fees incurred by Agency and Developer in determining the Fair Market Value.

ARTICLE 13

LIQUIDATED DAMAGES

13.1 Retention by Agency. Agency shall hold the Liquidated Damages Amount and retain or disburse it as specifically provided in this Agreement.

13.2 Liquidated Damages. DEVELOPER AND AGENCY AGREE THAT IT WOULD BE IMPRACTICAL AND EXTREMELY DIFFICULT TO ESTIMATE THE DAMAGES SUFFERED BY AGENCY AS A RESULT OF DEVELOPER'S DEFAULT IN PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT AND THAT UNDER THE CIRCUMSTANCES EXISTING AS OF THE DATE OF THIS AGREEMENT, THE LIQUIDATED DAMAGE AMOUNT WHICH IS PAYABLE TO AGENCY UNDER THE SPECIFIC PROVISIONS OF THIS AGREEMENT, REPRESENTS A REASONABLE ESTIMATE OF THE DAMAGES WHICH AGENCY WILL INCUR AS A RESULT OF SUCH SPECIFIC DEFAULT WHICH DAMAGES WOULD INCLUDE THE COST AND EXPENSE OF NEGOTIATING THIS AGREEMENT AND REVIEWING DOCUMENTS AND THE COSTS OF REMOVING THE PROPERTY FROM THE MARKET; PROVIDED, HOWEVER

THAT THIS PROVISION WILL NOT LIMIT AGENCY'S RIGHT TO RECEIVE ITS ATTORNEYS' FEES NOR WAIVE NOR AFFECT DEVELOPER'S INDEMNITY OBLIGATIONS AND AGENCY'S RIGHTS TO THOSE INDEMNITY OBLIGATIONS UNDER THIS AGREEMENT NOR LIMIT AGENCY'S RIGHT TO PURSUE SPECIFIC PERFORMANCE OR OTHER EQUITABLE REMEDIES FOR SUCH DEFAULT. THE PARTIES FURTHER AGREE THAT:

WHERE APPLICABLE, THE LIQUIDATED DAMAGE AMOUNT WILL BE THE FULL, AGREED AND LIQUIDATED DAMAGES FOR DEVELOPER'S FAILURE TO FULFILL THE APPLICABLE OBLIGATIONS REQUIRED UNDER THIS AGREEMENT;

THE PAYMENT OF SUCH AMOUNT AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO AGENCY PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677.

AS PROVIDED HEREIN, AGENCY, AT AGENCY'S OPTION, MAY IN ADDITION TO RETAINING THE LIQUIDATED DAMAGE AMOUNT, TERMINATE THIS AGREEMENT AND/OR DEVELOPER'S RIGHTS HEREUNDER AND, EXCEPT FOR DEVELOPER'S INDEMNITY OBLIGATIONS WHICH MAY BE ENFORCED BY AGENCY NEITHER PARTY SHALL HAVE ANY FURTHER OBLIGATIONS HEREUNDER, EACH TO THE OTHER EXCEPT FOR THE RIGHT OF AGENCY TO RETAIN THE LIQUIDATED DAMAGE AMOUNT.

DEVELOPER'S INITIALS: *[Signature]* AGENCY'S INITIALS: *[Signature]*

13.3 Payment to Developer. Upon any termination under Section 12.1, or within five (5) days of the opening of the Hotel for business, Agency shall pay the Liquidated Damages Amount to Developer.

ARTICLE 14

HOLDERS' RIGHTS

14.1 Encumbrance for Development Purposes. Subject to the provisions of **ARTICLE 11**, prior to a Certificate of Completion having been issued, Developer may place, as provided in **Section 4.10.3**, one or more Deeds of Trust upon the Property for the sole purpose of securing loans of funds to be used for financing the development of the Project. Prior to Commencement of Construction, Developer shall promptly notify Agency of any Deed of Trust, sale and leaseback or other financing, conveyance, encumbrance or lien that has been or will be created or attached to the Property. Any such lien or encumbrance shall be subject and subordinate to this Agreement.

14.2 Holder Not Obligated to Construct. The holder of a beneficial or a legal interest in a Deed of Trust ("Holder") (including any Holder who obtains title to the Property or any part thereof as a result of foreclosure proceedings or action in lieu thereof) is not obligated to construct or complete the Hotel or any other improvements or to guarantee such construction or completion. However, nothing in this Agreement shall be deemed to permit any Holder to devote the Property to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

14.3 Notice of Default and Right to Cure. Except as otherwise expressly provided in this Agreement, whenever Agency, pursuant to its rights set forth in this **ARTICLE 14** delivers any notice or demand to Developer with respect to the commencement, completion, or cessation of the construction of the Project, or of any default under this Agreement, Agency shall at the same time deliver to each Holder of which it has been provided notice pursuant to **Section 14.1**, a copy of such notice or demand. Except as expressly provided in this Agreement, each Holder shall have the right at its option, within thirty (30) calendar days after the receipt of the notice, to cure or remedy, or commence to cure or remedy, any such default or breach and to add the cost thereof to the security interest debt and the lien on its security interest. Nothing in this Agreement is intended to permit a Holder to construct improvements on the Property (beyond the extent necessary to conserve or protect such improvements or construction already made) without first having expressly assumed Developer's obligations to Agency herein by written agreement reasonably satisfactory to Agency within such thirty (30) day period. Holder in that event must agree to complete, in the manner provided in this Agreement, the Project and submit evidence satisfactory to Agency that it has the qualifications and financial responsibility necessary to perform such obligations. After approval by Agency, any Holder property completing the Project shall be entitled, upon written request made to Agency, to a Certificate of Completion.

14.4 Failure of Holder to Complete Hotel. In any case where, subsequent to default or breach by Developer, any Holder: (i) has, but does not exercise, or would otherwise have but cannot, because of inability or failure to submit evidence satisfactory to the Agency that it has the necessary qualifications and financial responsibility, or otherwise, exercise the option to construct or complete the Hotel and such inability or failure continues for a period of thirty (30) days after Holder has been notified or informed of the default or breach, or (ii) undertakes construction or completion of the Hotel but does not complete such construction within such period as agreed upon by the Agency and Holder, which period shall in any event be at least as long as the period prescribed for such construction or completion with respect to Developer as provided for herein, and such default shall not have been cured within sixty (60) days after written demand by Agency so to do, Agency shall, and every Deed of Trust made prior to completion of the Hotel shall so provide, have the option of paying to Holder the amount of the Deed of Trust debt and securing an assignment of such debt and of the Deed of Trust, or, in the event ownership of the Property has vested in Holder by way of foreclosure or action in lieu thereof, Agency shall be entitled, at its option, to a conveyance to it of the Property or part thereof, upon payment to such Holder of an amount equal to the sum of: (i) the Deed of Trust debt at the time of foreclosure or action in lieu

thereof, less all appropriate credits; (ii) all expenses with respect to the foreclosure; (iv) the net expenses, if any, exclusive of general overhead, incurred by the Holder in and as a direct result of the subsequent ownership and management of the Property; (v) the costs of any work performed on or with respect to the Hotel by Holder; and (vi) an amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the Deed of Trust debt and such debt had continued in existence.

14.5 Right of Agency to Cure. By appropriate agreement with each Holder, Developer shall cause such Holder to provide Agency with written notice by registered mail of the occurrence of any event of default under Holder's mortgage, deed of trust or other security instrument.

In the event of a default or breach by Developer of a Deed of Trust prior to the completion of the Project, and if Holder has not exercised its option to complete the Project, Agency may cure the default, prior to the completion of any foreclosure. In such event Agency shall be entitled to reimbursement from Developer for all costs and expenses incurred by Agency in curing the default. Agency shall also be entitled to a lien upon the Property and the Project to the extent of such costs and disbursements. Any such lien shall be subject to mortgages, deeds of trust or other security instruments executed for the sole purpose of obtaining funds to purchase and develop the Property as authorized herein.

14.6 Right of Agency to Satisfy Other Liens. After the conveyance of title to the Property and prior to the recordation of a Certificate of Completion, and after Developer has had a reasonable time to challenge, cure or satisfy any liens or encumbrances on the Property or any portion thereof, Agency shall have the right to satisfy any such lien or encumbrances not satisfied by Developer; provided, however, that nothing in this Agreement shall require Developer to pay or make provision for the payment of any tax, assessment, lien or charge so long as Developer in good faith shall contest the validity or amount thereof and so long as Developer shall provide such reasonable security as may be required by Agency to insure the payment of such tax, assessment, lien or charge to prevent any sale, foreclosure or forfeiture of the Property by reason of such nonpayment. Such security shall be not less than the amount of the contested tax, assessment, lien or charge, including all penalties, fines and interest which can be assessed thereon.

ARTICLE 15

GENERAL PROVISIONS

15.1 Employment Non-Discrimination. Developer shall not, and shall include in its contracts with its contractors, requirements that its contractors and their subcontractors, joint ventures, successors, and assigns shall not discriminate against any employee or applicant for employment in connection with the use of the Property or the Project on the basis of race, color, religion, sex, sexual preference, marital status, AIDS or AIDS-related complex, disability, ancestry or national origin. Each of the following activities shall be conducted in a nondiscriminatory manner: hiring;

upgrading; demotion and transfers; recruitment and recruitment advertising; layoff and termination; rates of pay and other forms of compensation; and selection for training, including apprenticeship.

15.2 Living Wage. This Agreement is subject to the Living Wage Ordinance of the Oakland Municipal Code. The Ordinance requires among other things, submission of the Declaration of Compliance attached as **Exhibit O**.

15.2.1 Unless specific exemptions apply or a waiver is granted, that Developer provide the following to its employees who perform services under or related to this Agreement:

a. Minimum compensation – Said employees shall be paid an initial hourly wage rate of \$8.00 with health benefits or \$9.25 without health benefits. These initial rates shall be upwardly adjusted each year no later than April 1 in proportion to the increase at the immediately preceding December 31 over the year earlier level of the Bay Region Consumer Price Index as published by the Bureau of Labor Statistics, U.S. Department of Labor.

b. Health benefits – Said full-time and part-time employees paid at the lower living wage rate shall be provided health benefits of at least \$1.25 per hour. Developer shall provide proof that health benefits are in effect for those employees no later than 30 days after execution of the contract or receipt of City financial assistance.

c. Compensated days off. – Said employees shall be entitled to twelve compensated days off per year for sick leave, vacation or personal necessity at the employee's request, and ten uncompensated days off per year for sick leave. Employees shall accrue one compensated day off per month of full time employment. Part-time employees shall accrue compensated days off in increments proportional to that accrued by full-time employees. The employees shall be eligible to use accrued days off after the first six months of employment or consistent with company policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required 12 compensated days off. Ten uncompensated days off shall be made available, as needed, for personal or immediate family illness after the employee has exhausted his or her accrued compensated days off for that year.

d. Federal Earned Income Credit (EIC) – Developer shall inform said employees who earn less than \$12.00 per hour that he or she may be eligible for EIC and shall provide forms to apply for advance EIC payments to eligible employees.

15.2.2 Developer shall provide to all employees and to the Office of Contract Compliance, written notice of its obligation to eligible employees under the City's Living Wage requirements. Said notice shall be posted prominently in communal areas of the work site(s) and shall include information set forth in Sections 1 through 4 above.

15.2.3 Developer shall provide all written notices and forms required above in English, Spanish or other languages spoken by a significant number of employees within 30 days of employment under this Agreement.

15.2.4 Reporting - Developer shall maintain a listing of the name, address, hire date, occupation classification, rate of pay and benefits for each of its employees. Developer shall provide a copy of said list to the Office of Contract Compliance, on a quarterly basis, by March 31, June 30, September 30 and December 31 for the applicable compliance period. Failure to provide said list within five days of the due date will result in liquidated damages of five hundred dollars (\$500.00) for each day that the list remains outstanding. Developer shall maintain employee payroll and related records for a period of four (4) years after expiration of the compliance period.

15.2.5 Developer shall require subcontractors that provide services under or related to this Agreement to comply with the above Living Wage provisions. Developer shall include the same or similar provisions as those set forth above in its subcontracts. Copies of said subcontracts shall be submitted to the Office of Contract Compliance.

15.3 Notices, Demands and Communications. All notices and other communications under this Agreement shall be in writing and shall be deemed duly given: (a) when delivered if personally delivered to the recipient; (b) when transmitted by telecopier or facsimile device during normal business hours, provided such device is capable of generating a written confirmation of such transmission and receipt and an original is deposited in first class mail within two (2) business days thereafter addressed as set forth below; (c) on the first business day following delivery to an overnight delivery service, provided delivery is confirmed by the delivery service; and (d) on the earlier of actual receipt or three (3) days following deposit in United States registered or certified mail, postage prepaid and return receipt requested, addressed to the parties as set forth below. Any party may change its address for notices by giving written notice to the other parties in the manner set forth above.

Agency: Redevelopment Agency Of The City Of Oakland
 Community and Economic Development Agency
 250 Frank H. Ogawa Plaza, 3rd Floor
 Oakland, California 94612
 Attn: Agency Director
 Telephone: (510) 238-3015
 Fax: (510) 238-3691

with copies to: Redevelopment Agency of the City of Oakland
Community and Economic Development Agency
250 Frank H. Ogawa Plaza, 5th Floor
Oakland, California 94612
Attn: Alex Greenwood
Telephone: (510) 238-6124
Fax: (510) 238-3691

Redevelopment Agency of the City of Oakland
c/o Oakland City Attorney's Office
One City Hall Plaza, 6th Floor
Oakland, California 94612
Attn.: Vincent Jones, Esq.
Telephone: (510) 238-6629
Fax: (510) 238-6500

Developer: Oakland Garden Hotel, LLC
One Hallidie Plaza, Suite 228
California 94404
Attn: Lawrence Chan
Telephone: (415) 989-1881
Fax: (415) 397-5389

With a copy to: James Murad, Esq.
Cooper, White & Cooper LLP
201 California Street, 17th Floor
San Francisco, CA, 94111
Telephone: (415) 433-1900
Fax: (415) 433-5530

Written notices, demands and communications may be sent in the same manner to such other addresses as the affected party may from time to time designate.

15.4 Conflict of Interest. Developer shall ensure that no member, officer, employee, or consultant of Agency who participates in any way in this Project or the making of this Agreement, or a member of such person's immediate family, shall have a financial interest in the Project or this Agreement. Developer warrants that it has not paid or given, and will not pay or give, to any third person any money or other consideration in exchange for obtaining this Agreement.

15.5 Non-Liability of Agency Officials, Employees and Agents. No member, official, employee, or agent of Agency shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by Agency or for any amount which may become due to Developer or successor under the terms of this Agreement.

15.6 Enforced Delay. Performance by either party under this Agreement shall not be deemed to be in default where delays or default are due to Force Majeure. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within fifteen (15) days of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by Agency and Developer.

15.7 Interpretation. Section headings in this Agreement are for convenience of reference only and shall not affect the meaning or interpretation of any provision of this Agreement. As used herein: (a) the singular shall include the plural (and vice versa) and the masculine or neuter gender shall include the feminine gender (and vice versa) where the context so requires; (b) locative adverbs such as "herein," "hereto," and "hereunder" shall refer to this Agreement in its entirety and not to any specific section or paragraph; (c) the terms "include," "including," and similar terms shall be construed as though followed immediately by the phrase "but not limited to;" and (d) "shall" is mandatory and "may" is persuasive. The parties have jointly participated in the negotiation and drafting of this Agreement, and this Agreement shall be construed fairly and equally as to the parties, without regard to any rules of construction relating to the party who drafted a particular provision of this Agreement.

15.8 No Merger; Survival. None of the provisions of this Agreement are intended to or shall be merged with the Grant Deed, and the Grant Deed shall not affect or impair this Agreement. The obligations of Developer hereunder to be performed following the Closing shall survive the Closing.

15.9 Governmental Approvals. Developer shall bear the sole cost and responsibility for obtaining any necessary approval of any governmental body or board. No building permits or other governmental approvals shall be issued by City if Developer is in default under this Agreement.

15.10 Hold Harmless. If through acts or neglect on the part of Developer or the Contractor, any other contractor or any subcontractor suffers loss or damage on the work, and such other contractor or subcontractor assesses any claim against Agency on account of any damage alleged to have been sustained, Agency shall notify Developer and the Contractor who shall defend at their own expense any suit based upon that claim, and Developer shall pay all costs and expenses incurred by Agency in connection with any judgment or claim.

Developer shall indemnify and hold Agency, its members, officials, directors, employees, and agents harmless from any losses, damages, liabilities, claims, demands, judgments, actions, court costs, and legal or other expenses (including attorneys' fees) which Agency may incur as a result of (i) Developer's failure to perform any of its obligations as and when required by this Agreement; (ii) a failure of any of Developer's representations or warranties to be true and complete; or (iii) any act or omission by Developer or any contractor, subcontractor, architect,

engineer or supplier with respect to development or use of the Property, except if the loss is caused by the sole negligence or willful misconduct of Agency. When a loss is caused by the joint negligence or willful misconduct of Developer and Agency, Developer's duty to indemnify and hold Agency harmless shall be in proportion to Developer's allocable share of the joint negligence or willful misconduct. Developer shall pay immediately upon Agency's demand any amounts owing under this indemnity. The duty of Developer to indemnify includes the duty to defend Agency in any court action, administrative action, or other proceeding brought by any third party arising from the Project or the Property. All liability of Developer under this Section 15.10 shall survive Close of Escrow or termination of the Agreement.

15.11 Developer Representations and Warranties. Developer represents and warrants to Seller as of the date of this Agreement and as of the Closing Date as follows, which representations and warranties shall survive the Close of Escrow:

15.11.1 Developer has the legal power, right and authority to enter into this Agreement and the agreements and instruments to be executed by Developer pursuant to this Agreement, and to consummate the transactions contemplated hereby;

15.11.2 All requisite action (corporate, trust, partnership or otherwise) has been taken in connection with Developer's execution of this Agreement, the agreements and instruments to be executed by Developer pursuant to this Agreement and the consummation of the transactions contemplated hereby;

15.11.3 The individuals executing this Agreement and the instruments to be executed by Developer pursuant to this Agreement on behalf of Developer have the legal power, right and actual authority to bind Developer to the terms and conditions of this Agreement and such instruments;

15.11.4 Neither the execution and delivery of this Agreement and the agreements and instruments to be executed by Developer pursuant to this Agreement, nor the incurring of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this Agreement and the agreements and instruments to be executed by Developer pursuant to this Agreement conflict with or result in the material breach of any terms, conditions or provisions of, or constitute a default under, any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease or other agreement or instrument to which Developer is a party or affecting the Property;

15.11.5 The sole member of Developer is Wailua Associates, a California limited partnership;

15.11.6 There is no litigation pending or, to the best of Developer's actual knowledge, threatened, against Developer that could reasonably be deemed likely to materially

and adversely affect the ability of Developer to consummate the transactions contemplated hereunder, construct and operate the Project or perform its obligations under this Agreement;

15.11.7 Except as expressly set forth in this Agreement, no approval, consent, withholding of objection or other authorization is required from any court, administrative agency, governmental body or any other third party in connection with the execution, delivery or performance by Developer of this Agreement or any of the other documents described herein, is required;

15.11.8 No representation, warranty or statement of Developer in this Agreement or any statement in any document, certificate, report, or schedule furnished or to be furnished to Agency pursuant hereto contains or will contain any untrue statement of a material fact or omits or will omit a material fact necessary to make the statements or facts contained therein not materially misleading;

15.11.9 All copies of all reports, correspondence or other documents provided or to be provided by Developer hereunder are or will be true and complete copies of the originals; and,

15.11.10 This Agreement, and when executed the documents to be executed by Developer hereunder, constitute legal, valid and binding obligations of Developer, enforceable against Developer in accordance with their terms.

15.12 Insurance. Developer shall cause to have in full force and effect such policies of insurance as are required by Agency pursuant to **Exhibit L** which is attached hereto and incorporated herein by this reference.

15.13 Applicable Law. This Agreement shall be governed by the laws of the State of California.

15.14 Severability. If any term or provision of this Agreement is ever determined to be invalid or unenforceable for any reason, such term or provision shall be severed from this Agreement without affecting the validity or enforceability of the remainder of this Agreement so long as the remainder of this Agreement can thereafter be implemented for the purposes for it is intended.

15.15 Attorneys' Fees. The prevailing party in any action or proceeding to enforce or interpret this Agreement or otherwise arising out of or in connection with the subject matter hereof (including, but not limited to, any suit, arbitration, entry of judgment, post-judgment motion or enforcement, appeal, bankruptcy litigation, attachment or levy) shall be entitled to recover its costs and expenses, including, but not limited to, attorneys', experts' and consultants' fees and costs.

15.16 Binding Upon Successors. Subject to the provisions of **ARTICLE 11**, this Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in

interests and assigns of each of the parties hereto. Any reference in this Agreement to a specifically named party shall be deemed to apply to any successor, heir, administrator, executor or assign of such party who has acquired an interest in compliance with the terms of this Agreement or under law. This Agreement shall constitute a covenant running with the land comprising the Property and shall be binding upon each successive owner, during its/his/her ownership, of any portion of the Property and upon each person having an interest derived through an owner thereof. To the extent any provision of this Agreement is deemed not to constitute a covenant running with the land, such provision shall be deemed an equitable servitude.

15.17 Relationship of Parties. The relationship of Developer and Agency for this Project is and shall remain solely that of a purchaser and seller of real property, and shall not be construed as a joint venture, equity venture, partnership, or any other relationship. Agency neither undertakes nor assumes any responsibility or duty to Developer (except as provided for herein) or any third party with respect to the Project or the Property. Developer shall have no authority to act as an agent of Agency or to bind Agency to any obligation.

Developer shall be solely responsible for all aspects of its conduct in connection with the Project, including, but not limited to, the quality and suitability of the plans and specifications, the supervision of construction work, and the qualifications, financial conditions, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Agency is under no duty to review the plans and specifications or to inspect construction of the Project. Any review or inspection undertaken by Agency for the Project including the review of Developer Submissions, any agreements related to the Project and any other submittals made by Developer shall not be relied upon by Developer or by any third parties as a warranty or representation by Agency or City as to the validity, enforceability, economic soundness, feasibility, quality of the Project or the design or construction, or any other matter related thereto, or compliance with the provisions of this Agreement. Agency shall not be bound by any obligation under any contract or agreement entered into by Developer (other than Agency's obligation under this Agreement), or have any obligation to Developer thereunder.

15.18 Waiver. No waiver of any provision of this Agreement shall be binding unless such waiver is expressly stated to be a waiver and executed in writing by the party making the waiver. No waiver of any provision of this Agreement shall be deemed to constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver unless the written waiver so specifies.

15.19 No Third Party Beneficiary. This Agreement is made solely for the benefit of the parties to this Agreement and their respective successors and permitted assigns, and no other person or entity shall have or acquire any rights or remedies under this Agreement.

15.20 Execution and Conformance of Agreements and Other Documentation. Agency and Developer acknowledge that this Agreement and any related agreements in furtherance of this Agreement may need to be executed at the Close of Escrow or revised and amended at the

Completion of Construction. Agency and Developer agree that each will cooperate in the preparation of any other documents to effectuate the intent of this Agreement, including such amendments or revisions. Agency and Developer further agree that each will execute such documents and any other documentation that may be necessary to carry out the intent and obligations under this Agreement, provided said documents do not conflict with this Agreement or the Redevelopment Plan.

15.21 Amendments. Any amendment to this Agreement shall be executed in writing by Agency and by Developer.

15.22 Estoppel Certificates. Either party to this Agreement shall provide an estoppel certificate to the another as requested from time to time stating that this Agreement has not been modified, or, if modified, stating the nature of such modification, and certifying that this Agreement, as modified, is in full force and effect.

15.23 Counting Days. Any act required under this Agreement to be performed within a certain number of days shall be deemed to refer to calendar days unless otherwise expressly specified.

15.24 Counterparts. This Agreement is executed in six (6) duplicate originals each of which is deemed to be an original. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one and the same instrument.

15.25 Entire Agreement. This Agreement, including All Recitals, Exhibits and Schedules hereto each of which is incorporated in and made a part of this Agreement, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior or contemporaneous understandings, negotiations, representations, promises and agreements, oral or written, by or between the parties, with respect to the subject matter hereof. No representations, inducements, promises, or agreements have been made in connection with this Agreement by any party, or anyone acting on behalf of any party, other than those expressly set forth herein.

IN WITNESS WHEREFORE, the parties hereby have executed this Disposition and Development Agreement to be effective as of the date first above written.

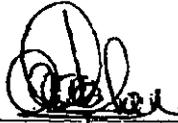
DEVELOPER:

Oakland Garden Hotel, LLC
a Nevada limited liability company

Execution Date:

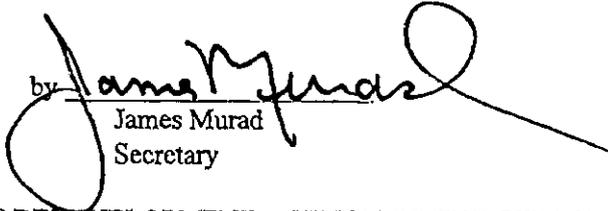
July 14, 1999

by:



Lawrence Chan
President

by:



James Murad
Secretary

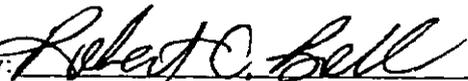
AGENCY:

THE REDEVELOPMENT AGENCY OF THE CITY OF
OAKLAND, a public body, corporate and politic

Execution Date:

July 19, 1999

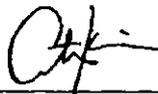
By:



Agency Administrator
ROBERT C. BOBB

APPROVED AS TO FORM AND LEGALITY:

By:



Agency Attorney

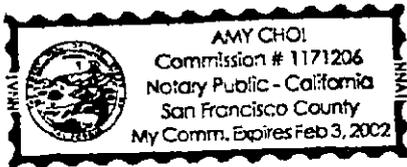
CURTIS S. KIDDER

Execution Date: July 23, 1999

STATE OF CALIFORNIA)
)
COUNTY OF SAN FRANCISCO) ss.

On July 14th, 1999, before me, Amy Choi, a Notary Public in and for said State, personally appeared Lawrence Chan, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



(seal)

A handwritten signature in cursive script, appearing to read "Amy Choi".

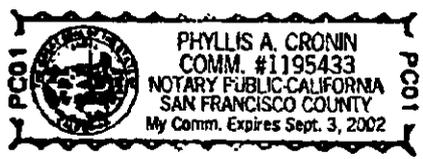
Notary Public in and for said State

STATE OF CALIFORNIA)
)
COUNTY OF SAN FRANCISCO)

ss.

On July 14, 1999, before me, Phyllis A. Cronin, a Notary Public in and for said State, personally appeared James Murad, personally known to me ~~(or proved to me on the basis of satisfactory evidence)~~ to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



(seal)

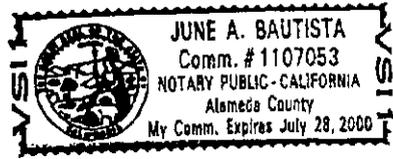
Phyllis A. Cronin
Notary Public in and for said State

STATE OF CALIFORNIA)
)
COUNTY OF _____)

ss.

On Aug. 2, 1999, before me, JUNE A. BAUTISTA, a Notary Public in and for said State, personally appeared ROBERT C. BOBB, personally known to me (~~or proved to me on the basis of satisfactory evidence~~) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



June A. Bautista
Notary Public in and for said State

(seal)

Exhibit A

LEGAL DESCRIPTION OF PROPERTY

DDA#4 June 27, 1999

Exhibit A-1

LEGAL DESCRIPTION

REAL PROPERTY in the City of Oakland, County of Alameda, State of California, described as follows:

PARCEL ONE

Lots 1B 2B, 3B, Parcels 2Y and 2Z, Tract 3954, filed October 17, 1978, Map Book 106, Page 24, Alameda County Records, as amended by Certificate of Correction recorded September 27, 1979, Series No. 79-193134, Official Records.

EXCEPTING THEREFROM, those portions thereof conveyed to Asian Holdings, Inc., by the following instruments:

- A. Grant Deed recorded October 31, 1980, Series No. 80-193557, Official Records.
- B. Grant Deed recorded October 31, 1980, Series No. 80-193556, Official Records.
- C. Grant Deed recorded November 8, 1984, Series No. 84-224581, Official Records.

ALSO EXCEPTING THEREFROM, the Southeasterly 122.00 feet thereof.

PARCEL TWO

A NON-EXCLUSIVE EASEMENT for the passage of air and light, appurtenant to that portion of Parcel 2B of Tract 3954, filed October 17, 1978, Map Book 106, Page 24, Alameda County Records within Parcel One, above, as set forth in that certain Grant Deed of Tower Site, dated October 31, 1980 and reserved to The Redevelopment Agency of the City of Oakland, a public body, corporate and politic, recorded October 31, 1980, Series No 80-193555, Alameda County Official Records. Said easement being located through the land, and any subsequent subdivisions thereof, described as follows:

All that portion of Lot 3A of Tract 3954, filed October 17, 1978, Map Book 106, Page 24, Alameda County Records, lying Southwesterly of a line drawn parallel to and 210 feet Southwesterly of the Northeastern line of said Lot.

PARCEL THREE

AN EXCLUSIVE EASEMENT for construction, maintenance, modification, use repair and reconstruction of improvements reasonably necessary to provide access and functional, but not structural, connection with complimentary commercial improvements to be constructed, appurtenant to that portion of Parcel 2B of Tract 3954, filed October 17, 1978, Map Book 106, Page 24, Alameda County Records within Parcel One, above, as set forth in that certain Grant Deed of Podium Site dated October 31, 1980 and reserved to The Redevelopment Agency of the City of Oakland, a public body, corporate and politic, recorded October 31, 1980, Series No 80-193556, and in the corrective Podium Site Grant Deed recorded November 8, 1984, Series No. 84-224581, over and across the lands described as follows:

The entire Southwestern boundary of Parcel 2A of Tract 3954, filed October 17, 1978, Map Book 106,

Page 24, Alameda County Records, and in the entire Southwestern facade of the improvements to be constructed within said Parcel 2A, as reasonably necessary to effect such access and interconnection, and through any hiatus between said Southwestern line and Southwestern facade, between an upper plane having an elevation of +124 feet, City Of Oakland Vertical Datum, and a lower plane having an elevation of +35 feet, City Of Oakland Vertical Datum, excepting therefrom those portions thereof lying Northwesterly of a line drawn parallel to and 32 feet Southeasterly of the Northwestern line of Parcel 2A and Southeasterly of a line drawn parallel to and 268 feet Southeasterly of the Northwestern line of Parcel 2A.

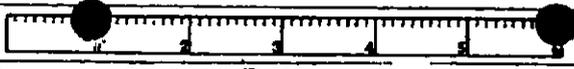
A.P. No. 002-0094-002 (portion)
002-0095-002 (portion)
002-0096-002 (portion)

NOTICE:

THIS LEGAL DESCRIPTION IS PROFORMA IN NATURE AND WAS PREPARED IN CONTEMPLATION OF IT BEING USED ON FUTURE RECORDED DOCUMENTS ONLY UPON A LOT LINE ADJUSTMENT OR FILED MAP BEING FORMALLY APPROVED IN ACCORDANCE THE CALIFORNIA SUBDIVISION MAP ACT AND LOCAL LAWS AND ORDINANCES APPLICABLE TO THE SUBDIVISION OF LAND. ANY USE OF THIS LEGAL DESCRIPTION BY ANYONE FOR ANY PURPOSE IN VIOLATION OF SAID ACT AND/OR LOCAL LAWS OR ORDINANCES IS DONE AT THEIR OWN RISK AND FIRST AMERICAN TITLE INSURANCE COMPANY AND FIRST AMERICAN TITLE GUARANTY COMPANY SHALL BE WITHOUT RESPONSIBILITY OR LIABILITY IN SUCH EVENT.

EXHIBIT A

TRW-REDI
1-800-345-7334



SCALE OF 1/4" = 60'

ASSESSOR'S MAP 2

Code Area Nos. 17-022

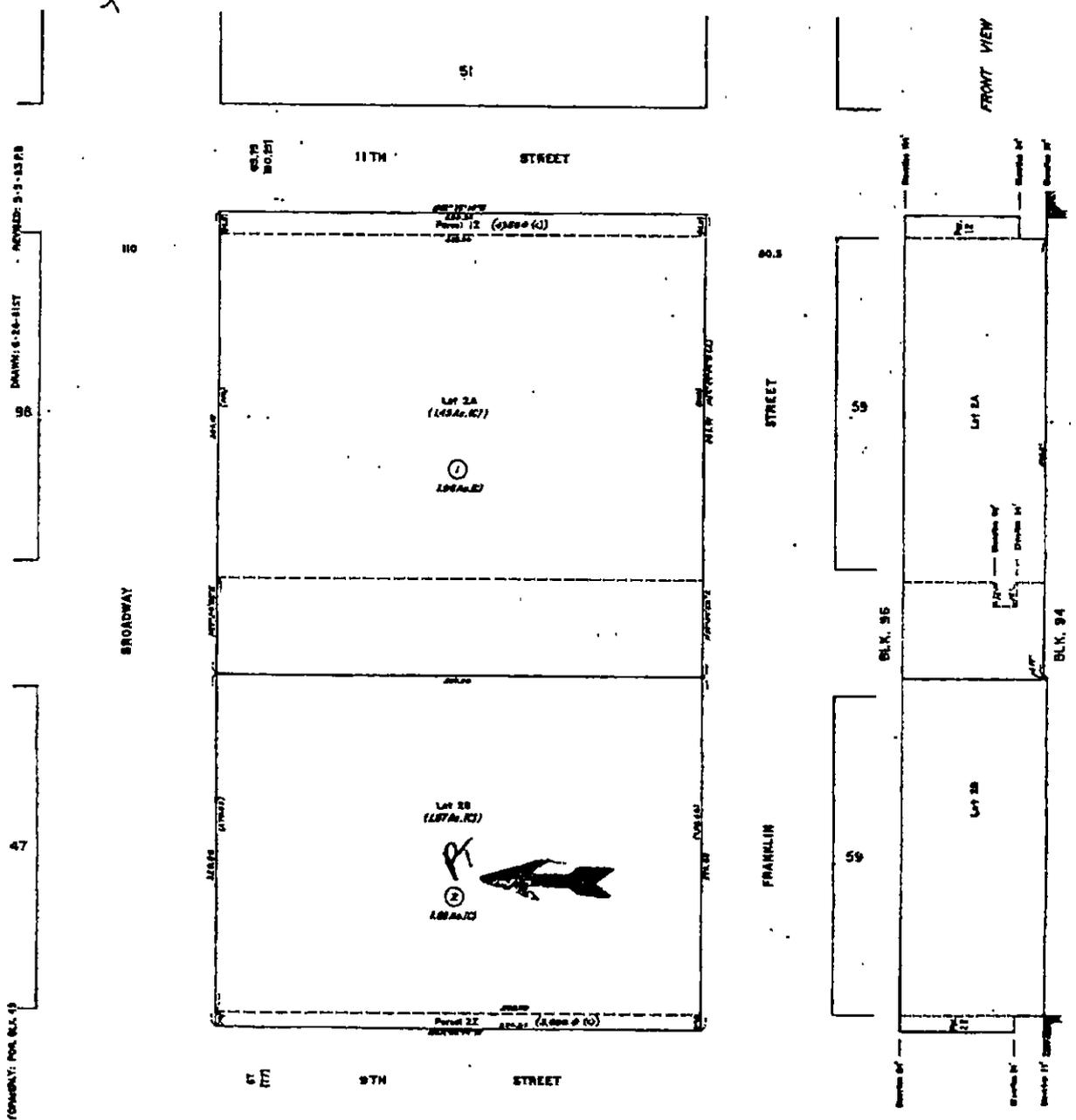
95

SCALE: 1" = 60'

TR. 3954 196/24 (LITS 2A & 2B)



THIS MAP MAY BE USED ONLY AS A SURVEY OF THE LAND DEPICTED HEREON. IT IS NOT TO BE RELIED UPON FOR ANY PURPOSE OTHER THAN ORIENTATING ONE'S SELF AS TO THE GENERAL LOCATION OF THE PARCEL OR PARCELS OF INTEREST. FIRST AMERICAN TITLE COMPANY ASSUMES NO LIABILITY FOR LOSS OR DAMAGE RESULTING FROM RELIANCE THEREON.



RECORDED: 9-3-13 P.B.
DRAWN: 8-16-11 ST
98
47
COMMENTS: FOR B.L.K. 9

FRONT VIEW

A.C.N.

REF.: CASE 1-7-4

BOOK 1

MAP 2

SHT. PG. 2

Exhibit A-1

PRELIMINARY PARCEL MAP

DDA#4 June 27, 1999

Exhibit A-1-1

Exhibit B

PRELIMINARY TITLE REPORT

DDA#4 July 6, 1999

Exhibit B-1

PTR-3A (REV. 3-90)

FIRST AMERICAN TITLE COMPANY

PRELIMINARY REPORT

Note:

Before the transaction contemplated by this report can be closed, the **seller** must furnish a correct **Taxpayer Identification Number** to us so that we can file an IRS Form 1099, or its equivalent, with the Internal Revenue Service. This procedure is required by Section 6045 of the Internal Revenue Code and the seller may be subject to civil or criminal penalties for failing to furnish a correct Taxpayer Identification Number.



ALL INQUIRIES AND CORRESPONDENCE REGARDING THE ESCROW PERTAINING TO THE PROPERTY COVERED BY THE ATTACHED PRELIMINARY REPORT SHOULD BE DIRECTED TO THE ESCROW OFFICER WHOSE NAME APPEARS IN THE UPPER RIGHT HAND CORNER OF THE FOLLOWING PAGE AND WHOSE ADDRESS AND PHONE NUMBER ARE SET FORTH BELOW:

First American Title Company
1535 Harrison Street
Oakland, CA 94612

(510) 763-0500

Dated as of **May 25, 1999** at 7:30 a.m.

Title to said estate or interest at the date hereof is vested in:

REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND, a public body corporate and politic

The estate or interest in the land hereinafter described or referred to covered by this Report is:

A FEE TO PARCEL ONE AND EASEMENTS TO PARCELS TWO AND THREE

AT THE DATE HEREOF EXCEPTIONS TO COVERAGE IN ADDITION TO THE PRINTED EXCEPTIONS AND EXCLUSIONS CONTAINED IN SAID POLICY FORM WOULD BE AS FOLLOWS:

1. **PROPERTY TAXES**, including any assessments collected with taxes, for the fiscal year **1999-2000**, a lien not yet due or payable.

No Taxes are due for the present fiscal year **1998-1999** as said land is vested in a public agency.

2. **THE LIEN** of supplemental taxes, if any, assessed pursuant to Chapter 3.5 commencing with Section 75 of the California Revenue and Taxation Code.

3. Rights of the public in and to certain portions of the premises lying within the lines of 9th Street and Franklin Street

4. **EASEMENT** for the purposes stated herein and incidents thereto
Purpose : **Public Transportation Facilities**
To : **San Francisco Bay Area Rapid Transit District**
Recorded : **June 21, 1965, Reel 1532, Image 468, Official Records**
Affects : **A central portion of Lots 1B and 2B below an elevation of 24 feet measured from mean sea level, United States Coast Guard and Geodetic Survey, 1929 mean sea level datum**

Subject to the terms, covenants and conditions contained therein.

5. **THE EFFECT** ~~of effect~~ of the Central District Urban Renewal Plan, dated May 27, 1969, recorded December 10, 1969, Reel 2529, Image 910, Official Records.

An "Amended Notice of Oakland Central District Urban Renewal Plan", referring to said Plan, was recorded December 10, 1969, Reel 2529, Image 938, Official Records.

An "Amended Declaration of Restrictions concerning the Central District Urban Renewal Project", referring to said Plan, was recorded December 10, 1969, Reel 2529, Image 942,

APPLICANT:

City of Oakland
1330 Broadway, Suite 1001
Oakland, CA 94612
Attention: Tom Kennelly
(510) 238-6360
(510) 238-2240 (Fax)

YOUR CONTACT PERSON IS: Denise A. Madsen

CALL : (510) 763-0500
ESCROW FAX NO. : (510) 763-6111
ESCROW ORDER NO. : SP156238
TITLE ORDER NO. : SP156238 Update III
TITLE OFFICER : Paul Donahue (pd)
CUSTOMER REFERENCE :
PROPERTY ADDRESS : 900 Broadway
Oakland, California

**COPIES TO: Martin M. Ron Associates
James Murad, Esq. - Cooper, White & Cooper**

Subject to a minimum charge required by Section 12404 of the Insurance Code. The form of policy of title insurance contemplated by this report is: **TO BE DETERMINED**

In response to the above-referenced application for a policy of title insurance, this Company hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a Policy or Policies of Title Insurance in the form specified above, describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an Exception below or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations of said Policy forms.

The printed Exceptions and Exclusions from the coverage of said Policy or Policies are set forth in Exhibit A attached. Copies of the Policy forms should be read. They are available from the office which issued this report.

Please read the exceptions shown or referred to below and the exceptions and exclusions set forth in Exhibit A of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered.

It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects, and encumbrances affecting title to the land.

This report (and any supplements or amendments thereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.



Title Operations Manager

Order No. SP156238
Page No. 3

Official Records.

Said Plan was amended by Instrument dated May 29, 1973, and recorded December 17, 1974, Reel 3835, Image 488, Alameda County Records.

Said Plan was amended by Instrument dated December 16, 1975, and recorded December 31, 1975, Reel 4214, Image 290, Official Records.

Said Plan was amended and adopted by Ordinance No. 8288 C.M.S., on January 21, 1971, a certified copy of which was recorded on January 18, 1980, Series No. 80-010677, Official Records.

Said Plan was amended by Instrument dated August 3, 1982, and recorded October 18, 1982, Series No. 82-157558, Official Records.

Said Plan was amended by Ordinance No. 10256 C.M.S., which recorded July 30, 1984, Series No. 84-153776, Official Records.

Said Plan was amended by Ordinance No. 10510 C.M.S., which recorded November 20, 1984, Series No. 84-231776, Official Records.

Said Plan was amended by Instrument recorded June 17, 1985, Series No. 85-117792, Official Records.

Said Plan was amended by Ordinance No. 11198 C.M.S., which recorded September 1, 1995, Series No. 95-201279, Official Records.

6. EASEMENT for the purposes stated herein and incidents thereto
- | | |
|------------|---|
| Purpose | : Subsurface Transit Tunnel Facilities |
| Granted to | : San Francisco Bay Area Rapid Transit District |
| Recorded | : May 13, 1978, Reel 5415, Image 795, Official Records |
| Affects | : A portion of Lots 1B and 2B below an elevation of 27.00 feet, national Geodetic Vertical datum |

Subject to the terms, covenants and conditions contained therein.

7. EASEMENT for the purposes stated herein and incidents thereto
- | | |
|------------|--|
| Purpose | : Street Lighting, Fire Alarm Cables, Traffic Signals, Storm Drainage Systems and Fire Hydrants |
| Granted to | : City of Oakland |
| Recorded | : September 26, 1978, Reel 5597, Image 191, Official Records |
| Affects | : Those portions of Lots 1B, 2B and 3B lying within the lines of 10th Street (vacated) |

The easement referred to above became effective upon adoption of Resolution No. 58428, C. M. S., on September 24, 1979, a certified copy of which recorded September 28, 1979, Series No. 79-194712, Official Records.

Order No. SP156238

Page No. 4

NOTE: Upon abandonment of that portion of Lot 1B lying within the lines of Franklin Street, said Easement will also affect said portion of Lot 1B.

8. EASEMENT shown on filed map, and incidents thereto
Purpose : **Subsurface Transit Facilities**
Affects : **Portions of Lots 1B and 2B lying within the lines of 10th Street (vacated) and Parcel 2Y**
9. EASEMENT for the purposes stated herein and incidents thereto
Purpose : **Street Lighting, Fire Alarm Cables, Traffic Signals, Storm Drainage Systems and Fire Hydrants**
Granted to : **City of Oakland**
Recorded : **April 11, 1979, Series No. 79-067601, Official Records**
Affects : **Parcel 2Y and a portion of Parcel 2Z**

The easement referred to above became effective upon adoption of Resolution No. 59452, C. M. S., on September 25, 1979, a certified copy of which recorded September 28, 1979, Series No. 79-194713, Official Records.

NOTE: Upon abandonment of the portion of Parcel 2Z currently subject to "The Rights of the Public," said easement will also affect said portion of Parcel 2Z.

10. EASEMENT for the purposes stated herein and incidents thereto
Purpose : **Light and Air**
Granted to : **Asian Holdings, Inc.**
Recorded : **October 31, 1980, Series No. 80-193555, Official Records**
Affects : **A portion of Lot 3B, Tract 3954**

Subject to the terms, covenants and conditions contained therein.

11. EASEMENT for the purposes stated herein and incidents thereto
Purpose : **Air Conditioning Cooling Tower, Light and Air**
Granted to : **Asian Holdings, Inc.**
Recorded : **October 31, 1980, Series No. 80-193556, Official Records**
Affects : **Portions of Lot 3B, Tract 3954**

Subject to the terms, covenants and conditions contained therein.

12. EASEMENT for the purposes stated herein and incidents thereto
Purpose : **Air Conditioning Cooling Tower**
Granted to : **Asian Holdings, Inc.**
Recorded : **October 31, 1980, Series No. 80-193557, Official Records**
Affects : **A portion of Lot 3B, Tract 3954**

Subject to the terms, covenants and conditions contained therein.

13. EASEMENT for the purposes stated herein and incidents thereto
Purpose : **Building Support and Foundations**
Granted to : **Asian Holdings, Inc.**
Recorded : **October 31, 1980, Series No. 80-193562, Official Records**
Affects : **Portions of Lots 1B and 2B**
- Subject to the terms, covenants and conditions contained therein.
14. ~~AGREEMENT on the terms and conditions contained therein,
For : **Disposition and Development Agreement**
Between : **Redevelopment Agency of the City of Oakland, the City of Oakland**
And : **Pacific Renaissance Associates II, a California limited partnership**
Recorded : **June 18, 1987, Series No. 87-172978, Official Records.**~~
- ~~First Amended and fully restated agreements were recorded January 31, 1989, Series No. 89-25187, Official Records.~~
- ~~Second Amended and fully restated agreements were recorded July 17, 1990, Series No. 90-194501, Official Records.~~
15. Any and all unrecorded and subsisting leases in favor of the owner and/or users of parking facilities located on the premises.
16. The requirement that either the exact location and dimensions of the "Lot 2B Fee Title Connector thru Lot 1B" be defined of record as contemplated in Note 1 on Page 3 of the filed map of Tract 3954 or that said filed map be amended so as to effectively delete said connector therefrom.
17. Matters which may be disclosed by an inspection or by a survey of said land that is satisfactory to this Company, or by inquiry of the parties in possession thereof.

INFORMATION NOTES:

- A. The City of Oakland imposes a property transfer tax of 1.5% of the total consideration.
- B. Short term rate does not apply.
- C. Collect \$10.00 (per parcel) user fee for each Grant Deed for County Monument Preservation Fund.

- D. NOTE: Listed below are various grant deeds which conveyed the fee title to parcels which are contiguous to the herein described land. Said deeds contained reservations of certain rights and easements which, at the time of execution, were intended to the appurtenant to the herein described land in conformance with development plans contemplated at the time of execution. Upon request, this company will examine said rights and easements to determine their insurability.

Said Deeds are as follows:

- A. Grant Deed (Tower Site)
To Asian Holdings, Inc., recorded October 31, 1980, Series No. 80-193555, Official Records.
- B. Grant Deed (Podium Site)
To Asian Holdings, Inc., recorded October 31, 1980, Series No. 80-193556, Official Records.
- C. Grant Deed (Garage)
To Asian Holdings, Inc., recorded October 31, 1980, Series No. 80-193557, Official Records.
- D. Grant Deed (Podium Site)
To Asian Holdings, Inc., recorded November 8, 1985, Series No. 84-224581, Official Records.

Order No. SP156238

Page No. 7

LEGAL DESCRIPTION

REAL PROPERTY in the City of Oakland, County of Alameda, State of California, described as follows:

PARCEL ONE

Lots 1B 2B, 3B, Parcels 2Y and 2Z, Tract 3954, filed October 17, 1978, Map Book 106, Page 24, Alameda County Records, as amended by Certificate of Correction recorded September 27, 1979, Series No. 79-193134, Official Records.

EXCEPTING THEREFROM, those portions thereof conveyed to Asian Holdings, Inc., by the following instruments:

- A. Grant Deed recorded October 31, 1980, Series No. 80-193557, Official Records.
- B. Grant Deed recorded October 31, 1980, Series No. 80-193556, Official Records.
- C. Grant Deed recorded November 8, 1984, Series No. 84-224581, Official Records.

ALSO EXCEPTING THEREFROM, the Southeasterly 122.00 feet thereof.

PARCEL TWO

A NON-EXCLUSIVE EASEMENT for the passage of air and light, appurtenant to that portion of Parcel 2B of Tract 3954, filed October 17, 1978, Map Book 106, Page 24, Alameda County Records within Parcel One, above, as set forth in that certain Grant Deed of Tower Site, dated October 31, 1980 and reserved to The Redevelopment Agency of the City of Oakland, a public body, corporate and politic, recorded October 31, 1980, Series No 80-193555, Alameda County Official Records. Said easement being located through the land, and any subsequent subdivisions thereof, described as follows:

All that portion of Lot 3A of Tract 3954, filed October 17, 1978, Map Book 106, Page 24, Alameda County Records, lying Southwesterly of a line drawn parallel to and 210 feet Southwesterly of the Northeastern line of said Lot.

PARCEL THREE

AN EXCLUSIVE EASEMENT for construction, maintenance, modification, use repair and reconstruction of improvements reasonably necessary to provide access and functional, but not structural, connection with complimentary commercial improvements to be constructed, appurtenant to that portion of Parcel 2B of Tract 3954, filed October 17, 1978, Map Book 106, Page 24, Alameda County Records within Parcel One, above, as set forth in that certain Grant Deed of Podium Site dated October 31, 1980 and reserved to The Redevelopment Agency of the City of Oakland, a public body, corporate and politic, recorded October 31, 1980, Series No 80-193556, and in the corrective Podium Site Grant Deed recorded November 8, 1984, Series No. 84-224581, over and across the lands described as follows:

The entire Southwestern boundary of Parcel 2A of Tract 3954, filed October 17, 1978, Map Book 106,

Page 24, Alameda County Records, and in the entire Southwestern facade of the improvements to be constructed within said Parcel 2A, as reasonably necessary to effect such access and interconnection, and through any hiatus between said Southwestern line and Southwestern facade, between an upper plane having an elevation of +124 feet, City Of Oakland Vertical Datum, and a lower plane having an elevation of +35 feet, City Of Oakland Vertical Datum, excepting therefrom those portions thereof lying Northwesterly of a line drawn parallel to and 32 feet Southeasterly of the Northwestern line of Parcel 2A and Southeasterly of a line drawn parallel to and 268 feet Southeasterly of the Northwestern line of Parcel 2A.

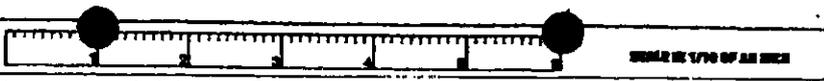
A.P. No. 002-0094-002 (portion)
002-0095-002 (portion)
002-0096-002 (portion)

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EXHIBIT A

(RW-REB)
1-800-345-7334



SCALE IS 1/100 OF AN INCH

ASSESSOR'S MAP 2

Code Area Nos. 17-022

94

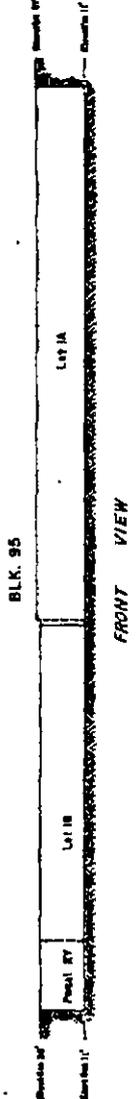
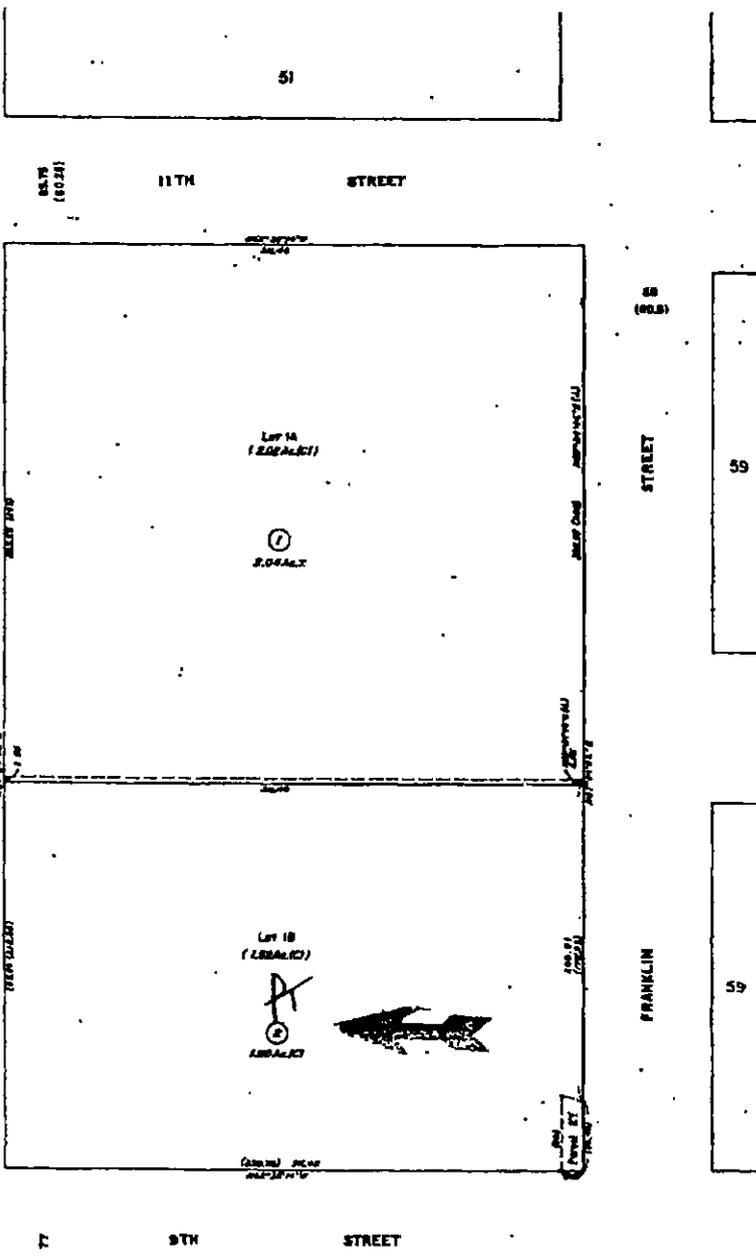
SCALE: 1" = 80'

TR. 3954 04/24 (LOTS 1A & 1B)

THIS MAP MAY BE USED IN A SURVEY OF THE LAND DEPICTED HEREON. IT IS NOT TO BE RELIED UPON FOR ANY PURPOSE OTHER THAN ORIENTATING ONE'S SELF AS TO THE GENERAL LOCATION OF THE PARCEL OR PARCELS OF INTEREST. FIRST AMERICAN TITLE COMPANY ASSUMES NO LIABILITY FOR LOSS OR DAMAGE RESULTING FROM RELIANCE THEREON.

REVISION: 5-8-83 P.P.
DRAWN: 8-24-81 ET
98
47
FORMERLY FOR BLK. 93

BROADWAY



ACM.

REF: CASE 1-7-11

BOOK 1

NPK 2

WB, 74 1

TRW-REDI

1-800-345-7334

SCALE IS 1/16" OF AN INCH

ASSESSOR'S MAP 2

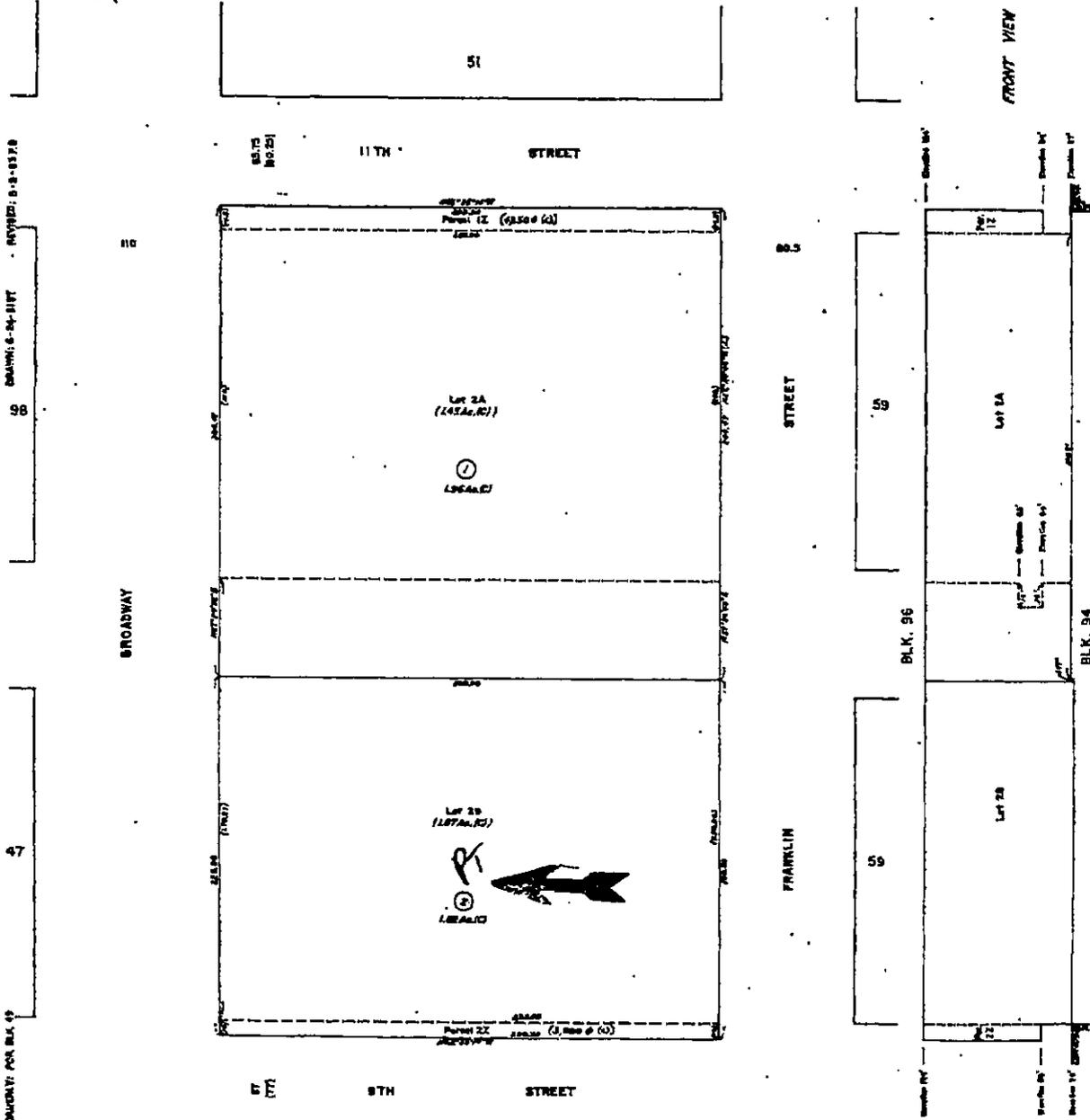
Code Area Nos. 17-022

95

SCALE: 1" = 60'

TR. 3954 104/24 (LOTS 2A & 2B)

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A.C.M.

REF.: CASE 1-7-0

BOOK 1

WPM 2

INO, PG 2

TRW-NED

1-800-345-7334

SCALE: 1/4" = 40' 0"

ASSESSOR'S MAP 2

Code Area Nos. 17-022

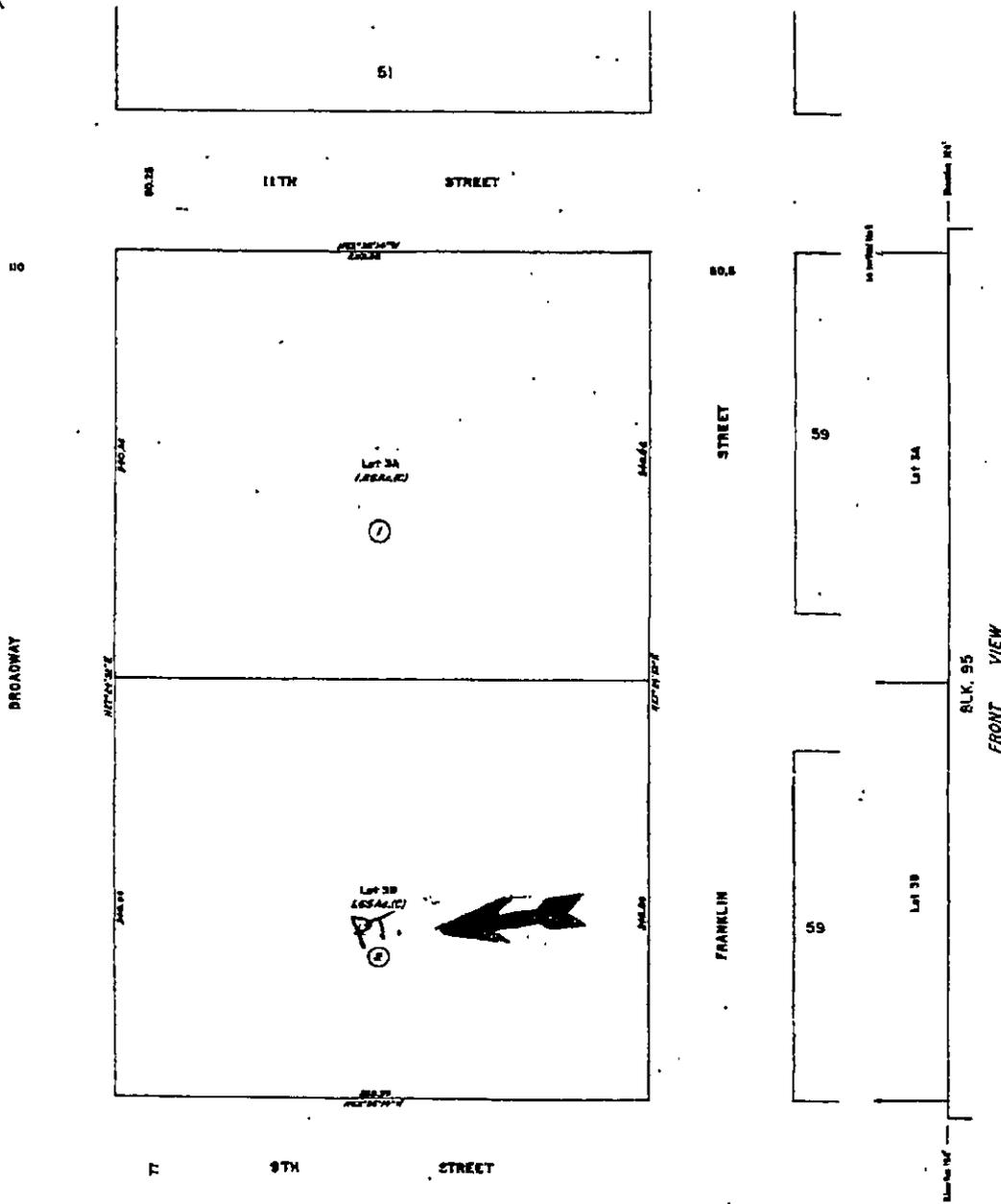
96

SCALE: 1" = 80'

TR. 3954 100/20 (LUTER & BO)

DISCLAIMER
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FORBENTY: PDR, BLK. 95
47
98
DRAWN: 6-26-01ST
REVISED: 8-08-02B



A.C.N.

REF: CASE 4-T-11

BOOK 1

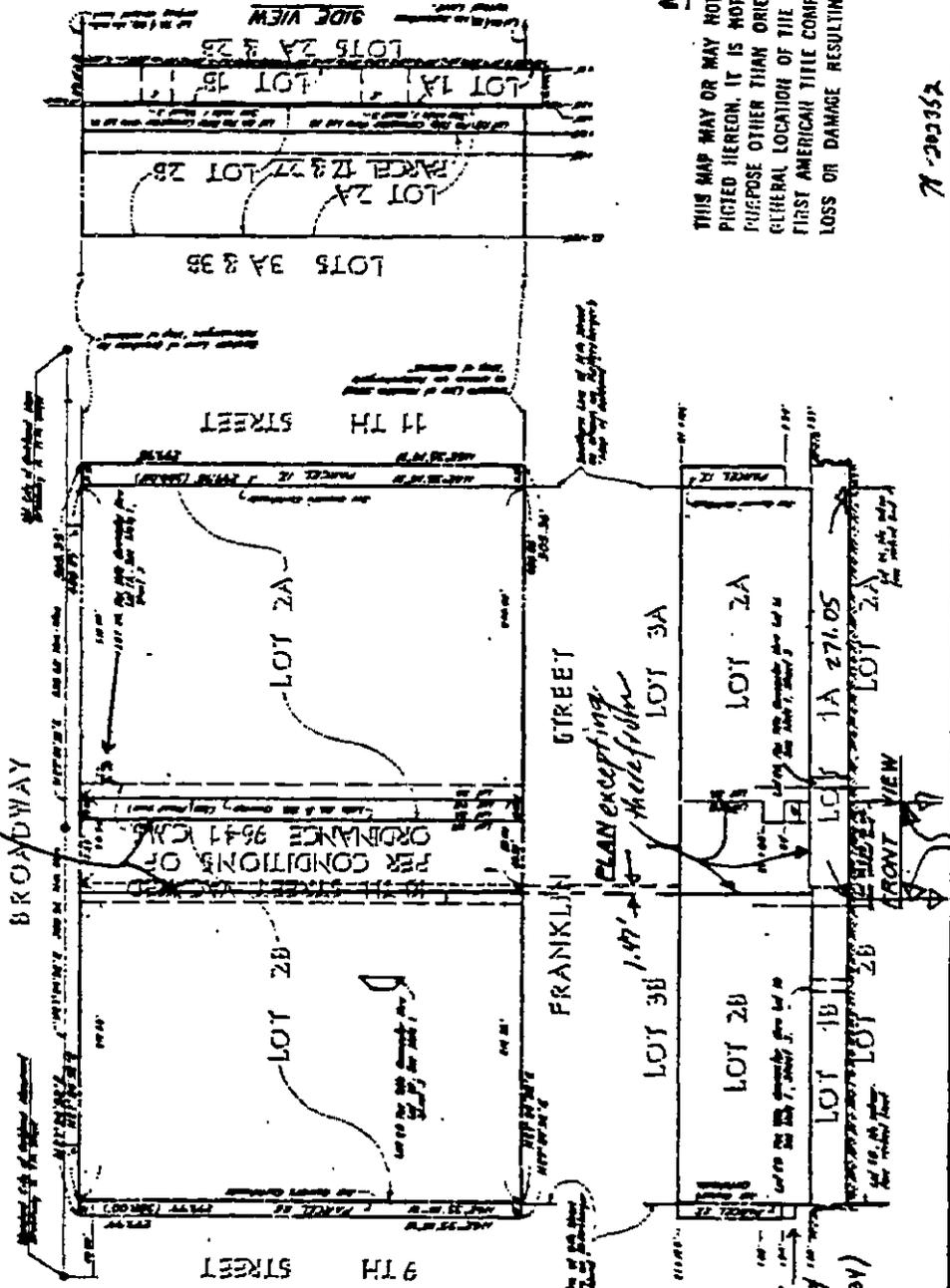
KPN 2

HD, PG 2



TRACT 3954
CITY OF OAKLAND
 ALAMEDA COUNTY, CALIFORNIA
 BISSELL & KAHN, INC.
 CIVIL ENGINEERS
 SAN LEANDRO, CALIFORNIA
 SCALE: 1" = 100'

excepting therefrom



NOTICE

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LOTS 2A & 2B

7-202362

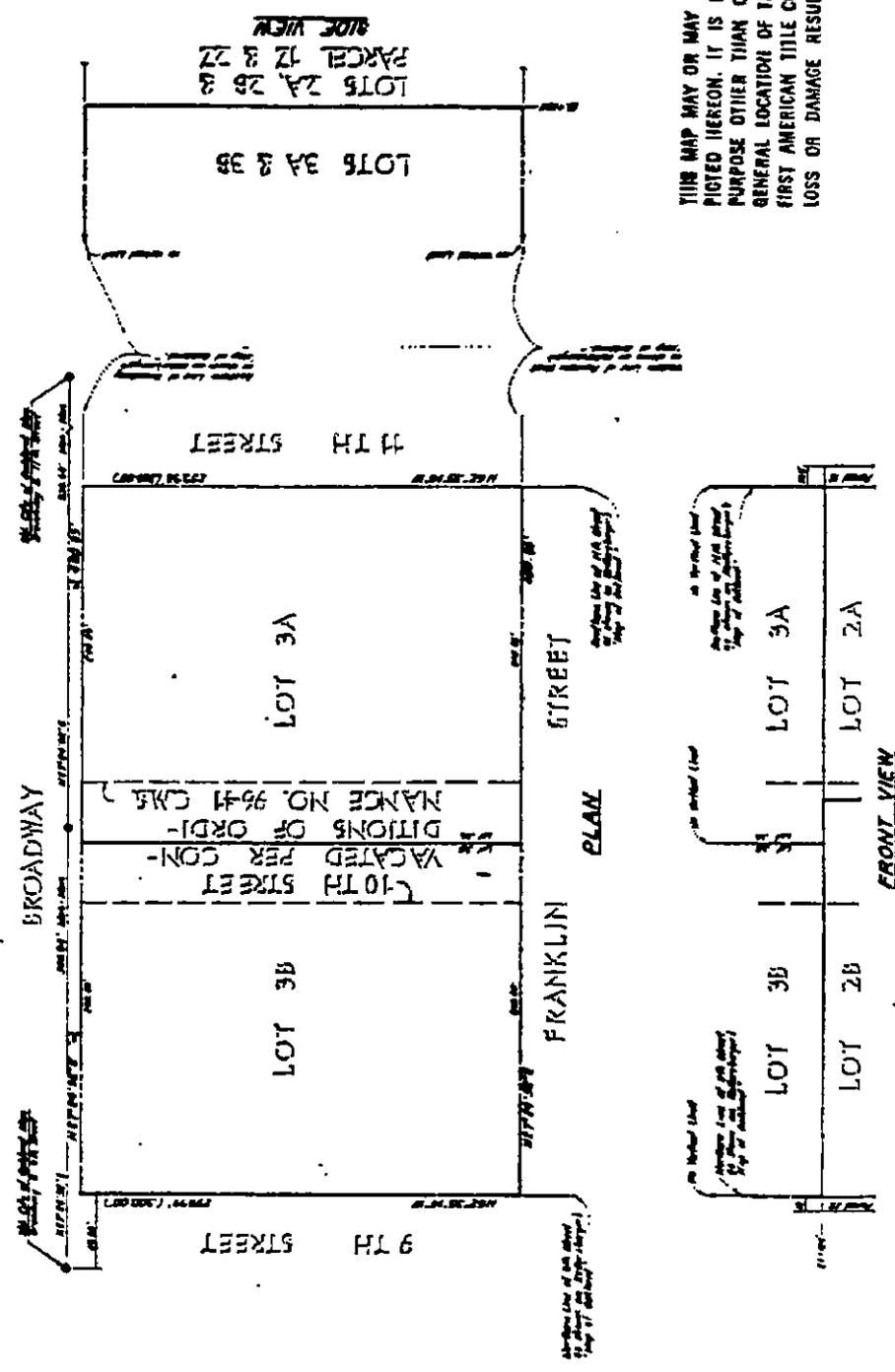
excepting therefrom

2-143-1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11
 2-119-1, 2, 3, 4, 5, 6, 7, 8-1

(per cert of 10/10/77)
 77-193134



TRACT 3954
CITY OF OAKLAND
ALAMEDA COUNTY, CALIFORNIA
MISSELL & HARR, INC.
CIVIL ENGINEERS
345 LECARNO, CALIFORNIA
SCALET NO. 1000, OCT. 1970



NOTICE

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LOTS 3A & 3B
PART 1 OF 2

7-202352

2743-12, 3, 5, 6, 7, 8, 9, 10, 11
2-110-12, 3, 4, 5, 6, 7, 8, 9, 10, 11

NOTICE

Section 12413.1 of the California Insurance Code effective January 1, 1990, requires that any Title Insurance Company, underwritten Title Company, or controlled Escrow Company handling funds in an escrow or sub-escrow capacity, wait a specified number of days after depositing funds, before recording any documents in connection with the transaction or disbursing funds. This statute allows for funds deposited by wire transfer to be disbursed the same day as deposit. In the case of cashier's checks or certified checks, funds may be disbursed the next day after deposit. In order to avoid unnecessary delays of three to seven days, or more, please use wire transfer, cashier's checks, or certified checks whenever possible.

If you have any questions about the effect of this new law, please contact your local First American Office for more details.

NOTICE

In accordance with Sections 18662 and 18668 of the Revenue and Taxation Code, a buyer may be required to withhold an amount equal to three and one-third percent of the sales price in the case of the disposition of California real property interest by either:

- 1. A seller who is an individual with a last known street address outside of California or when the disbursement instructions authorize the proceeds be sent to a financial intermediary of the seller, OR*
- 2. A corporate seller which has no permanent place of business in California.*

The buyer may become subject to penalty for failure to withhold an amount equal to the greater of 10 percent of the amount required to be withheld or five hundred dollars (\$500).

However, notwithstanding any other provision included in the California statutes referenced above, no buyer will be required to withhold any amount or be subject to penalty for failure to withhold if:

- 1. The sales price of the California real property conveyed does not exceed one hundred thousand dollars (\$100,000), OR*
- 2. The seller executes a written certificate, under the penalty of perjury, certifying that the seller is a resident of California, or if a corporation, has a permanent place of business in California, OR*
- 3. The seller, who is an individual, executes a written certificate, under the penalty of perjury, that the California real property being conveyed is the seller's principal residence (as defined in Section 1034 of the Internal Revenue Code).*

The seller is subject to penalty for knowingly filing a fraudulent certificate for the purpose of avoiding the withholding requirement.

The California statutes referenced above include provisions which authorize the Franchise Tax Board to grant reduced withholding and waivers from withholding on a case-by-case basis.

The parties to this transaction should seek an attorney's, accountant's, or other tax specialist's opinion concerning the effect of this law on this transaction and should not act on any statements made or omitted by the escrow or closing officer.



**AMERICAN LAND TITLE ASSOCIATION LOAN POLICY -
WITH A.L.T.A. ENDORSEMENT FORM 1 COVERAGE
SCHEDULE OF EXCLUSIONS FROM COVERAGE**

1. Any law, ordinance or governmental regulation (including but not limited to building and zoning ordinances) restricting or regulating the occupancy, use or enjoyment of the land, or regulating the character, dimensions or location of any improvement now or hereafter erected on the land, or prohibiting a separation in ownership or a reduction in the dimensions or area of the land, or the effect of any violation of any such law ordinance or governmental regulation.
2. Rights of eminent domain or governmental rights of police power unless notice of the exercise of such rights appears in the public records at Date of Policy.
3. Defects, liens, encumbrances, adverse claims, or other matters (a) created, suffered, assumed or agreed to by the insured claimant, (b) not known to the Company and not shown by the public records but known to the insured claimant either at Date of Policy or at the date such claimant acquired an estate or interest insured by this policy or acquired the insured mortgage and not disclosed in writing by the insured claimant to the Company prior to the date such insured claimant became an insured hereunder, (c) resulting in no loss or damage to the insured claimant; (d) attaching or created subsequent to Date of Policy (except to the extent insurance is afforded herein as to any statutory lien for labor or material or to the extent insurance is afforded herein as to assessments for street improvements under construction or completed at Date of Policy).
4. Unenforceability of the lien of the insured mortgage caused of failure of the insured at Date of Policy or of any subsequent owner of the indebtedness to comply with applicable "doing business" laws of the state in which the land is situated.

**5. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 1976
WITH REGIONAL EXCEPTIONS**

When the American Land Title Association Lenders Policy is used as a Standard Coverage Policy and not as an Extended Coverage Policy, the exclusions set forth in paragraph 4 above are used and the following exceptions to coverage appear in the policy.

SCHEDULE B

This policy does not insure against loss or damage by reason of the matters shown in parts one and two following:

Part One:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interest, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.
5. Unpatented mining claims, reservations or exceptions in patents or in Acts authorizing the issuance thereof, water rights, claims or title to water.
6. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.

**6. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 1992
WITH A.L.T.A. ENDORSEMENT FORM 1 COVERAGE
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part, or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters:
 - (a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
 - (c) resulting in no loss or damage to the insured claimant;
 - (d) attaching or created subsequent to Date of Policy (except to the extent that this policy insures the priority of the lien of the insured mortgage over any statutory lien for services, labor or material or the extent insurance is afforded herein as to assessments for street improvements under construction or completed at date of policy); or
 - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with the applicable "doing business" laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.

6. Any statutory lien for services, labor or materials, the claim of priority of any statutory lien for services, labor or materials over the lien of the insured mortgage arising from an improvement or work related to the land which is contracted for and commenced subsequent to Date of Policy and is not financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance.
7. Any claim, which arises out of the transaction creating the interest of the mortgagee insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
 - (i) the transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer; or
 - (ii) the subordination of the interest of the insured mortgagee as a result of the application of the doctrine of equitable subordination; or
 - (iii) the transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure:
 - (a) to timely record the instrument of transfer; or
 - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

**7. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 1992
WITH REGIONAL EXCEPTIONS**

When the American Land Title Association policy is used as a Standard Coverage Policy and not as an Extended Coverage Policy the exclusions set forth in paragraph 6 above are used and the following exceptions to coverage appear in the policy.

SCHEDULE B

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interest, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.
5. Unpatented mining claims, reservations or exceptions in patents or in Acts authorizing the issuance thereof, water rights, claims or title to water.
6. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.

**8. AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY - 1992
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters:
 - (a) created, suffered, assumed or agreed to by the insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
 - (c) resulting in no loss or damage to the insured claimant;
 - (d) attaching or created subsequent to Date of Policy; or
 - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
4. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
 - (i) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or
 - (ii) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:
 - (a) to timely record the instrument of transfer; or
 - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

9. AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY WITH REGIONAL EXCEPTIONS

When the American Land Title Association policy is used as a Standard Coverage Policy and not as an Extended Coverage Policy the exclusions set forth in paragraph 8 above are used and the following exceptions to coverage appear in the policy.

SCHEDULE B

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

- Part One:
1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
 2. Any facts, rights, interest, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
 3. Easements, claims of easement or encumbrances which are not shown by the public records.
 4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.
 5. Unpatented mining claims, reservations or exceptions in patents or in Acts authorizing the issuance thereof, water rights, claims or title to water.
 6. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.

10. AMERICAN LAND TITLE ASSOCIATION RESIDENTIAL TITLE INSURANCE POLICY - 1987

EXCLUSIONS

In addition to the Exceptions in Schedule B, you are not insured against loss, costs, attorneys' fees and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes building and zoning ordinances and also laws and regulations concerning:
 - * land use
 - * land division
 - * improvements of the land
 - * environmental protection

This exclusion does not apply to violations or the enforcement of these matters which appear in the public records at Policy Date. This exclusion does not limit the zoning coverage described in items 12 and 13 of Covered Title Risks.

2. The right to take the land by condemning it, unless:
 - * a notice of exercising the right appears in the public records on the Policy Date
 - * the taking happened prior to the Policy Date and is binding on you if you bought the land without knowing of the taking
3. Title Risks:
 - * that are created, allowed, or agreed to by you
 - * that are known to you, but not to us, on the Policy Date - unless they appeared in the public records
 - * that result in no loss to you
 - * that first affect your title after the Policy Date - this does not limit the labor and material lien coverage in Item 8 of Covered Title Risks
4. Failure to pay value for your title.
5. Lack of a right
 - * to any land outside the area specifically described and referred to in item 3 of Schedule A, or
 - * in streets, alleys, or waterways that touch your land

This exclusion does not limit the access coverage in Item 5 of Covered Title Risks.

Exhibit C

HOTEL

The Project consists of a hotel ("Hotel") of approximately 160 guest rooms in an "L" shaped, five story building along Broadway and to mid block of 9th Street with grade level retail space on Broadway and 9th Streets. The Hotel will be in the limited service category and will have the characteristics and amenities required by the Franchisor. The Hotel's interior finishes, fixtures, furnishings and spatial relationships will be consistent with the brand standard requirements of the Franchisor.

The Hotel will provide the following physical amenities:

- Approximately 160 guest rooms sized and configured to be consistent with the brand standard requirements of the Hotel's proposed franchisor.
- A 65-70 seat restaurant principally for Hotel guest and meeting room use.
- A lounge facility principally for Hotel guest use.
- A health club facility of approximately 840 square feet for Hotel guests.
- A spa.
- A sundries facility principally for Hotel guests.
- A self-service laundry facility for Hotel guest use.
- Approximately 1,545 square feet of meeting space in 3 rooms.
- Approximately 2,950 square feet of street frontage retail space.

Parking for 26 automobiles in a non-valet configuration and for approximately 54 automobiles in a valet configuration will be provided in the rectangular space bounded on the north by the existing Trans Pacific Building, to the south by the 9th Street wing of the Hotel building, to the east by Parcel 2, and to the west by the Broadway wing of the Hotel building. The Hotel parking area will be screened from Parcel 2 by a vine covered decorative metal security fence.

Pedestrian entrances will be located on Broadway and on 9th Streets. In each instance, the pedestrian entrances will be near the intersection of Broadway and 9th Streets and adjacent to the Hotel's front desk.

Guest drop off and check in will be located on 9th Street. Ingress and egress to guest parking and to the Hotel's loading dock will be on 9th Street.

The configuration and exact uses of the street frontage retail development have not been determined. It is anticipated however, that the 9th Street retail uses would be consistent with and complimentary to the Chinatown retail.

DDA#4 July 6, 1999

Exhibit C-2

Exhibit D

PROJECT MILESTONES

Agency and Developer Obligations ¹	Due Date ²	Target Date ³
1. Developer to deposit \$50,000 (good faith deposit)	At inception of DDA negotiations	Completed
2. Agency to provide Developer with Preliminary Title Report (§3.5)	Prior to Execution	Completed
3. Execute DDA	Execution Date	7/14/99
4. Developer to deposit \$200,000 to Escrow (§4.2)	Ten business days after Execution Date	7/24/99*
5. Developer to deliver Development Strategy (§4.3.1)	Ninety-one days after Execution Date	10/13/99
6. Developer to provide Final Design Development Plans (§4.4.1)	Ninety-one days after Execution Date	10/13/99
7. Developer to provide Cost Estimate (§4.3.2)	Two hundred ten days after Execution Date	2/09/00

¹ This Exhibit does not contain an exhaustive list of Agency's and Developer's obligations. Other obligations may exist under the Disposition and Development Agreement ("DDA").

² Terms used herein shall have the meaning set out in the DDA.

³ Target Date is based on projected Execution Date of July 14, 1999 and is, except as indicated by an * the earliest anticipated date for the event. Dates indicated by an * are to occur no later than the indicated Due Date. In the event of any conflict between the due date indicated in the body of the DDA and the Due Date or Target Date shown on this Exhibit, the provisions of the body of the DDA will control. In the event of any conflict between the Due Date and the Target Date shown on this Exhibit, the Due Date will control.

8.	Developer to submit Construction Plans (§4.5)	Two hundred forty-six days after Execution Date	3/16/00
9.	Developer to provide Financing Plan (§4.10.1)	Sixty days prior to Close of Escrow	1/16/00
10.	Developer to provide ten year cash flow projection (§4.10.2)	Sixty days prior to Close of Escrow	1/16/00
11.	Agency to prepare, file and record all tract and parcel maps for subdivision (§6.3)	Sixty days prior to Close of Escrow	1/16/00
12.	Developer to provide pro forma of Developer's title policy (§4.12)	Fifteen days prior to Close of Escrow	3/01/00
13.	Developer to provide loan agreement, promissory note, deed of trust, and other loan documents (§4.10.3)	Five days prior to Close of Escrow	3/11/00
14.	Developer to provide fully executed Franchise Agreement (§4.9.1)	Prior to Close of Escrow	
15.	Developer to provide fully executed Management Agreement (§4.9.2)	Prior to Close of Escrow	
16.	Developer to deliver into Escrow Reversionary Grant Deed (§3.4)	Prior to Close of Escrow	
17.	Developer to receive all government approvals (§4.11)	Prior to Close of Escrow	
18.	Close of Escrow and conveyance of property to Developer (§3.3)	Projected Close of Escrow	3/16/00
19.	Developer to submit copies of Construction Documents (§4.6)	Thirty days prior to Commencement of Construction	4/15/00

DDA#4 July 6, 1999

20.	Developer to cause Contractor to submit Bonds (§4.7)	Five days prior to Commencement of Construction	5/10/00
21.	Developer to apply for additional approvals and permits (§9.1)	Five days prior to Commencement of Construction	5/10/00
22.	Developer to Commence Construction (§9.2)	Sixty days after Close of Escrow	5/15/00
23.	Outside date for Commencement of Construction (§9.2)	Three years after Execution Date	7/13/03*
24.	Developer to complete Construction (§9.6)	Twenty four months after Commencement of Construction	5/15/02*
25.	Outside date for Completion of Construction (§9.6)	December 31, 2003	12/31/03*
26.	Agency to deliver Certificate of Completion (§9.8)	Completion of Construction of Project	12/31/03*
27.	Developer to pursue marketing efforts (§10.7)	Eighteen months before Hotel opens	11/13/00
28.	Developer to file annual certificate of DDA Compliance	April 1, each year after Opening, for 7 years	

Exhibit E

PLANNING COMMISSION APPROVAL

DDA#4 July 6, 1999

Exhibit E-1

CITY OF OAKLAND



250 FRANK H. OGAWA PLAZA, SUITE 2114 - OAKLAND, CALIFORNIA 94612-2031

City Planning Commission

(510) 238-3912
FAX (510) 238-4730
TDD (510) 839-6451

JULY 7, 1999

OAKLAND GARDEN HOTEL
388 9TH ST STE 228
OAKLAND CA 94607

RE: CASE FILE CMDV98-178 (ER98-19) - NORTHEAST CORNER OF 9TH STREET AND BROADWAY

Dear Sir/Madam:

Your application as noted above was approved at the City Planning Commission meeting on: July 7, 1999.

Commission action is indicated below. This action becomes final ten (10) days from the date of the Commission action unless an appeal to the City Council is filed by: July 19, 1999.

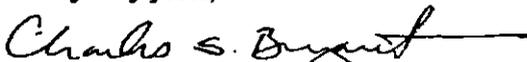
Appeals may be made to the City Council, at any time before that date on a form provided by the Community and Economic Development Agency/Zoning and filed with the required fee of \$413.00 at the Zoning Counter with a copy provided to the City Clerk.

If there is an appeal, Council members or citizens may have questions regarding this case. It is therefore advisable that you inquire of the City Clerk at 238-3611 on the above date or as soon thereafter as possible, as to whether the decision was appealed, and if so, when it is set to be reviewed by the City Council.

If you have any questions please contact the case planner Pamela Kershaw at (510) 238-2229.

(X) Granted with required conditions. - (Vote: 5 ayes, 0 noes - to approve)

Very truly yours,


CHARLES S. BRYANT, Secretary
City Planning Commission

CSB:ej

cc: "To All Interested Parties"
Ray Derania, Housing Conservation
Antonio Acosta, Parks and Recreation

Calvin Wang, Building Services Division
Phil Grubstick, Engineer Services/Permit Processing
Mitch Thomson, OPRCA/Tree Section

NOTICE TO ALL PARTIES:

The time within which judicial review must be sought of this decision of the Planning Commission is governed by Section 1094.6 of the Code of Civil Procedure of the State of California. With certain exceptions, the time is ninety (90) days from the date of the decision. If you challenge this application in court, you may be limited to raising only those issues you or someone else raised at the public hearing, or in written correspondence delivered to the Community and Economic Development Agency/Zoning at, or prior to, the public hearing.

CITY OF OAKLAND
Oakland, California 94612
Telephone: 238-3912

ZONING REPORT

 City Planning Department

CASE FILE: CMDV98-178,
ER98-19

 X City Planning Commission

APPLICANT: Oakland Garden Hotel, Inc. REPORT DATE: July 7, 1999

LOCATION: The project site is located at the northeast corner of
9th Street and Broadway, in Oakland, California.

PLANNING AREA: Central District/Chinatown

APPLICATION: Conditional Use Permit,
 Design Review, Variance and
 Environmental Review

PROPOSAL: Consideration of an application for a Major Conditional
Use Permit and Design Review to establish a Transient
Habitation Commercial Activity in a facility containing
approximately 100,000 square feet and within the first
20 feet of the ground floor, and a Major Variance to
reduce the required number of parking spaces on a site
located at the northeast corner of 9th Street and
Broadway in the "Central Business District" General Plan
Land Use Classification and the C-51 Central Business
Service Commercial and S-8 Urban Street Combining Zones.

STAFF RECOMMENDATION: Approve
 X Conditions Attached

COMMISSION ACTION: Approved
Vote: 5 ayes, 0 noes - to approve
Date: July 7, 1999

GENERAL PLAN LAND USE CLASSIFICATION: Central Business District

ZONING: C-51 Central Business Service Commercial and S-8 Urban
Street Combining Zones

ENVIRONMENTAL DETERMINATION:
 EIR X Negative Declaration Exempt
Mitigated Negative Declaration prepared.

PROJECT DESCRIPTION: The proposed project entails the development
of an approximately 100,000 square foot building containing 160
hotel rooms, ground floor commercial activity space, and 26 self
park and 28 valet parking spaces, on an approximately 37,341

(SEE REVERSE SIDE)

July 7, 1999

square foot site. The proposed structure will be oriented to abut both Broadway and 9th Street in an L-shaped configuration, with parking provided within the center portion of the site. The applicant is also proposing utilization of tandem and valet parking services on the site to provide parking for the proposed use, in addition to securing dedicated parking within the parking lot adjacent to the site owned by the Redevelopment Agency.

The proposed building will be five stories and approximately 65 feet in height, and will be finished with a mixture of masonry and ceramic tile at the ground floor, cement plaster above the first floor, with a standing seam metal mansard roof and metal balconies provided at various window openings around the structure. The proposed project also entails acquisition of a portion of the existing surface parking lot on the site by the developer from the Redevelopment Agency for construction of the hotel, and may entail the provision of financial assistance from the Agency to ensure the financial feasibility of the project.

PROPERTY DESCRIPTION: The proposed project will be located on an existing 37,341 square foot site, comprising approximately 2/3 of an entire block within downtown Oakland. The site is bounded by Broadway, Franklin Street, 9th Street and the TransPacific Center and currently contains a surface fee parking lot. The property is bordered by a range of mid to high rise commercial and residential uses to the south, the Trans Pacific Center office building to the north, the Pacific Renaissance Plaza high-rise mixed use development across Franklin Street to the east, and the Old Oakland historic mixed use district immediately across Broadway to the west. The site is located within a built out urbanized area, surrounded by a mixture of residential, office and commercial activities within the Chinatown neighborhood of downtown. The site is located immediately adjacent to Broadway, a major transportation arterial and commercial corridor in downtown Oakland, and within 1-2 blocks of the City Center BART station, a major transfer station on the regional BART system.

GENERAL PLAN ANALYSIS: The project site is designated as Central Business District (CBD) by the General Plan land use diagram. The Central Business District classification is intended to "encourage, support, and enhance the downtown area as a high density mixed use urban center of regional importance and a primary hub for business, communications, office, government, high technology, retail, entertainment, and transportation in Northern California." The desired character and uses envisioned for the CBD include "a mix of large scale offices, commercial, urban (high-rise) residential, institutional, open space, cultural, educational, arts, entertainment, service, Data/Trace LLC. All rights reserved. Copyright 2002. All rights reserved."

July 7, 1999

addition, the following General Plan policies are directly applicable to the proposed project:

Policy D5.1: Activities and amenities that encourage pedestrian traffic during the work week, as well as evenings and weekends should be promoted.

Policy D6.1: Construction on vacant land or to replace surface parking lots should be encouraged throughout the downtown, where possible.

Policy D9.1: Concentrate region-serving or "destination" commercial development in the corridor around Broadway between 12th and 21st Streets, in Chinatown, and the Jack London Waterfront. Ground floor locations for commercial uses that encourage a pedestrian-friendly environment should be encouraged throughout the downtown.

Policy N1.7: Hotels and motels should be encouraged to locate downtown, along the waterfront, near the airport, or along the I-880 corridor. No new hotels or motels should be located elsewhere in the city, however, the development of "bed-and-breakfast" type lodgings should be allowed in the neighborhoods, provided that the use and activities of the establishment do not adversely impact nearby areas, and parking areas are screened.

Policy I/C1.5: City-owned properties should, where feasible, be utilized to stimulate economic development activities or serve as catalysts to such efforts.

ZONING ANALYSIS: The project site is located in the C-51 Central Business Service Commercial and the S-8 Urban Street Combining Zones. The C-51 zone is intended to "create, preserve, and enhance areas for medium-intensity development of offices and business service activities, and is typically appropriate to the service commercial areas immediately adjoining the core of the central district." The S-8 zone is intended to "create, preserve, and enhance compact, attractive, and clearly defined street and plaza spaces and to assure ground-level continuity of retail and consumer service uses along key shopping frontages, and is typically appropriate to major pedestrian shopping streets in the central district."

Pursuant to Sections 17.58.200 (Special regulations for mini-lot developments, planned unit developments, and large-scale developments), and 17.58.090 (Restrictions on open accessory parking and loading) of the C-51 zone, Sections 17.86.050 (Conditionally permitted activities in front twenty feet of ground floor) and 17.86.080 (Restrictions on parking and loading at ground level) of the S-8 zone, and Section 17.134.020 (Definition of major and minor conditional use permit) of the zoning regulations, a major conditional use permit is required to construct the proposed project. Findings must be made pursuant to Sections 17.134.050 (General use permit criteria) and 17.86.100 (Use permit criteria of

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the S-8 zone) to approve the proposed conditional use permit.

In addition, pursuant to Section 17.86.030 (Design review for construction or alteration in the S-8 zone) design review approval is required to construct the proposed project. Findings must be made pursuant to Sections 17.86.110 (Design review criteria of the S-8 zone) and 17.136.070B (Design review criteria for nonresidential facilities and signs) to approve the proposed design review application. Pursuant to Section 17.148.020 the applicant is requesting a variance to reduce the number of parking spaces provided on site below that required by the zoning regulations. The zoning regulations require 120 spaces for the proposed use, and the applicant is proposing to provide 26 self park and 28 valet parking spaces on the site, with the remaining spaces provided in the adjacent surface parking lot through a long term lease agreement with the Redevelopment Agency. Findings must be made pursuant to Section 17.148.050 (Findings required) prior to granting the variance request.

DISCUSSION AND ANALYSIS: As indicated in the June 16 staff report, the applicant has been working with staff of both the Redevelopment Agency and the Planning Division for several months in addition to discussing the project concept with various members of the community. The key issues raised during these early discussions, and the major modifications that were made to the project thus far to address these issues, include the following:

- Site Plan and Circulation Access: Early site plans for the project entailed use of the entire block between Franklin, Broadway, 9th Street and the TransPacific Center for construction of a four story hotel with surface parking located in the center area, and with vehicular access provided from Broadway. At the request of both Agency and Planning staff, the applicant has revised the project site plan such that the project now entails use of only 2/3 of the project block, leaving the rear portion of the site available for subsequent development of a mixed use project with a parking structure. In addition, the applicant has eliminated the vehicular access from Broadway and relocated this access to 9th Street. This revised site plan configuration allows for a more intensive use of the property, consistent with the more urban nature of several surrounding projects along the Broadway spine, and maintains a continuous strong building edge adjacent to the sidewalk along Broadway, consistent with the intent of the S-8 overlay zone to create an active, engaging urban corridor along this important downtown street.
- Building Design: Staff raised concerns with the initial project design in terms of the lower rise nature of the building, the somewhat corporate appearance of the original proposal, and the lack of interesting detailed elements provided on the pedestrian level of the original building plans. The project design is somewhat limited in terms of the scale and height of the

July 7, 1999

proposed building due to the existence of the BART tube which runs diagonally beneath the property, and poses structural and legal limitations pertaining to the load of the building weight placed above. Nonetheless, the applicant has subsequently refined the project plans to include an additional floor of rooms which also coincided with the aforementioned site plan reconfiguration which reduced the amount of site area utilized for the project. The applicant has also revised the project to provide commercial activity space along the ground floor pedestrian frontages on both Broadway and 9th Street, incorporate masonry and tile materials as well as awnings along the ground floor of the building to add visual interest, provide metal balcony treatments and recessed window openings along the front facade and a standing seam metal mansard roof to emphasize the three-part vertical composition of the structure.

- Loss of Surface Parking and On-Site Parking Constraints: Concerns have been expressed by area residents and merchants regarding the loss of the existing surface fee parking lot on the site and the potential parking supply limitations this project may create for the surrounding Chinatown area. Due to the constrained nature of the development site and the subsurface limitations of the property, the applicant is requesting a variance to reduce the number of parking spaces provided on the site. However, to address this concern, the applicant has agreed to provide a combination of on-site regular and valet parking spaces as well as secure a long term lease for the remaining parking spaces necessary to serve the anticipated demand of the hotel use on the adjacent property, which is owned by the Redevelopment Agency. As mentioned previously, the proposed project will provide 26 self-park spaces and 28 valet/tandem spaces on the site, of the total 120 parking spaces required for the use as established by the zoning regulations. Thus, the remaining 66 spaces will be secured through a long term lease or license agreement in the reconfigured subsurface parking lot owned by the Redevelopment Agency, or within any other available public parking structure within 300 feet of the site. It is anticipated that the reconfigured surface parking lot will provide approximately 60 parking spaces when restriped. The Redevelopment Agency is also currently exploring the possibility of developing a mixed use project with a public parking structure on the remaining portion of the site, which will remain a surface parking lot in the interim period, in an effort to address long term parking supply issues for the Chinatown area. In addition, a transportation and parking analysis was prepared to support the Mitigated Negative Declaration prepared for the project which evaluated the potential traffic and parking impacts. The parking demand number identified by the environmental analysis indicates that the project parking is approximately 88 spaces and that the existing public fee parking structures within the vicinity of the site are currently at approximately 75% occupancy. The analysis

July 7, 1999

concluded that no significant parking impacts would result if the aforementioned long term lease arrangement was provided as part of the project mitigations due to other existing available public parking options within the vicinity of the site in surrounding parking lots and structures such as the EBMUD building and the Pacific Renaissance Plaza development.

In addition to these aforementioned issues, additional comments regarding the design of the building were expressed by members of the public and the Commission at the public hearing held on this item on June 16, 1998. Since the date of the public hearing, the applicant has been working to address these additional issues and refine the project accordingly where feasible. The issues raised at the hearing, and the applicant's response to these suggestions or comments, are listed below:

- Height of the Ground Floor: Suggestions were made to increase the floor to ceiling height of the ground floor of the structure from the current height of 13 feet to approximately 15-17 feet to better reflect the predominant building character of other buildings in the surrounding area and to further articulate and strengthen the base of the structure. The originally proposed 13 foot elevation was measured at the lowest point on the site. In fact, the elevation of the ground floor, resulting from the slope on 9th Street, varies from a low of 13 feet on Broadway to a high of 14 feet 4 inches at the easterly corner along 9th Street. In response to the suggestion to raise the ground floor height the applicant has revised the building design to increase the floor to ceiling height from the original proposal of 13 feet to 14 feet at the lowest elevation, which results in a 15 foot mid block elevation along 9th Street and a 15 foot 4 inch elevation at the easterly corner of the building. The applicant has indicated that further increases to the floor to ceiling height of the ground floor would be cost prohibitive, result in additional space that cannot be utilized functionally, and create a disproportionate base feature on the building. Staff believes this proposed additional foot of height largely addresses the concern raised but would like the opportunity to continue to work with the applicant to either add additional height to the ground floor, or alter the exterior finishes or treatments in a manner which creates an appearance of greater height along the ground floor. Thus, a condition of approval is suggested requiring that the applicant explore additional options and work with staff to examine possibilities for further refinement with respect to this issue.
- Mansard Roof Treatment: Comments were also expressed regarding the proposed mansard roof, with the suggestions ranging from simplifying this element to include a cornice feature instead of a mansard, or providing additional height to the mansard feature to further emphasize the "cap" aspect of the structure. In addition, it was suggested that the mansard roof treatment

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should be wrapped around the corners of the building to avoid creation of an uneven joint between surfaces at the corners of the building. In response to this issue the applicant has indicated that the incorporation of the mansard roof was included as a response to direction provided by the consulting architect for the Redevelopment Agency, and that the mansard element provides a tasteful unique treatment for the building. In addition, in response to the aforementioned suggestion, the applicant has extended the height of the mansard roof by an additional 18 inches to further emphasize this feature. The applicant has also indicated on the revised plans that the mansard treatment will wrap around all of the corners of the building. Staff believes this is an acceptable response to this issue.

- Exterior Building Materials: The importance of utilizing quality exterior building materials throughout the structure was raised at the public hearing, particularly with respect to the materials used at the base or pedestrian level of the building. The proposed project will be finished with slate along the base of the structure up to approximately 2 feet above the ground, large size ceramic tile sections (2 feet by 2 feet) above the slate up to approximately 13'-14'4" above the ground, with a 6" course of masonry material capping the tile element and joining the cement plaster which is utilized on the remaining portions of the building walls, up to the juncture with the standing seam metal mansard roof. In response to this issue raised at the hearing, the applicant has raised the slate proposed along the base of the building from the original proposal of 2 feet to 3 feet above the ground, as a companion revision to the additional height provided on the ground floor of the structure. Staff also requested that the applicant explore utilizing more of the masonry material further up along the base of the structure to either a level of 6 feet above the ground or to the top of the first floor in response to this same issue. The applicant expressed the concern that the placement of the slate up to the 6 foot level above the ground would be proportionally awkward when compared with the overall dimensions of the building components and the height of the adjacent storefront glazing, which staff generally concurs with. The applicant has further indicated that utilization of slate for the entire ground floor would be cost prohibitive and would eliminate an important accent material and texture which is provided by the ceramic tile segments currently proposed. Thus, staff concurs with the revisions to pull the slate up to the 3 foot level above the ground, and agrees that the use of ceramic tile on the building adds visual interest, but suggests inclusion of a condition of approval requiring final staff approval of exterior materials and finishes to ensure that quality materials and the appropriate size and placement of these materials are incorporated on the final plans submitted for building permits.

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- Streetscape Improvements: A suggestion was made regarding the coordination of any proposed streetscape enhancements of the project along Broadway with the larger Broadway corridor streetscape program, and incorporation of similar landscaping improvements/enhancements along 9th Street. A suggested condition of approval requires that the applicant work with the appropriate City Departments to coordinate, install and maintain streetscape landscaping and improvements along both Broadway and 9th Street along the perimeter of the subject site.
- Roof Equipment: The importance of carefully locating and creatively screening any roof equipment on the structure from view from both street level pedestrians as well as from tenants of adjacent high rise buildings was raised as an issue. To ensure that appropriate treatment is provided for these appurtenances, a suggested condition of approval is included requiring that such equipment be carefully placed and screened to minimize the visibility to the extent feasible.
- Pedestrian Entrance Treatment: A suggestion to provide further enhancement and emphasis of the pedestrian entrance feature to the hotel on Broadway was expressed. The applicant has responded to this suggestion by increasing the width of the recessed bay at the entrance from 17'6" to 22' to create more of a stately entrance. While staff believes this revision is appropriate, a suggested condition of approval requires that the applicant further refine this feature through either raising the awning over the entrance, placing a decorative sign feature above this entrance area, incorporating a change in exterior building materials or finishes around the entryway, or some other creative design solution, and include such refinements on the plans submitted for building permits.
- Space Between TransPacific Center and Hotel: A suggestion was raised regarding sealing the area between the existing TransPacific Center and the first two floors of the adjacent hotel building from access, to address both security concerns and provide a strong continuous building edge along Broadway. The applicant has indicated that the Transpacific Center's easement rights prevent the hotel from being built any closer than indicated on the plans. However, the space between the Transpacific Center and the hotel will be closed by a wall that extends to the top of the 2nd floor of the hotel and aligns with the horizontal relief joint at the top of the second floor windows to address security concerns and provide a continuous building connection along this frontage.
- Corner Treatment of Building at 9th/Broadway: A suggested refinement raised by the Commission included examining the appropriateness of extending the roof line of the proposed building at the corner of 9th/Broadway to create an interesting corner element at this key intersection. The applicant has

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explored this concept at various stages throughout the design process, and eliminated an earlier more dramatic vertical element affect at the direction of the architectural consultant hired by the Redevelopment Agency. As the entrance to the hotel area is not provided at this corner location, but is rather located midblock up Broadway, this feature was determined to be somewhat visually confusing to the overall design concept and was eliminated. Thus, staff believes that the proposed corner treatment, with the currently proposed balcony elements and angled building corners, presents an appropriate design solution for this corner of the building.

- Screening/Treatment of Exterior Ventilation Units: The final issue raised at the public hearing was the importance of providing an effective and attractive design for the metal grills proposed below the windows to screen the exterior air conditioning units. This issue has been a longstanding concern for staff, and in response the applicant has proposed continuing the glazing system down to either side of the louver panel to integrate the louver itself into the window system, rather than placing the windows above a separate decorative metal grill louver, as previously proposed. Staff believes that this approach will minimize the visual affect of these units on the overall appearance of the building and present an effective design solution for these units.

Thus, based upon incorporation of the aforementioned design refinements and inclusion of the suggested conditions of approval, staff believes that the proposed project is an appropriate land use at this location and presents an attractive design solution for the site. The applicant has attempted to respond to the various key issues raised throughout the project formation process as well as those discussed at the public hearing, by refining the project design accordingly. In those instances where refinements are not proposed yet further design revisions appear warranted, staff has suggested conditions of approval to address these issues. As a result, staff believes that the project design will present a continuous urban facade along Broadway, with ground floor commercial activities incorporated into the project consistent with the intent of the S-8 zone, and will provide parking ingress/egress from the 9th Street side of the project, thereby eliminating the need to provide any curb cuts along Broadway, further emphasizing the importance of Broadway as a major pedestrian spine for downtown. The request for the on-site parking variance is justifiable due to the applicant's attainment of the shared parking lease/license arrangement on the adjacent parcel, and due to the existence of other public parking spaces within the surrounding area.

Furthermore, the project is consistent with the goals and policies of the General Plan in that it provides much needed visitor services to the downtown area to support the existing Oakland

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Convention Center, and promotes more 24 hour activity within the downtown. In addition, the proposed project will intensify an existing underutilized parcel within the downtown and redevelops an unattractive surface parking lot with an appropriately designed urban building at this key site along the Broadway spine.

REQUIRED FINDINGS: Approval of the proposed development project may be granted only if the proposal meets all of the required findings of Section 17.134.050 (General Use Permit Criteria), Section 17.86.100 (Use Permit Criteria of the S-8 Zone Regulations), Section 17.136.070B (Design Review Criteria for Nonresidential Facilities), Section 17.86.110 (Design Review Criteria of the S-8 Zone Regulations), Section 17.148.050 (Variance findings required) of the Zoning Regulations. Based on the analysis contained within this report, staff believes that the required findings referenced by these aforementioned sections can be made to approve the proposed project as listed below:

Conditional Use Permit - Section 17.134.050:

- A. That the location, size, design, and operating characteristics of the proposed development will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood, with consideration to be given to harmony in scale, bulk, coverage, and density; to the availability of civic facilities and utilities; to harmful effect, if any, upon desirable neighborhood character; to the generation of traffic and the capacity of surrounding streets; and to any other relevant impact of the development. The proposed development project at 5 stories of height, is consistent in scale and bulk with development in the vicinity of the site, which generally ranges from low to mid rise structures across Broadway to the west and includes multi-story commercial buildings on other sides, and will contribute to the economic vitality of the central district office core area. The traffic and circulation impacts of the proposed project have been analyzed in detail in the Initial Study/Mitigated Negative Declaration prepared for the project, and have been adequately mitigated to a less than significant level.
- B. That the location, design, and site planning of the proposed development will provide a convenient and functional living, working, and shopping, or civic environment, and will be as attractive as the nature of the use and its location and setting warrant. The proposed project will provide a five story hotel building with ground floor retail space which will provide an infusion of visitor services into the central district area. Furthermore, the location, design and site planning of the proposed project, in conjunction with the appropriate conditions of approval regarding design refinements, will create an attractive and complementary development which is well integrated into the surrounding fabric of the

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downtown.

- C. That the proposed development will enhance the successful operation of the surrounding area in its basic community functions, or will provide an essential service to the community or region. The proposed development will enhance the successful operation of the surrounding area by expanding the visitor service sector within the central district core area of downtown and may result in the potential expansion or intensification of use of the Convention Center, thereby further contributing to the economic revitalization of surrounding downtown businesses, while reusing and redeveloping an underutilized surface parking lot within the downtown central business district core.
- D. That the proposal conforms to all applicable design review criteria set forth in the DESIGN REVIEW PROCEDURE at Section 17.136.070. (see applicable section listed below)
- E. That the proposal conforms in all significant respects with the Oakland Comprehensive Plan and with any other applicable plan or development control map which has been adopted by the City Council. The proposal is consistent with the Oakland General Plan which designates this site as Central Business District and identifies this area as appropriate for development of visitor service uses, as well as with the Zoning Regulations which identifies the subject site as appropriate for transient habitation commercial activities. Furthermore, the proposed development is consistent with the purpose and intent of the Central District Urban Renewal Plan which encourages the reuse of underutilized buildings and infill development on vacant parcels or surface parking lots within the downtown commercial core area.

Conditional Use Permit of the S-8 Zone Regulations - Section 17.86.100:

- 1. That the proposal will not detract from the compact, urban character of the area. As the proposed development is located immediately adjacent to the sidewalk along Broadway, with all vehicular access provided on 9th Street, the proposed development will not detract nor significantly alter the compact, urban character of the area. The project has been designed to support the Broadway streetscape through provision of direct entrances to the hotel lobby and commercial activity uses along this important pedestrian corridor and by locating the building immediately adjacent to the sidewalk to create an intensive urban presence.
- 2. That the proposal will not impair a generally continuous wall of building facades. In an effort to provide a compact urban environment, the proposed project has been revised to provide a continuous wall of building facades immediately adjacent to

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Broadway, with vehicular entrances provided along 9th Street, rather than Broadway.

3. That the proposal will not weaken the concentration and continuity of retail facilities at ground level, and will not break up an important shopping frontage. The proposed project will not weaken the concentration or continuity of retail facilities or impact an important shopping frontage as the project has been designed to provide ground floor commercial activity space directly adjacent to Broadway, along with the hotel lobby entrance, in an effort to engage pedestrians along this important corridor.
4. That the proposal will not interfere with the movement of people along an important pedestrian street. The proposed project will not interfere with the movement of people along Broadway. The project has been redesigned to accommodate vehicular access along 9th Street rather than Broadway, in an effort to eliminate any curb cuts or vehicular impedance to pedestrian movement along Broadway.
5. That the proposal will conform in all significant respects with any applicable district plan which has been adopted by the City Council. (see response to finding 17.134.050E above)

Design Review - Section 17.136.070B:

1. That the proposal will help achieve or maintain a group of facilities which are well related to another and which, when taken together, will result in a well-composed design, with consideration given to site, landscape, bulk, height, arrangement, texture, materials, colors, and appurtenances; the relation of these factors to other facilities in the vicinity; and the relation of the proposal to the total setting as seen from key points in the surrounding area. Only elements of design which have some significant relationship to outside appearance shall be considered, except as otherwise provided in Section 17.102.030. The proposed development has been designed in a manner which is consistent with the scale and bulk of surrounding developments within the immediate downtown area, and blends well with both the scale of the Old Oakland historic district across Broadway from the site, as well as with the Chinatown area immediately surrounding the project site. The project, in conjunction with the appropriate conditions of approval, is designed with exterior finishes, materials and features which are appropriate and relate well to other developments within the downtown area and results in a complementary addition to the existing development pattern of Oakland.
2. That the proposed design will be of a quality and character which harmonizes with, and serves to protect the value of, private and public investments in the area. The proposed

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project, in conjunction with all appropriate conditions of approval, has been designed to reflect the quality and character of the surrounding downtown context and will contribute to the economic revitalization of surrounding properties through intensification of a surface parking lot at an integral location along the Broadway corridor.

3. That the proposed design conforms in all significant respects with the Oakland Comprehensive Plan and with any applicable district plan or development control map which has been adopted by the City Council. (see response to finding 17.134.050E above)

Design Review Criteria of the S-8 Zone Regulations - Section 17.86.110:

1. That the proposal will be compatible with an atmosphere of quality and refined architectural taste appropriate to a highly urban commercial center. The proposed project, inclusive of all appropriate conditions of approval regarding exterior design refinements, has been designed to reflect the quality and architectural tenor of adjacent developments and the urban context of the central office core of downtown.
2. That the design of ground-level facilities will be interesting to pedestrians and will preserve, and where possible enhance, the basic continuity of key shopping frontages. The design of the proposed project includes provision of masonry and tile material at the base, along with awnings over ground floor store front windows, and a continuous building facade with ground floor commercial uses which will provide activities intended to engage pedestrians along Broadway.
3. That the building facade and other walls will be considered and treated as a whole, and in relationship to adjoining buildings. The proposed project has been designed to complement the development pattern of adjacent office buildings including the TransPacific Center and the Old Oakland Victorian development in scale and bulk, located immediately across Broadway from the site. The proposed structure has been designed to provide a continuous street building edge and is located as close as legally permitted to the existing TransPacific Center building.
4. That all signs will be harmonious with the architectural design of the building and adjacent buildings, and will not cover or detract from desirable architectural features. The proposed project includes the anticipated provision of signs on the proposed awnings of the building, and above the pedestrian and vehicular entrance areas to the structure. A suggested condition of approval requires staff review and approval of the final design of all signs proposed on the project to ensure that they do not detract from the urban

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character or intent of the S-8 zone.

Variance Findings:

Section 9604 - Findings Required

1. In all zones except the S-14 zone: That strict compliance with the specified regulation would result in practical difficulty or unnecessary hardship inconsistent with the purposes of the ZONING REGULATIONS, due to unique physical or topographic circumstances or conditions of design; or, as an alternative in the case of a minor variance, that such strict compliance would preclude an effective design solution improving livability, operational efficiency, or appearance. Strict compliance with the specific on-site parking requirements would result in practical difficulty due to the limitations associated with the proposed reuse of the relatively small portion of the block and the structural limitations of the site due to the existence of the BART tube below the surface, which renders many alternative design solutions infeasible.
2. That strict compliance with the regulations would deprive the applicant of privileges enjoyed by owners of similarly zoned property; or, an alternative in the case of a minor variance, that such strict compliance would preclude an effective design solution fulfilling the basic intent of the applicable regulation. Strict compliance with the regulations would require an alternate design solution which is infeasible due to the structural and size limitations of the site due to the Agency retention of the rear 1/3 of the site and the existence of the BART tube under the surface, which places weight limitations on the load of the structure which may be constructed on portions of the site.
3. That the variance, if granted, will not adversely affect the character, livability, or appropriate development of abutting properties or the surrounding area, and will not be detrimental to the public welfare or contrary to adopted plans or development policy. The variance, if granted, will not affect the character or livability of abutting properties within the area, as the necessary parking for the proposed use will be provided through obtainment of a long term parking lease or license agreement with the Redevelopment Agency, the owners of the adjacent 1/3 block or from other parking owners within a 300 foot radius of the project site. In addition, the proposed smaller size of the parking area on the site will allow for more intensive use of the subject block, in keeping with the desired urban intensive character envisioned for the downtown core area.
4. That the variance will not constitute a grant of special privilege inconsistent with limitations imposed on similarly zoned properties or inconsistent with the purposes of the

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ZONING REGULATIONS. The variance will not constitute a grant of special privilege inconsistent with the purposes of the ZONING REGULATIONS or with limitations imposed on similarly zoned properties, as the proposed project represents a unique case involving the intensive redevelopment of an existing surface parking lot along Broadway, a key urban arterial within the downtown area. The development intensity encouraged at this location within the General Plan includes high density development and reuse of underutilized land along the Broadway spine, which supports the concept of sharing parking arrangements between uses or providing parking for uses within public parking structures within the area rather than on individual parking provided for each use on site.

Based on the analysis and findings listed in the previous sections, staff believes that the proposed project is an appropriate land use and an attractive design for this location, and recommends approval of the requested zoning permit applications, subject to the suggested conditions of approval.

ENVIRONMENTAL DETERMINATION AND ENVIRONMENTAL FINDINGS: The California Environmental Quality Act (CEQA) requires environmental review for those projects that might have significant impacts on the environment. An Initial Study was prepared to determine if this project might result in significant impacts to the environment. The Initial Study identified some potentially significant impacts of the project, as well as mitigation measures that would reduce those impacts to a level of insignificance. Therefore, a proposed Mitigated Negative Declaration was prepared. The Initial Study and Mitigated Negative Declaration were circulated for public comment. The comment period ended at 4:00 p.m. on June 23, 1999. No written comments or challenges were received on the Mitigated Negative Declaration.

RECOMMENDATIONS:

1. Approve the Mitigated Negative Declaration; and
2. Adopt the Mitigation Monitoring Program for the proposed project; and
3. Approve the Major Conditional Use Permit, Design Review and Variance based upon the findings contained within the staff report and subject to the attached conditions of approval.

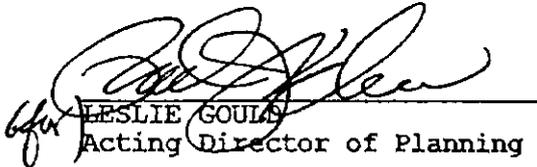
City Planning Commission
Case File No. CMDV98-178, ER98-19
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Prepared by:


PAMELA KERSHAW
Planner IV

Approved for forwarding to the
City Planning Commission:


LESLIE GOULD
Acting Director of Planning

ATTACHMENTS:

- A. Location Map
- B. Project Plans
- C. Initial Study/Mitigated Negative Declaration
- D. Mitigation Monitoring Program

9C98178.DOC

July 7, 1999

CONDITIONS OF APPROVAL ATTACHED TO AND MADE A PART OF ZONING CASE
NO. CMDV98-178, ER98-19:

1. That the project shall be constructed and operated in accordance with the authorized use as described in this staff report, and according to the site plan and elevations approved by the Planning Commission on July 7, 1999; provided further, that the project incorporate the revisions listed below as conditions of approval.
2. These conditions of approval shall be reproduced on page one of any plans submitted for a building permit for this project.
3. The project is approved pursuant to the Planning Code only and shall comply with all other applicable codes and requirements imposed by other affected departments. Minor changes to approved plans may be approved administratively by the Zoning Administrator; major changes shall be subject to review and approval by applicable City departments and divisions and shall be subject to a public hearing held by the City Planning Commission.
4. The applicant shall comply with all mitigation measures contained within the attached Initial Study/Mitigated Negative Declaration and Mitigation Monitoring Program (Case file #ER98-19) and incorporated herein as a condition of approval by this reference.
5. The applicant shall defend, indemnify, and hold harmless the City of Oakland, its agents, officers, and employees from any claim, action, or proceeding (including legal costs and attorney's fees) against the City of Oakland, its agents, officers or employees to attack, set aside, void or annul, an approval by the City of Oakland, Community and Economic Development Agency, Planning Commission, or City Council. The City shall promptly notify the applicant of any claim, action or proceeding and the City shall cooperate fully in such defense. The City may elect, in its sole discretion, to participate in the defense of said claim, action, or proceeding.
6. The City Planning Commission reserves the right, after notice and public hearing, to alter Conditions of Approval or revoke this conditional use permit if it is found that the approved activity is violating any of the Conditions of Approval or the provisions of the Zoning Regulations.
7. The facility's final design, including all exterior design details, proposed signs, and the final selection of exterior materials, colors and textures shall be submitted to and approved by the Planning Director, or his designee, prior to the issuance of building permits.

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8. The applicant shall cooperate with the City in the Mitigation Monitoring Program. The applicant shall be responsible for those costs associated with those Conditions of Approval herein that have completion milestones tied to the issuance of permits or certificates of occupancy. Unless otherwise stated in the Mitigation Monitoring Program, those conditions of approval herein that involve ongoing maintenance or any other ongoing provision shall be monitored and reported on pursuant to standard code compliance procedures of the City.
9. A detailed streetscape landscaping plan, improvement plan and street tree plan for the project shall be prepared and submitted to the Director of Parks and Recreation and the Engineering Services Manager or his designee for review and approval prior to the issuance of a Certificate of Occupancy for the project. All planting materials, hardscape materials and public improvements shall be installed prior to issuance of the final Certificate of Occupancy, and shall be permanently maintained in a neat, safe and healthy condition.
10. A lighting plan shall be submitted to and approved by the Planning Director or his/her designee, with referral to other departments or divisions as appropriate, and shall include the design and location of all lighting fixtures or standards; and said lighting shall be installed such that it is adequately shielded and does not cast glare onto adjacent properties.
11. This Conditional Use Permit, Variance and Design Review approval shall become effective upon satisfactory compliance with the above conditions. Any additional uses other than those approved with this permit will require a separate application and approval. Failure to exercise this Conditional Use Permit, Variance or Design Review approval or obtain required building permits by July 7, 2000, shall invalidate this approval, provided further, that upon written request the Director of City Planning may grant a one year extension of this date, with additional extensions subject to approval by the City Planning Commission.
12. The applicant shall comply with all applicable provisions of the Clean Water Act.
13. Roof equipment shall be thoughtfully placed and adequately screened from view from pedestrians on adjacent streets as well as from tenants from surrounding mid and high rise structures. Plans indicating the location and proposed screening technique for these elements shall be submitted to the Director of City Planning, or his/her designee, for review and approval prior to the issuance of building permits.
14. The applicant shall examine possible solutions to providing additional floor to ceiling height at the ground floor of the building, or create the appearance of additional height on the

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ground floor through various design techniques, to the satisfaction of the Director of City Planning, and shall incorporate these revisions into the plans submitted for issuance of building permits. In addition, the applicant shall explore possible solutions to enhance the pedestrian entrance to the hotel from Broadway through a combination of strategies such as raising the awning over the entrance, placing a decorative sign feature above this entrance area, incorporating a change in exterior building materials or finishes around the entryway, including of landscaping materials, or some other design solution, to the satisfaction of the Director of City Planning, and shall incorporate these revisions into the plans submitted for issuance of building permits.

- 15. The applicant shall incorporate the changes indicated on the revised plans submitted since the date of the June 16, 1999 public hearing, including: raising the floor to ceiling height of the ground floor from a minimum of 13 feet to 14 feet; adding 18" to the height of the mansard roof; and raising the height of the masonry material provided at the base of the structure from 2' to 3' above the ground. In addition, all of the window openings above the ground floor on the Broadway and 9th Street elevations shall be recessed a minimum of 4-6" from the surface of the exterior wall.

ADOPTED BY: City Planning Commission: July 7, 1999 (date) 5 ayes, 0 noes - to approve (vote)
City Council: _____ (date) _____ (vote)

City of Oakland
Oakland, California

File No. ER98-19
Ref. No. CMDV98-178

MITIGATED NEGATIVE DECLARATION
California Environmental Quality Act

PROJECT TITLE: Oakland Garden Hotel

PROJECT LOCATION: The project site is located at the northeast corner of 9th Street and Broadway, and includes the entire block bounded by Franklin Street, 9th Street, Broadway and the TransPacific Center within downtown Oakland, California

PROJECT SPONSOR: Oakland Garden Hotel, Inc.

BRIEF DESCRIPTION OF PROJECT: The proposed project entails construction of an approximately 100,000 square foot building containing 160 hotel rooms, ground floor commercial activity space, and 26 self park and 28 valet parking spaces, on an approximately 37,341 square foot site. The proposed structure will be oriented to abut both Broadway and 9th Street in an L-shaped configuration, with parking provided within the center portion of the site. The applicant is also proposing utilization of tandem and valet parking services on the site to provide parking for the proposed use, in addition to securing dedicated parking within the parking lot adjacent to the site and owned by the Redevelopment Agency. The proposed building will be five stories and approximately 65 feet in height, and will be finished with a mixture of masonry and ceramic tile at the ground floor of the structure, cement plaster above the first floor, and will contain a standing seam metal mansard roof and will provide metal balconies at various window openings. The proposed project entails acquisition of a portion of the existing surface parking lot on the site by the developer from the Redevelopment Agency for construction of the proposed hotel, and may entail the provision of financial assistance from the Agency to ensure the financial feasibility of the project.

MITIGATION MEASURES:

- No mitigation measures have been required.
- The project has been modified to include mitigating measures which will reduce potentially adverse impacts to an insignificant level. These mitigation measures are described in the Initial Study.

FINDING OF NO SIGNIFICANT EFFECT:

- The project will not have a significant effect on the environment for the reasons documented in the attached Initial Study.

LESLIE GOULD
Planning Director

Date: June 2, 1999


By: Pamela Kershaw
Planner IV

ATTACHMENT C

(To be completed after public review and consideration of challenges to the Negative Declaration by the City Planning Commission.)

IV. DECLARATION OF COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT
This document has been prepared in accordance with the California Environmental Quality Act, the Guidelines issued by the Secretary for Resources and the City of Oakland's Environmental Review Regulations for Implementation of the California Environmental Quality Act.

Challenges to the Negative Declaration received by the City Planning Commission were rejected for the following reasons:

LESLIE GOULD
Planning Director

Date:

Attachment: Initial Study

Form ER-8 (Rev. 5/95)

City of Oakland
File No. ER 98-19
Ref. No. CMDV98-178

Oakland, California

INITIAL STUDY AND ENVIRONMENTAL REVIEW CHECKLIST
California Environmental Quality Act (CEQA)

I. PROJECT PROPONENT: Oakland Garden Hotel Inc.

II. PROJECT NAME: Oakland Garden Hotel

III. PROJECT ADDRESS AND LOCATION:

The project site is located at the northeast corner of 9th Street and Broadway, and includes the entire block bounded by Franklin Street, 9th Street, Broadway and the TransPacific Center within downtown Oakland.

IV. LEAD AGENCY: City of Oakland
Community and Economic Development Agency
Planning Division
250 Frank H. Ogawa Plaza, Suite 3330
Oakland, CA 94612

Agency Contact: Pamela Kershaw, Planner IV Telephone No. (510) 238-2229

V. ENVIRONMENTAL DETERMINATION:

On the basis of this initial environmental evaluation:

I find that the proposed project *could not* have a significant effect on the environment, and a Negative Declaration will be prepared.

I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because the attached *mitigation measures* have been incorporated into the project. Therefore, a Mitigated Negative Declaration will be prepared.

I find that the proposed project *may* have a significant effect on the environment, and an Environmental Impact Report (EIR) is required to assess the effects on the environment.

(for) LESLIE GOULD
Environmental Review Officer


Signature

6/2/97
Date

Initial Study, ER98-19
Project Name: Oakland Garden Hotel

VI. DESCRIPTION OF THE PROJECT:

The proposed project entails construction of an approximately 100,000 square foot building containing 160 hotel rooms, ground floor commercial activity space, and 26 self park and 28 valet parking spaces, on an approximately 37,341 square foot site. The proposed structure will be oriented to abut both Broadway and 9th Street in an L-shaped configuration, with parking provided within the center portion of the site. The applicant is also proposing utilization of tandem and valet parking services on the site to provide parking for the proposed use, in addition to securing dedicated parking within the parking lot adjacent to the site and owned by the Redevelopment Agency. The proposed building will be five stories and approximately 65 feet in height, and will be finished with a mixture of masonry and ceramic tile at the ground floor of the structure, cement plaster above the first floor, and will contain a standing seam metal mansard roof and will provide metal balconies at various window openings. The proposed project entails acquisition of a portion of the existing surface parking lot on the site by the developer from the Redevelopment Agency for construction of the proposed hotel, and may entail the provision of financial assistance from the Agency to ensure the financial feasibility of the project.

This Initial Study is intended to address potential environmental impacts associated with construction and operation of the project, including: site conveyance to the developer from the Redevelopment Agency; the provision of an additional Redevelopment Agency financial assistance to the project; construction of the proposed development project and obtainment of all necessary zoning, building and grading permits; any subsequent subdivision of the property; and any other discretionary permits as required by the City of Oakland.

VII. DESCRIPTION OF THE ENVIRONMENTAL SETTING:

The proposed Oakland Garden Hotel project will be located on an existing approximately 37,341 square foot site, comprising most of an entire block within the downtown Oakland. The site is bounded by Broadway, Franklin Street, 9th Street and the TransPacific Center and currently contains a surface parking lot. The property is bordered by mid to high rise commercial and residential uses to the south, the mid to high rise Trans Pacific Center office building to the north, the Pacific Renaissance Plaza high rise mixed use development across Franklin Street to the east, and the Old Oakland historic mixed use district immediately across Broadway to the west. The site is located within a built out urbanized area, surrounded by a mixture of residential, office and commercial activities within the Chinatown neighborhood of downtown. The site is located immediately adjacent to Broadway, a major transportation arterial and commercial corridor in downtown Oakland, and within 1-2 blocks of the City Center BART station, a major transfer station on the regional BART system. The project site is located within the C-51 Central Business Service Commercial Zone and S-8 Urban Street Combining Zones.

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VIII. ENVIRONMENTAL EFFECTS

(CEQA requires that an explanation of all "yes" and "maybe" answers be provided along with this checklist, including a discussion of ways to mitigate any significant effects identified. As defined here, a significant effect is considered a substantial adverse effect.)

Earth. Will the proposal result in:

1. Unstable earth conditions, including mudslides, landslides or changes in geologic substructures either on or off-site?

Yes No Maybe

Comment: The site is located outside of the geographical areas of the City that are most susceptible to landslides and severe erosion as delineated in the Environmental Hazards Element of the Oakland Comprehensive Plan. In addition, the project applicant will be required to comply with all applicable City regulations and standards to address potential geologic and soils impacts, as required prior to the issuance of grading or building permits. Thus, the proposed project will not result in significant impacts resulting in mudslides, landslides or changes in geologic substructures, and will not result in significant soils or geological impacts.

Source: Oakland Environmental Factors Analysis Report, October 1995
 Environmental Hazards Element, Oakland General Plan, 1974

2. Any increase in wind or water erosion of soils, either on or off-site, due to increased water runoff caused by conversion of pervious to impervious surfaces or to other factors?

Yes No Maybe

Comment: See response to Question 3 below.

3. Changes in deposition or erosion that result in changes in siltation, deposition or erosion which may modify the channel of a creek, inlet, lake, or any other waterway?

Yes No Maybe

Comment on questions 2-3: The site is currently entirely covered by impervious surfaces (an off-street parking lot). The development of the proposed project is not anticipated to increase the area of impervious surface on the site, but will contribute some on-site landscaping, which will serve to absorb some surface runoff beyond that currently absorbed by the existing uses. Little or no increase in surface flow is expected as a result of the project.

However, standard erosion control measures will be included as part of the proposed project prior to issuance of grading or building permits. The applicant will be required to prepare a construction period erosion control plan, and submit the plan to the Building Services Division for approval prior to issuance of a grading or building permit. The plan will be in effect for a period of time sufficient to stabilize the construction site for all phases of the project. These standard measures will address construction period erosion on the site by wind or water. Long-term erosion potential will be addressed through installation of project landscaping and storm drainage facilities, both of which will be designed to meet applicable regulations. These standard measures typically include the following:

- Construction operations, especially grading operations, shall be confined as much as possible to the dry season, in order to avoid erosion of disturbed soils;

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- Final project landscaping plans shall be submitted to the Planning Director for review and approval and shall incorporate the use of fast growing ground covers to stabilize soils soon after construction is completed.

Source: Site Plan
 Field Survey

4. Major changes in topography or ground surface relief features, or disruptions, displacements, compaction or overcovering of the soil?

Yes x No Maybe

Comment: The proposed project will not involve any substantial topographical changes and the existing project site is a relatively flat infill property within downtown Oakland. Project related construction activities will not result in major soil displacement, compaction, or overcovering. The proposed project will include some grading and excavation on site to accommodate the proposed structure, but is not anticipated to be substantial due to the lack of subsurface development. However, the applicant will be required to obtain all necessary grading and excavation permits to ensure that the appropriate measures are undertaken to address any soil displacement from the proposed excavation.

Source: Project Description

5. Construction on loose fill or other unstable land that might expose people or property to geologic hazards, such as earthquakes, liquefaction or ground failure, or similar seismic hazards?

Yes x No Maybe

Comment: According to the U.S.D.A. Soil Conservation Service Soils Classification, the soils on the site are characterized as Urban Land - Danville complex which have some development limitations which will be addressed in the required geotechnical studies and project engineering prepared for the proposed project. The subject site is not located on land identified as fill material which would be subject to liquefaction hazards, and the site is located approximately 2-3 miles from the Alquist-Priolo Geologic Hazards Zone Act Special Studies Zone boundaries. In conformance with current codes and regulations, the applicant will be required to submit detailed engineering drawings and material to the Building Services division prior to grading or construction on the site to ensure that all buildings are designed and built in conformance with the seismic requirements of the City of Oakland Building Code.

Source: Oakland General Plan: Open Space, Conservation & Recreation Element, 1997
 Community and Economic Development Agency, Building Division
 Environmental Hazards Element, Oakland General Plan, 1974

6. Construction within one-quarter mile of an earthquake fault?

Yes x No Maybe

Comment: The project is located approximately 2-3 miles southwest of the Hayward fault and is outside of the Alquist-Priolo Geologic Hazards Special Studies Zone. Therefore, the project will not be required to meet the development standards and criteria within the Special Studies Zone.

Source: Alquist-Priolo Special Studies Zone Map

7. Substantial depletion of a nonrenewable natural resource or inhibition of its extraction?

_____ x _____

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Yes No Maybe

Comment: The City of Oakland is generally a built out, urban community. The nature of the proposed development is in-fill. This project is the redevelopment of an existing urban land use on an existing surface parking lot site. The proposal will not include nor encourage any on-site quarrying, mining, dredging or extraction of a non-renewable natural resource. Therefore, this proposal will not significantly deplete a nonrenewable resource or inhibit its extraction.

Source: Project Description

Air and Water. Will the project result in:

- | | | | | |
|----|--|-------|---------|-------|
| 8. | Substantial air emissions, deterioration of ambient air quality or the creation of objectionable odors? | _____ | _____ | _____ |
| | | Yes | x
No | Maybe |
| | See response to question 9 below. | | | |
| 9. | Alteration of air movement, moisture, temperature, or any change in climate, either locally or regionally? | _____ | _____ | _____ |
| | | Yes | x
No | Maybe |

Comment on question 8-9: An Air Quality Analysis Technical Report and Update was prepared for the project which analyzed the potential air quality impacts from construction and operation of the proposed project, and is incorporated into this Initial Study by reference. The Report indicates that the proposed project will not result in the creation of significant long term or cumulative air quality impacts, on either a local or regional level, from construction or operation of the proposed project.

However, the proposed project will result in the creation of temporary project construction air quality impacts for which the following mitigation is proposed:

- The project proponent shall implement a construction dust abatement program to reduce the contribution of project construction to local respirable particulate matter concentrations. Elements of this program shall include the following:
 1. Watering of all active construction areas at least twice daily.
 2. Cover all trucks hauling soil, sand, and other loose materials, or require all trucks to maintain at least two feet of freeboard.
 3. Pave, apply water three times daily, or apply non-toxic soil stabilizers on all unpaved access roads, parking areas, and construction staging areas.
 4. Sweep daily with water sweepers all paved access roads, parking areas, and staging areas at construction sites.
 5. Sweep streets daily with water sweepers if visible soil material is carried onto adjacent public streets.

With imposition of the aforementioned mitigation measure, the project will result in less than significant temporary construction air quality impacts. In addition, as the proposed mid-rise development project is constructed of only five stories in height, the project will not result in any significant alteration in air movement, the creation of wind tunnels, temperature alterations or changes in climate. Furthermore, as the proposed project will comprise the majority of an existing City block, and will be bounded on two sides by existing streets containing 3-4 lanes of travel in addition to on-street parking, and on the other sides by existing structures or surface parking, these surrounding buildings and roadways serve to further reduce the

potential for the proposed project to cast shade or shadow on any adjacent public plazas or parks or effect local temperature on surrounding sites.

Source: Oakland Garden Hotel Air Quality Analysis Report and Update, September 21, 1998 and May 25, 1999, Environmental Science Associates
 Project Description
 Field Survey

10. Discharge into surface waters resulting in substantial degradation of surface water quality, including but not limited to turbidity, absorption rates, drainage patterns, or the rate or amount of surface runoff? Yes No x Maybe

Comment: The site is currently covered predominately by impervious surfaces in the form of an existing surface parking lot. The development of the proposed project will not significantly increase the area of impervious surface on this site, but will contribute some on-site project landscaping which will serve to absorb some surface runoff beyond that currently absorbed by the parking lot. Little or no increase in surface flow is expected as a result of the project. Furthermore the proposed project site is not located near any known creek, inlet, lake or waterway.

However, to minimize any construction related impacts on surface water quality, the applicant will be required to comply with existing applicable City standards and regulations, which typically include:

- The applicant will be required to grade unpaved areas to control surface drainage and redirect surface water away from areas of activity during demolition and construction; and
- The applicant will be required to comply with applicable provisions of the Clean Water Act with regard to preparing and submitting a storm water discharge plan to the State Regional Water Quality Control Board for approval.

Source: Field Survey
 Oakland General Plan: Open Space, Conservation & Resource Element, 1997
 Project Description and Plans

11. Alterations to the course of flood waters, or the exposure of people or property to water related hazards such as flooding or tidal waves Yes No x Maybe

Comment: The project site is located in Zone C, as shown on the Federal Emergency Management Agency Flood Insurance Rate Map. This zone is defined as a minimal potential risk for flooding. Therefore, the project will not expose people or property in the project vicinity to water related hazards.

Source: Flood Insurance Rate Map (FIRM) Floodplain Maps, Federal Emergency Management Administration (FEMA), September 30, 1982
 Project Description

12. Change in groundwater quantity, through direct addition or withdrawal, or interception of an aquifer by cuts or excavation? Yes No x Maybe

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Comment: Although the project proposes some grading and excavation for construction of the proposed building, no significant amount of development is proposed below grade and the project is thus not anticipated to interfere with groundwater quantity or intercept an aquifer. Furthermore, the local groundwater is not considered potable and is not utilized in the public drinking water supply. The applicant will be required to comply with all applicable City standards and regulations pertaining to project-related grading and excavation prior to issuance of grading and building permits. Thus, the project will result in less than significant impacts to groundwater quantity.

Source: Field Survey
 City of Oakland, CEDA, Building Division
 Project Description and Plans

Biotic. Will the project result in:

13. Reduction in quantity or diversity of plant and animal species in the project vicinity, interfere with migratory or other natural movement patterns, degrade existing habitats or require extensive vegetation removal?

Yes	X No	Maybe
-----	---------	-------

Comment: See response to Question 16 below.

14. Reduce the numbers of any unique, rare or endangered species of plants or animals?

Yes	X No	Maybe
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Comment: See response to Question 16 below.

15. Introduction of new species of plants or animals into an area, or result in a barrier to the replenishment of existing plant species, or the migration or movement of animals?

Yes	X No	Maybe
-----	---------	-------

Comment: See response to Question 16 below.

16. Deterioration to existing aquatic or wildlife habitat?

Yes	X No	Maybe
-----	---------	-------

Comment: The project is proposed within a built out, urbanized area, currently covered by an existing surface parking lot, where former biotic habitat and natural vegetation has been replaced with wildlife that has adapted to the urban setting. The subject site is not located in an area identified as a native plant or animal community, nor is it in an area where any rare, threatened or endangered plants or animal species have been identified. Thus, as no aquatic or wildlife habitat is known to exist on the site the project will not result in significant impacts to biotic resources.

Source: Field Survey
 Oakland General Plan: Open Space, Conservation, & Recreation Element, 1997

Noise. Will the project result in:

17. Increase in existing ambient noise levels near sensitive noise receptors?

Yes	No	X Maybe
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Comment: See response to question 18 below.

18. Exposure of people to severe noise levels?

		X
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Yes No Maybe

Comment on questions 17-18: A Noise Analysis Report and Update was prepared for the project to evaluate the potential project noise impacts as they relate to construction and operation of the proposed project and is incorporated herein by reference. The proposed project is located in a built-out urban area, in close proximity to the I-880 and I-980 Freeways, the major circulation arterial of Broadway, and numerous railroad tracks approximately four blocks to the west, all of which are noise-generating land uses. As indicated in the Noise Analysis Report, the development of a hotel at this site will not result in the creation of significant project related or cumulative operational noise impacts. However, significant temporary noise impacts could result from the construction of the hotel structure, for which the following mitigation measures are identified:

- To reduce the construction noise effects, the City shall require construction contractors to limit noisy construction activities to the least noise-sensitive times of day and week (e.g., 7:00 a.m. to 7:00 p.m., Monday through Friday).
- To avoid violation of the City Ordinance regarding temporary construction, complete ground clearing activities in less than 10 days.

With the imposition of the aforementioned mitigation measures, the temporary construction noise impacts from the proposed project will be reduced to a less than significant level. Thus, the proposed project will not result in the creation of significant noise impacts.

Source: Oakland Garden Hotel Noise Analysis Report, September 21, 1998 and Update May 25, 1999, Environmental Science Associates.
Noise Element of the Oakland Comprehensive Plan
Field Survey
Project Description and Plans

Light and Glare. Will the project result in:

19. Produce new light or glare in areas sensitive to light and glare (i.e., residents near industrial and commercial uses, freeways, and parks)?

Yes No Maybe
 x

Comment: The proposed project is anticipated to include the provision of some fixed exterior lighting, particularly at building entrance points, in addition to that provided by city street lights adjacent to the project site. However, the proposed project will be located within a built-out urban area, within downtown Oakland, where numerous land uses exist which produce light and glare during evening hours. Consistent with existing procedures, standards and regulations, plans for exterior lighting will be subject to review by the Planning and Building Divisions for conformance with appropriate lighting standards for the area prior to the issuance of building permits. The proposed hotel is not anticipated to generate substantial light and glare on surrounding land uses and the proposed project is thus not expected to produce significant impacts.

Source: Field Survey
Project Description and Plans
City of Oakland, CEDA, Planning and Building Divisions

20. Produce shade and shadow, or otherwise diminish sunlight or solar access?

 x

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Yes No Maybe

Comment: The proposed project will entail the construction of a five story hotel of approximately 65 feet of height within downtown Oakland, an area dominated by a mixture of mid-rise and high rise office, commercial and residential buildings. Immediately adjacent to the project site the surrounding existing structures tend to be of a mid to high rise scale, generally ranging from approximately four to ten stories in height. Immediately across Broadway from the site is the Old Oakland neighborhood, which is generally characterized by rehabilitated historic Victorian structures which range from two to four stories in height. The proposed project has been designed to respect the scale of development adjacent to the site and is of a similar or reduced scale to immediately surrounding building masses. Furthermore, the project site is surrounded on two sides by existing streets containing a minimum of 2-4 travel lanes in width in addition to on-street parking which will diminish the potential shadow impacts on adjacent structures, and is also immediately adjacent to the six story TransPacific Center to the north and a surface parking lot to the east. Thus, the proposed five-story building will not result in significant diminished sunlight or solar access impacts on adjacent properties.

Source: Project Description and Plans
 Field Survey

Land Use and Socioeconomic Factors. Will the project result in:

21. Conflict with approved plans for the area or the Oakland Comprehensive Plan or alter the present or planned land use of an area?

Yes No Maybe

Comment: The proposed project is consistent with the Oakland General Plan and with the range of present or planned land uses delineated for the area. The present land use designation for the site in the Oakland General Plan is Central Business District, which is intended to "encourage, support and enhance the downtown area as a high density mixed use urban center of regional importance which includes a mix of large-scale offices, commercial, urban residential, institutional, open space, cultural, educational, arts, entertainment, service, community facilities, and visitor uses". One of the objectives identified in the Oakland General Plan for the Downtown Showcase district is to "eliminate blight caused by underutilized properties." In addition, Policy 6.1 of the Downtown district states, "construction on vacant land or to replace surface parking lots should be encouraged throughout the downtown, where possible", and Policy 1.6 within the Neighborhoods section of the General Plan states, "hotels and motels should be encouraged to locate downtown, along the waterfront, near the airport, or along the I-880 corridor. . .". Thus, the proposed project is consistent with the General Plan designation for the site and with policy direction provided within the text of the Land Use Element.

The present zoning for the site is C-51/S-8 (Central Business Service Commercial Zone with an Urban Street Combining Zone Overlay). The C-51 zone is intended to "create, preserve, and enhance areas for medium-intensity development of offices and business service activities, and is typically appropriate to the service commercial areas immediately adjoining the core of the central district". The S-8 zone is intended to "create, preserve, and enhance compact, attractive, and clearly defined street and plaza spaces and to assure ground-level continuity of retail and consumer service uses along key shopping frontages, and is typically appropriate to major pedestrian shopping streets in the central district". Transient Habitation Commercial activities as well as General Retail Sales Commercial activities are permitted within the C-51 zone and are conditionally permitted within the first twenty feet of the ground floor in the S-8 zone. The proposed project has been designed to create continuous engaging pedestrian activity along the ground floor adjacent to Broadway within the S-8 zone, and will be built to the property line adjacent to both Broadway and 9th Street to create a continuous building presence along these important street frontages. Thus, the proposed project is consistent with existing land use policy and the applicable zoning regulations

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for the project site and for the downtown area.

Source: Oakland General Plan Land Use and Transportation Element, 1998
Oakland Zoning Regulations
Field Survey
Project Description and Plans

- 22. Require relocation of residents and/or businesses, or affect existing housing or create a demand for additional housing?

Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	Maybe
-----	-------------------------------------	----	--------------------------	-------

Comment: The site is currently covered by an existing surface parking lot and does not contain any residential units. In addition, due to the relatively small size of the project and the relatively few number of new employees this use is expected to generate within the region when compared with the total employment market within the downtown, the project is not anticipated to create a demand for additional housing, affect existing housing or require relocation of residents or businesses from the site.

Source: Field Survey
Project Description and Plans

- 23. Cause a substantial alteration in neighborhood land use, density or character?

Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	Maybe
-----	-------------------------------------	----	--------------------------	-------

Comment: The proposed project will result in the development of an approximately 160 room hotel with ground floor commercial activities within the downtown area. The downtown currently contains a mix of higher density residential developments, office towers and various small to mid-rise commercial developments. The proposed project is an example of the type of development currently being encouraged for the downtown area to create 24 hour activity and provide visitor services, as referred to in the General Plan. The proposed project will be five stories in height, consistent with or reduced in scale and bulk from that of surrounding properties. Thus, the project will not be out of character with the surrounding area, since the project massing and building height is similar or less than that of immediately surrounding developments. Furthermore, the nature of the proposed use is consistent and complementary to surrounding land uses within the downtown area and the proposed project will contribute to the mix of land use activities being encouraged in the area and further the purposes of the General Plan.

Source: Project Description and Project Plans
Field Survey
Oakland General Plan Land Use and Transportation Element, 1998

Human Health and Risk of Upset. Will the project involve:

- 24. The risk of an explosion or the release of hazardous substances, including oil, pesticides, chemicals or radiation, in the event of an accident that could create or expose people to potential health hazards?

Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	Maybe
-----	-------------------------------------	----	--------------------------	-------

Comment: The proposed project will not result in exposure of people to significant health hazards. Various soil and groundwater investigation and remediation reports have been prepared for the site in recent months, and relevant information is incorporated into this report by reference. The reports identify the need for some ongoing investigation and possible remediation or monitoring of soil and groundwater contaminants on site. The applicant will be required to comply with all applicable regulations of the Alameda County Environmental Health Division and the Regional Water Quality Control Board as they

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pertain to these remediation and monitoring activities. Thus, as the proposed project consists of the construction of a hotel use and will not involve the handling or storage of substantial quantities of hazardous substances, and additional investigation and remediation activities will be required in compliance with all applicable State or regional agencies prior to redevelopment on the site, no significant risk of hazardous substance exposure is anticipated from the proposed project.

Source: Project Description
 January 27, 1998 Memorandum from Public Works Agency to Community and Economic Development Agency regarding 9th Street and Broadway Soil and Groundwater Investigation and Remediation

25. Possible interference with an emergency response plan or emergency evacuation plan?
- | | | |
|-------------------|-------------------|-------------------|
| <u> </u> | <u> </u> | <u> </u> |
| Yes | No | Maybe |

Comment: Upon review of the City's Multi-Hazard Functional Plan ("City Emergency Plan") in comparison to the proposal, it can be determined that the proposal will not significantly interfere with the emergency routes tentatively identified by the plan. In addition, the proposal is within the scale of development anticipated in the Oakland General Plan.

Source: Multi-Hazard Functional Plan (City Emergency Plan) for the City of Oakland, 1993.

Transportation/Circulation: Will the project result in:

26. Substantially increase vehicular movement resulting in traffic hazards to motor vehicles, bicyclists, or pedestrians; or create a demand for new parking facilities?
- | | | |
|-------------------|-------------------|-------------------|
| <u> </u> | <u> </u> | <u> </u> |
| Yes | No | Maybe |

Comment: See response to Question 28 below.

27. Alterations to present patterns of circulation or movement of people and/or goods, or alterations to waterborne, rail or air traffic?
- | | | |
|-------------------|-------------------|-------------------|
| <u> </u> | <u> </u> | <u> </u> |
| Yes | No | Maybe |

Comment: See response to Question 28 below.

28. Have a substantial impact on existing transportation systems or circulation patterns?
- | | | |
|-------------------|-------------------|-------------------|
| <u> </u> | <u> </u> | <u> </u> |
| Yes | No | Maybe |

Comment on questions 26-28: A Transportation Technical Report and Update was prepared for the proposed project to analyze any potential traffic, parking and circulation impacts from the proposed project and is incorporated herein by reference. The results of this analysis indicate that the proposed project will not result in any significant project or cumulative impacts pertaining to operation or construction of the proposed project as it relates to intersection impacts, cumulative roadway impacts, transit impacts or traffic safety/hazard impacts. However, the Report indicates that the proposed project may result in the creation of significant impacts with respect to parking impacts and freight loading impacts, for which the following mitigations are suggested:

- In accordance with Section 17.116.170 of the Oakland Planning Code, the project applicant shall locate the 120 code-required off-street parking spaces, in combination, on the project site and on another lot located within 300 feet of the project site. As stipulated in Section 17.116.180 of the Planning Code, the owner or owners of both lots shall prepare and execute to the satisfaction of the City Attorney, and

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file with the Alameda County Recorder, an agreement guaranteeing that such facilities will be maintained and reserved for use by the project hotel, for as long as the hotel operates.

- The project sponsor shall schedule deliveries by large trucks to occur at off-peak hours to avoid conflicts with hotel guest parking activities, and shall ensure that there will be sufficient room for service vehicles to maneuver into the on-site loading space.

Based upon compliance with the above stated mitigation measures, the proposed project will not result in the creation of significant impacts with respect to traffic, parking or circulation.

Source: Oakland Garden Hotel Transportation Report and Update, September 21, 1998 and May 25, 1999, Environmental Science Associates
 City of Oakland, PWA, Traffic Engineering Division
 Project Description and Plans
 Field Survey

Public Services and Utilities: Will the project have an effect upon, or result in a need for new or altered public services in any of the following areas:

29. Impose a burden on public services or facilities including fire, solid waste disposal, police, schools or parks?
- | | | |
|-------------------|--------------|-------------------|
| <u> </u> | <u> X </u> | <u> </u> |
| Yes | No | Maybe |

Comment: As described in the Oakland Community Services Analysis report prepared for the Oakland General Plan Land Use Element update in 1995, the proposed project is consistent with the service plans of existing public utilities serving the downtown area, and is not anticipated to impose an undue burden on public services or facilities. Furthermore, the proposed project is relatively small in scale and the applicant will be required to pay any applicable school impact fees assessed and collected prior to the issuance of building permits for the proposed project to help offset the capital facility impacts, in addition to any required utility hook-up or service fees to affected utilities prior to operation of said utilities.

Source: Oakland Community Services Analysis, CEDA, October 1995

30. Impose a burden on existing utilities including roads, electricity, gas, water and sewers?
- | | | |
|-------------------|--------------|-------------------|
| <u> </u> | <u> X </u> | <u> </u> |
| Yes | No | Maybe |

Comment: As described in the Oakland Community Services Analysis report prepared for the Oakland General Plan Land Use Element update in 1995, the proposed project is consistent with the service plans of existing public utilities serving the downtown area, and is not anticipated to impose an undue burden on public services or facilities.

Source: Oakland Community Services Analysis, CEDA, October 1995

Cultural Resources. Will the project:

31. Destroy, deface or alter a structure, object, natural feature or site of prehistoric historic, architectural, archeological or aesthetic significance?
- | | | |
|-------------------|-------------------|--------------|
| <u> </u> | <u> </u> | <u> X </u> |
| Yes | No | Maybe |

Comment: See response to Question 32 below.

32. Result in adverse physical or aesthetic effects to a prehistoric or

historic building, structure, or object?

	X	
Yes	No	Maybe

Comment on questions 31-32: The proposed project entails the construction of a new hotel structure on an existing site which is currently covered by a surface parking lot. The proposed site does not contain any structures and is not located within an Area of Primary Importance (API) according to information from the Oakland Cultural Heritage Survey (OCHS). Thus, the proposed project will not result in the demolition or significant alteration of any properties listed on the Local Register of Historic Resources as defined by the Historic Preservation Element of the Oakland General Plan.

However, the proposed project is located across Broadway from the Old Oakland development and the accompanying S-7 zone. Thus, the proposed project has been designed in a manner which respects the scale and bulk of surrounding structures, including those within the Old Oakland development, which generally range in height from two to four stories, with building masses constructed immediately adjacent to the sidewalk. As the project plans indicate, the proposed project will not exceed 5 stories and has been designed to incorporate a strong presence at the pedestrian level, with building masses placed immediately adjacent to the sidewalk, and with a metal mansard roof and decorative metal window balconies which are intended to respect the three part vertical composition and detailed characteristics of many of the existing historic buildings in the vicinity.

In addition, although there are no known archeological features on the site, the proposed mitigation measures are suggested:

- Although there are no other known prehistoric or historic resources on the site, it is possible cultural resources may be discovered during development or excavation for the project. A qualified archaeologist will be consulted to determine the necessity for monitoring any excavation into natural soil on the site or to evaluate any cultural materials that are exposed during construction. If cultural materials are found on the site, the City will require the applicant to stop grading, excavation, and all construction activity within 10 feet of the find and all recommendations by the archeologist will need to be implemented. Cultural materials include but are not limited to: aboriginal human remains; chipped and ground stone tools and their manufacturing waste; shell and bone artifacts; concentrations of fire-cracked rock; ash and charcoal; bone; and historic features such as privies or building foundations.

Based upon compliance with this mitigation measure, the project will result in less than significant impacts to archaeological, historic or cultural resources.

Source: Oakland Cultural Heritage Survey information
 Field Survey
 Historical Preservation Element of the Oakland General Plan, 1994
 Project Description and Project Plans

Aesthetics. Will the project result in:

33. Involve an increase of 100 feet or more in the height of any structure over any previously existing adjacent structure?

	X	
Yes	No	Maybe

Comment: The proposed project will result in the construction of a five story structure of approximately 65 feet in height. The project will be consistent with or reduced in scale and bulk from that of immediately adjacent structures in the vicinity, which include a broad mix of buildings ranging from low-rise to high-rise. Thus, the proposed project will not involve an increase of 100 feet or more in height over any previously existing adjacent structures.

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environment is significant).

Yes No Maybe

d. Does the project have environmental effects that would cause substantial adverse effects on human beings, either directly or indirectly?

Yes No Maybe

X. DETERMINATION

On the basis of this initial environmental evaluation:

I find that the proposed project *will not* have a significant effect on the environment, and a Negative Declaration will be prepared.

I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because the attached *mitigation measures* have been incorporated into the project. Therefore, a Mitigated Negative Declaration will be prepared.

I find that the proposed project *may* have a significant effect on the environment, and an Environmental Impact Report is required to assess the effects on the environment.

Name Pamela Kershaw

Date 6/2/99

Title Planner IV

MITIGATION MEASURES AND MONITORING PROGRAM
CASE FILE NO. [ER 98-19]
OAKLAND GARDEN HOTEL PROJECT

1. AIR QUALITY:

Mitigation Measure: The project proponent shall implement a construction dust abatement program to reduce the contribution of project construction to local respirable particulate matter concentrations. Elements of this program shall include the following:

1. Watering of all active construction areas at least twice daily.
2. Cover all trucks hauling soil, sand, and other loose materials, or require all trucks to maintain at least two feet of freeboard.
3. Pave, apply water three times daily, or apply non-toxic soil stabilizers on all unpaved access roads, parking areas, and construction staging areas.
4. Sweep daily with water sweepers all paved access roads, parking areas, and staging areas at construction sites.
5. Sweep streets daily with water sweepers if visible soil material is carried onto adjacent public streets.

Monitoring Responsibility: City of Oakland, Community and Economic Development Agency (CEDA), Building Services Division

Monitoring Timeframe: Implementation will occur throughout the duration of all grading and construction activities on the site.

C. NOISE:

Mitigation Measure: To reduce the construction noise effects, the City shall require construction contractors to limit noisy construction activities to the least noise-sensitive times of day and week (e.g., 7:00 a.m. to 7:00 p.m., Monday through Friday). In addition, to avoid violation of the City Ordinance regarding temporary construction, complete ground clearing activities in less than 10 days.

Monitoring Responsibility: City of Oakland, CEDA, Building Services Division

Monitoring Timeframe: Implementation will occur throughout the duration of construction and grading activities on the site.

D. TRAFFIC, TRANSPORTATION, CIRCULATION AND PARKING

Mitigation Measure: In accordance with Section 17.116.170 of the Oakland Planning Code, the project applicant shall locate the 120 code-required off-street parking spaces, in combination, on the project site and on another lot located within 300 feet of the project site. As stipulated in Section 17.116.180 of the Planning Code, the owner or owners of both lots shall prepare and execute to the satisfaction of the City Attorney, and file with the Alameda County Recorder, an agreement guaranteeing that such facilities will be maintained and reserved for use by the project hotel, for as long as the hotel operates.

Monitoring Responsibility: City of Oakland, CEDA, Planning Division and City of Oakland, City Attorney's Office

Monitoring Timeframe: Implementation will occur prior to the issuance of a Certificate of Occupancy for the hotel project.

Mitigation Measure: The project sponsor shall schedule deliveries by large trucks to occur at off-peak hours to avoid conflicts with hotel guest parking activities, and shall ensure that there will be sufficient room for service vehicles to maneuver into the on-site loading space.

Monitoring Responsibility: City of Oakland, CEDA, Building Services Division

Monitoring Timeframe: Implementation will occur throughout the duration of the operation of the hotel facility on the site.

E. CULTURAL RESOURCES:

Mitigation Measure: Although there are no other known prehistoric or historic resources on the site, it is possible cultural resources may be discovered during development or excavation for the project. A qualified archaeologist will be consulted to determine the necessity for monitoring any excavation into natural soil on the site or to evaluate any cultural materials that are exposed during construction. If cultural materials are found on the site, the City will require the applicant to stop grading, excavation, and all construction activity within 10 feet of the find and all recommendations by the archeologist will need to be implemented. Cultural materials include but are not limited to: aboriginal human remains; chipped and ground stone tools and their manufacturing waste; shell and bone artifacts; concentrations of fire-cracked rock; ash and charcoal; bone; and historic features such as privies or building foundations.

Monitoring Responsibility: City of Oakland, CEDA, Building Services Division

Monitoring Timeframe: Implementation will occur throughout the duration of construction and grading activities on the site.

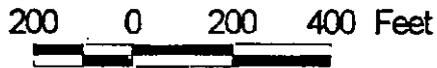
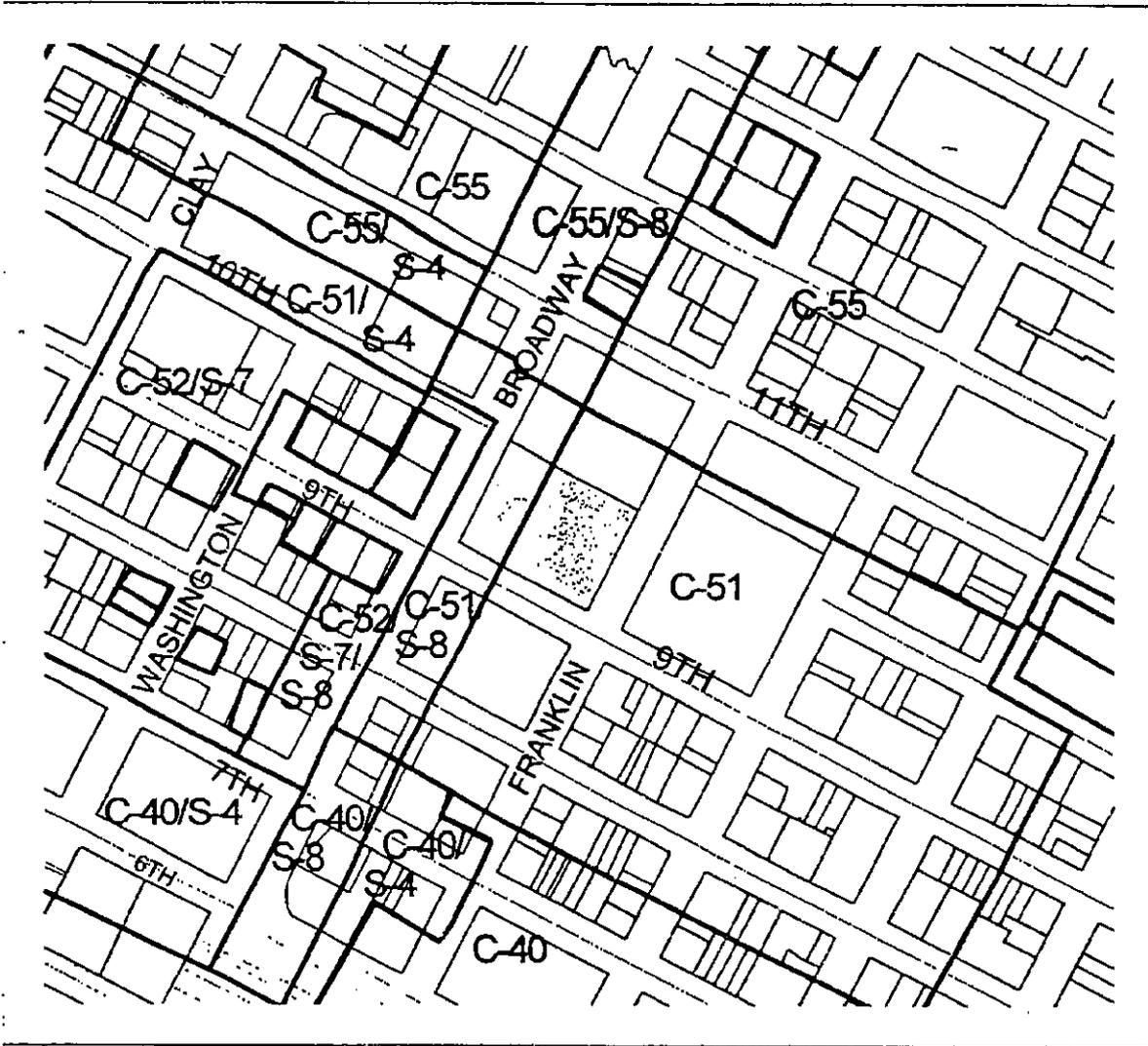
Exhibit E-1

PRELIMINARY PLANS

DDA#4 July 6, 1999

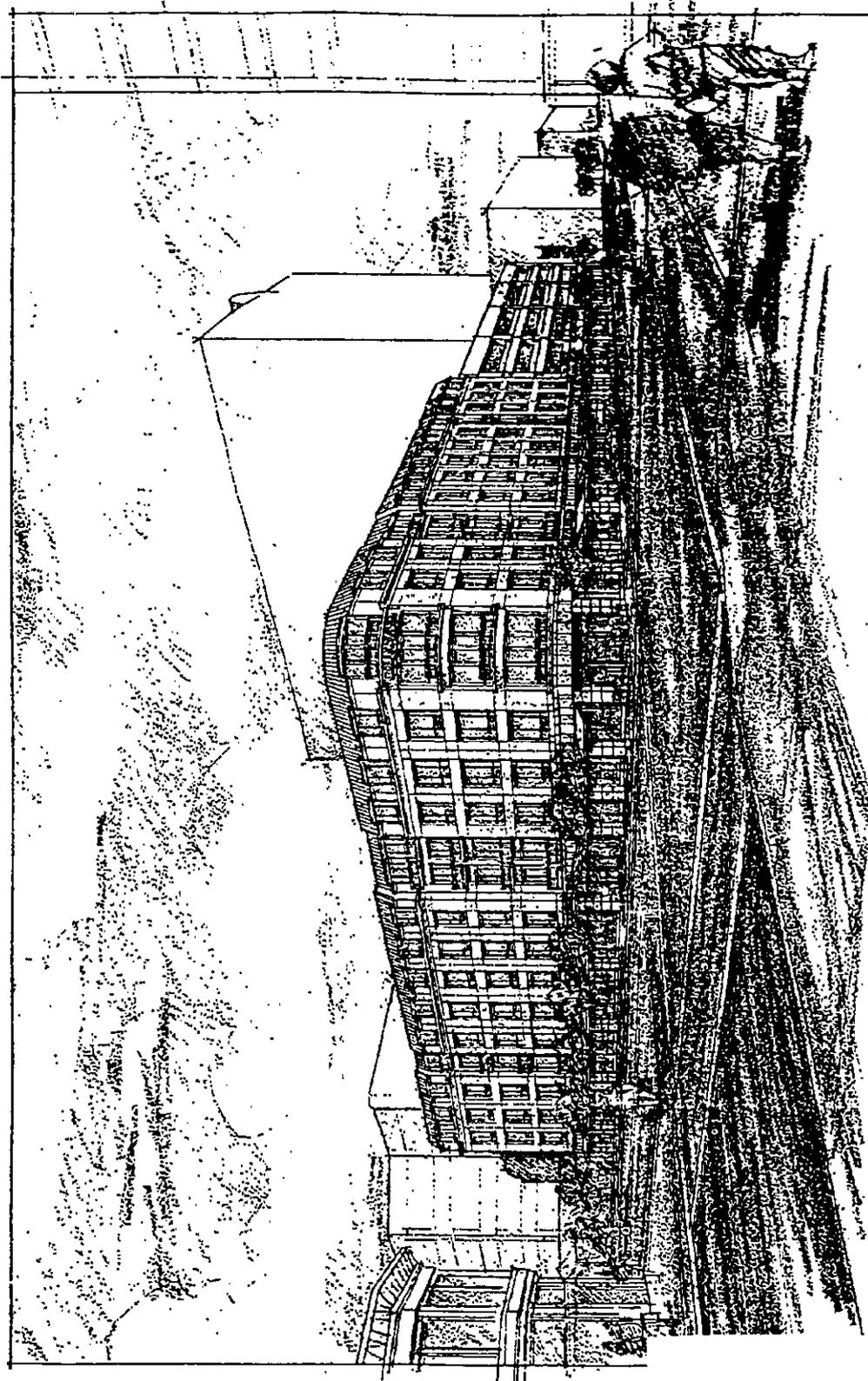
Exhibit E-1-1

CITY OF OAKLAND PLANNING COMMISSION



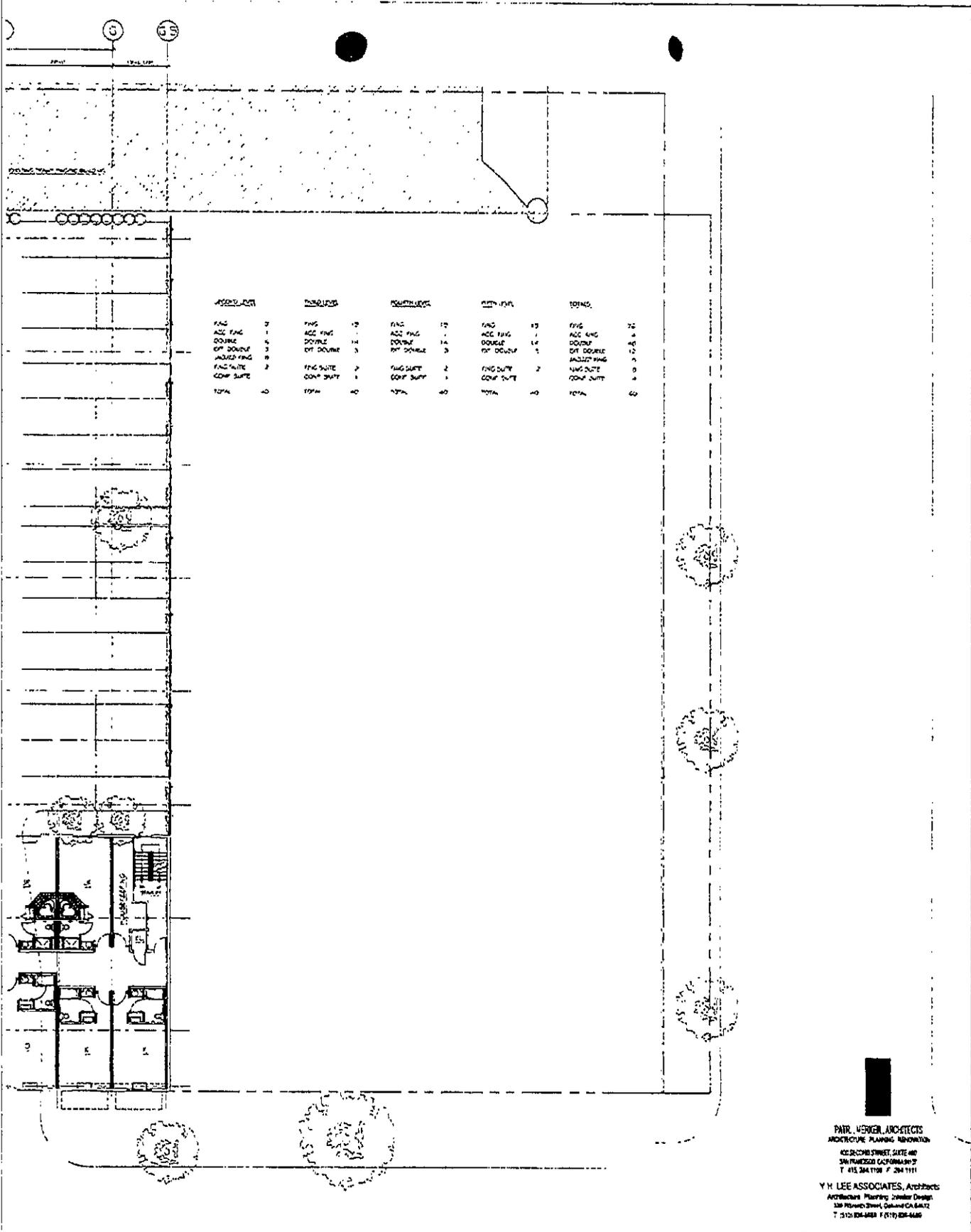
Case File: CMDV98-178
Applicant: Oakland Garden Hotel
Address: 9th Street and Broadway
Zone: C-51/S-8

ATTACHMENT A



OAKLAND GARDEN HOTEL

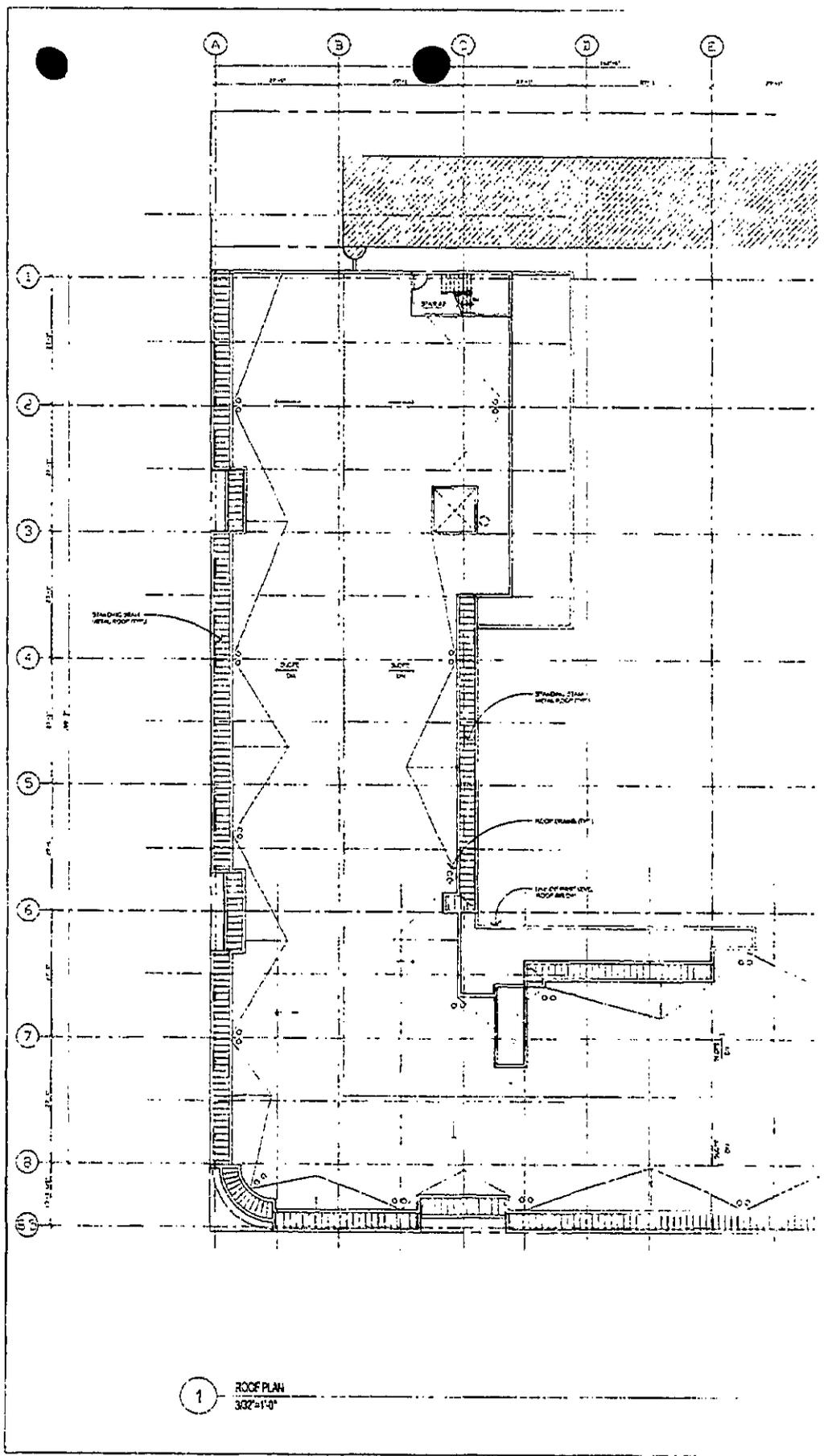
PAUL MENGER ARCHITECTS
YK LEE ASSOCIATES, AIA '98
MAY 21, 1999



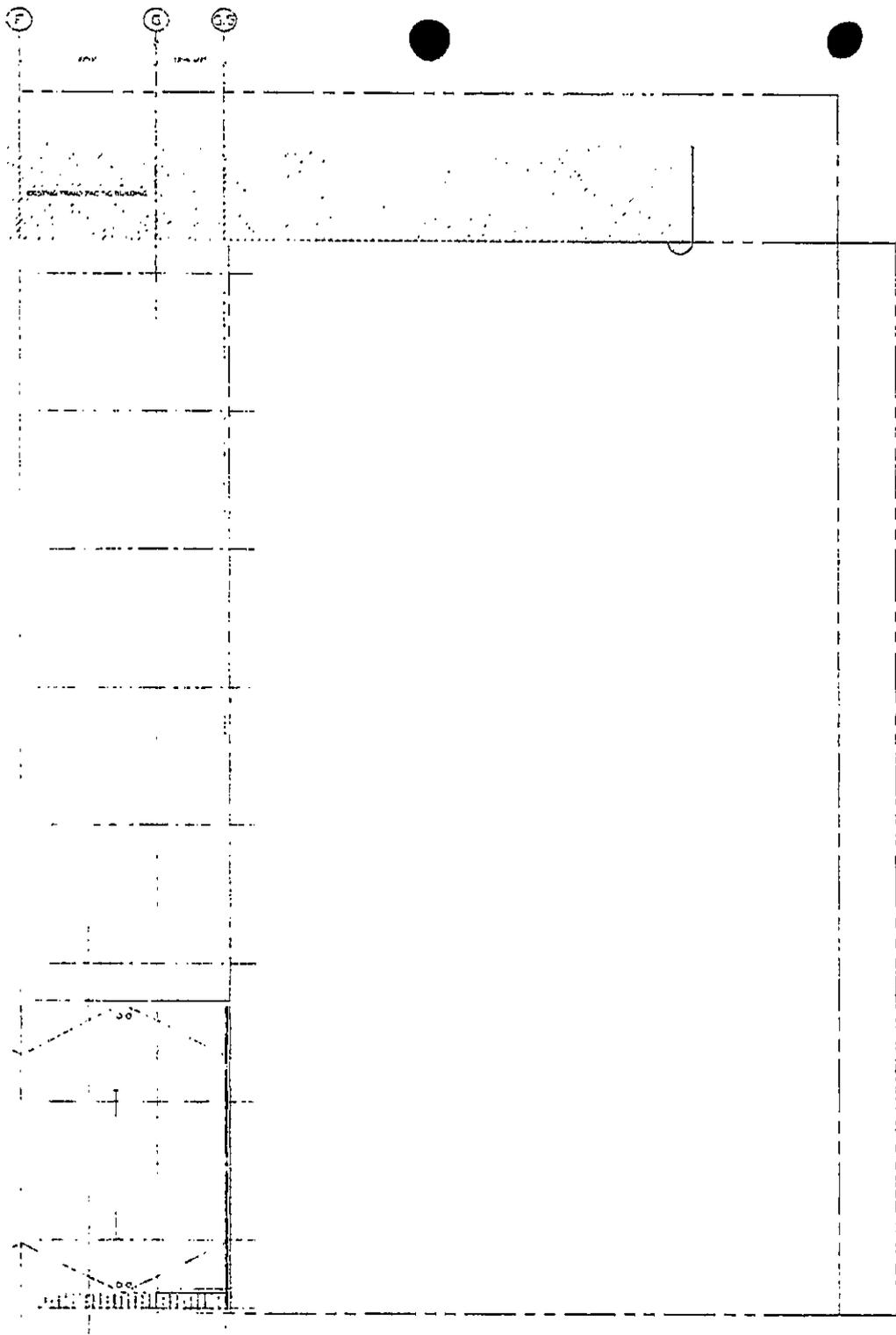
PAIR, VERNER, ARCHITECTS
 ARCHITECTURE PLANNING RENOVATION
 400 CHRISTMAS ST. SUITE 400
 SAN FRANCISCO CALIFORNIA 94107
 T 415 394 1100 F 204 1111

Y.M. LEE ASSOCIATES, Architects
 Architecture Planning Interior Design
 100 PINEWOOD DRIVE, OAKLAND CA 94612
 T 510 834-8488 F (510) 834-8488

OAKLAND GARDEN HOTEL
 10/21/99 SK 2.2



UNIVERSITY MICROFILMS INTERNATIONAL, INC. 300 N. ZEEB RD. ANN ARBOR MI 48106-1500

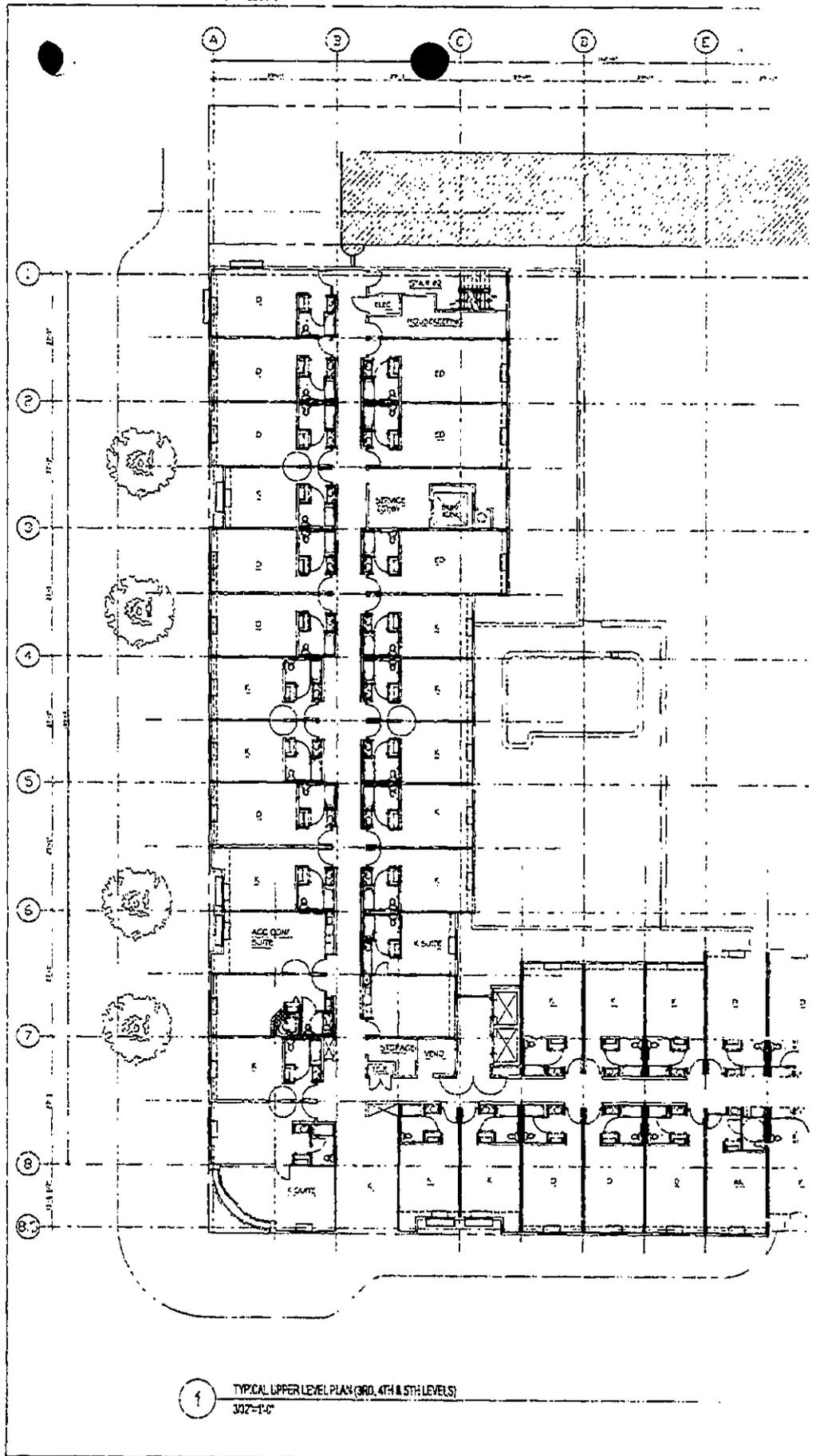


PATR HENSEL ARCHITECTS
 ARCHITECTURAL PLANNING ARCHITECTS
 425 CALIFORNIA STREET, SUITE 400
 SAN FRANCISCO, CALIFORNIA 94102
 T 415.398.1108 F 415.398.1111

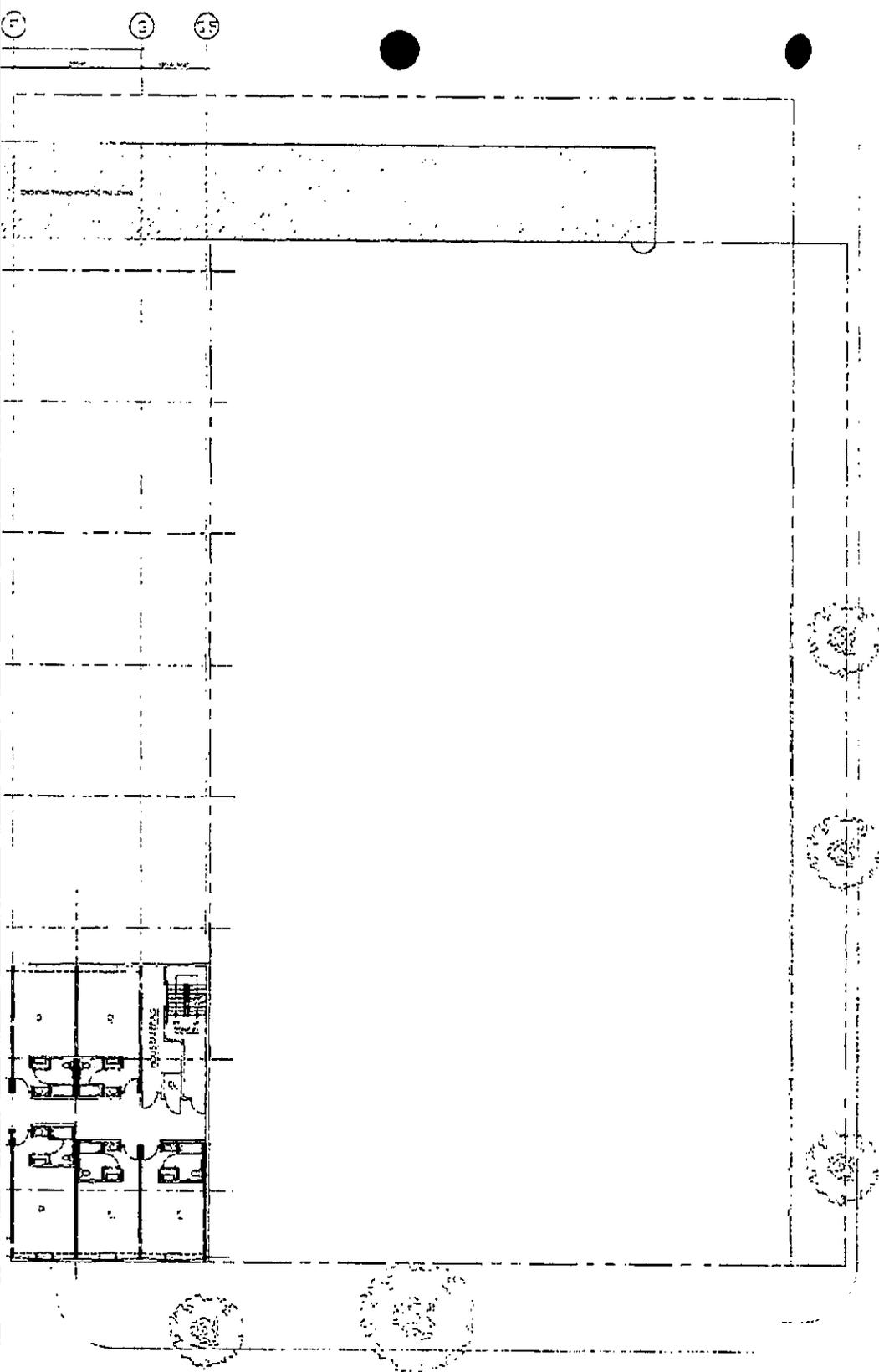
Y H LEE ASSOCIATES, Architects
 Architecture Planning Interior Design
 260 Franklin Street, Oakland CA 94612
 T (510) 865-8888 F (510) 865-8888

OAKLAND GARDEN HOTEL
 MAY 27, 1999 * SK 2.4

AMERICAN ARCHITECTURAL AND ENGINEERING CO. 1940



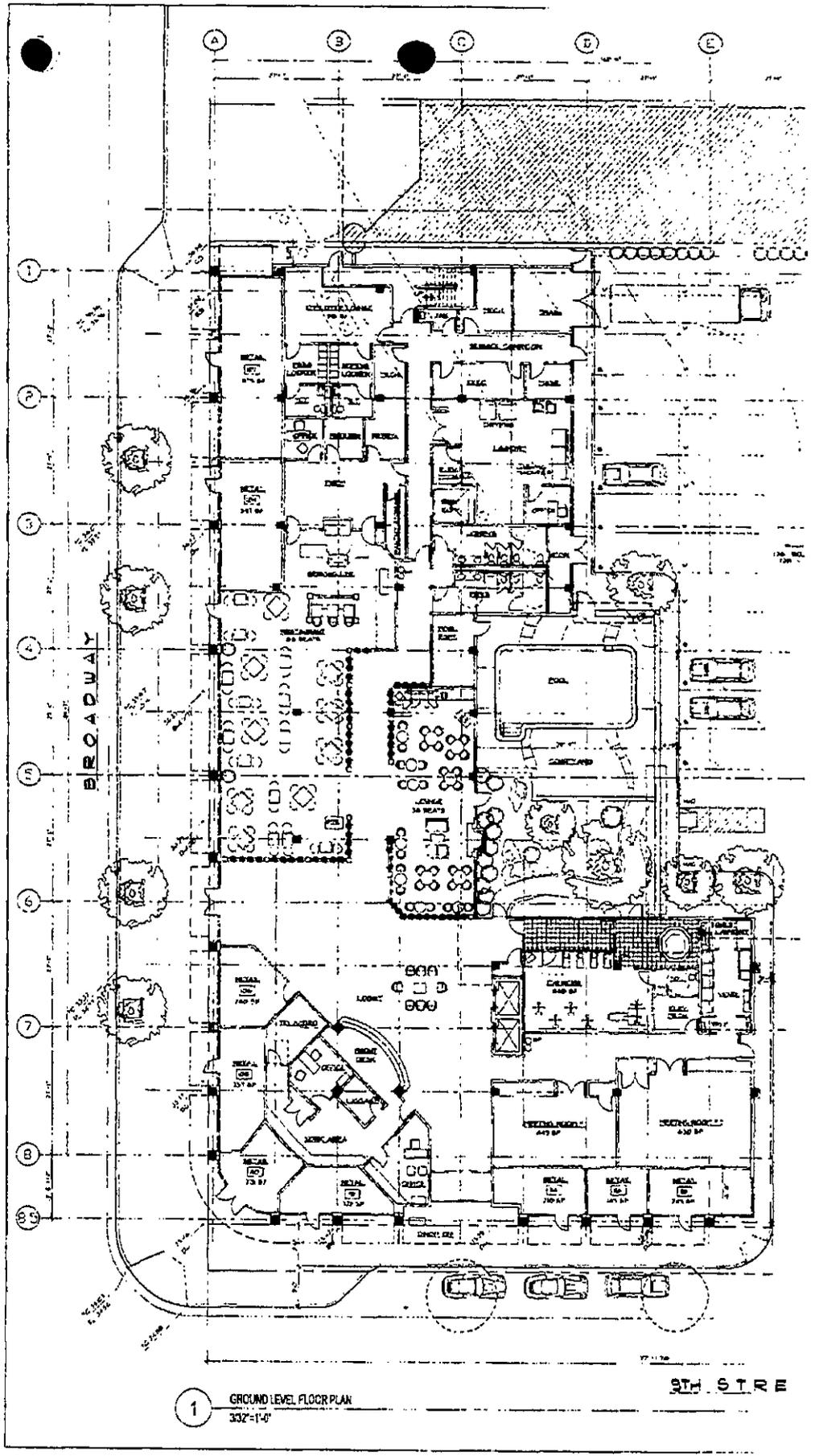
1 TYPICAL UPPER LEVEL PLAN (3RD, 4TH & 5TH LEVELS)
307-1-C



PATRICK MENGER, ARCHITECTS
 ARCHITECTURAL PLANNING RESEARCH
 400 BROADWAY, SUITE 400
 SAN FRANCISCO, CALIFORNIA 94107
 T 415.261.1108 F 261.1111

Y. H. LEE ASSOCIATES, ARCHITECTS
 Architecture Planning Interior Design
 200 Powell Street, Oakland CA 94612
 T 510.888.8888 F 510.888.8888

 **OAKLAND GARDEN HOTEL**
 2001 21 1998 * **SK 2.3**

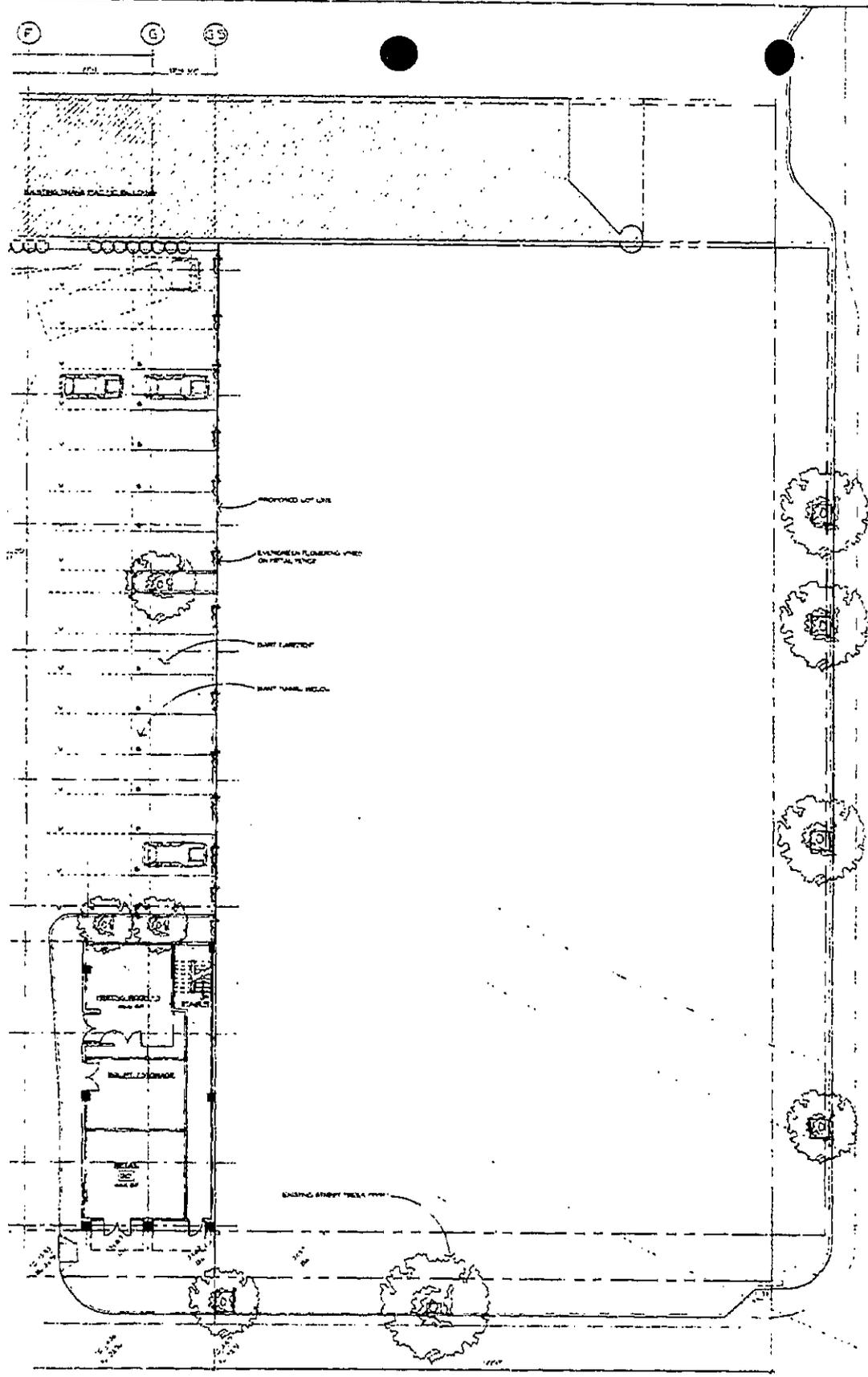


1 GROUND LEVEL FLOOR PLAN
332'-1"0"

ST. STRE

ALL DIMENSIONS UNLESS OTHERWISE NOTED ARE IN FEET AND INCHES.

F G 35



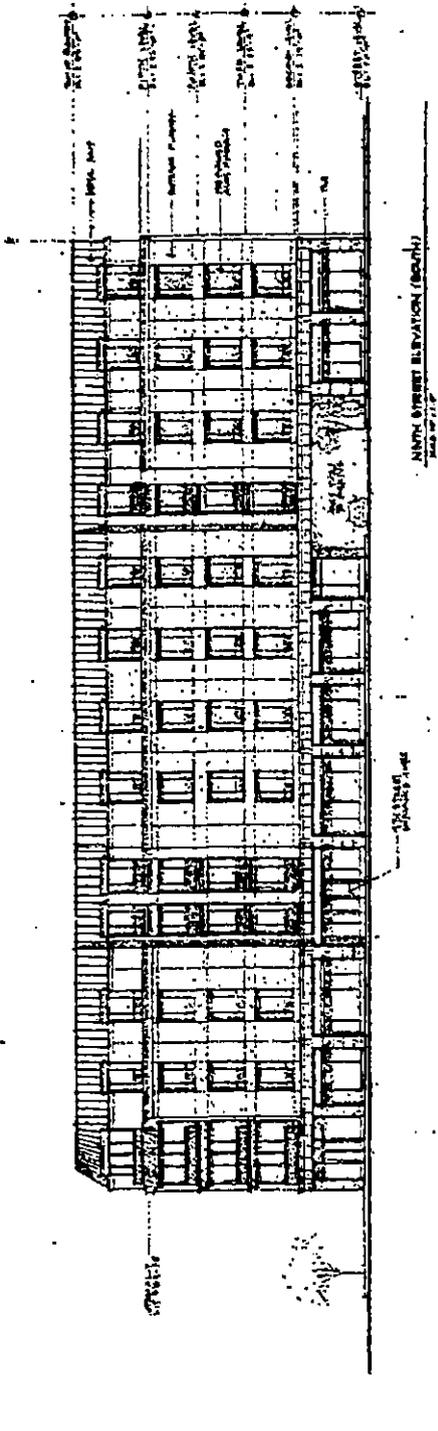
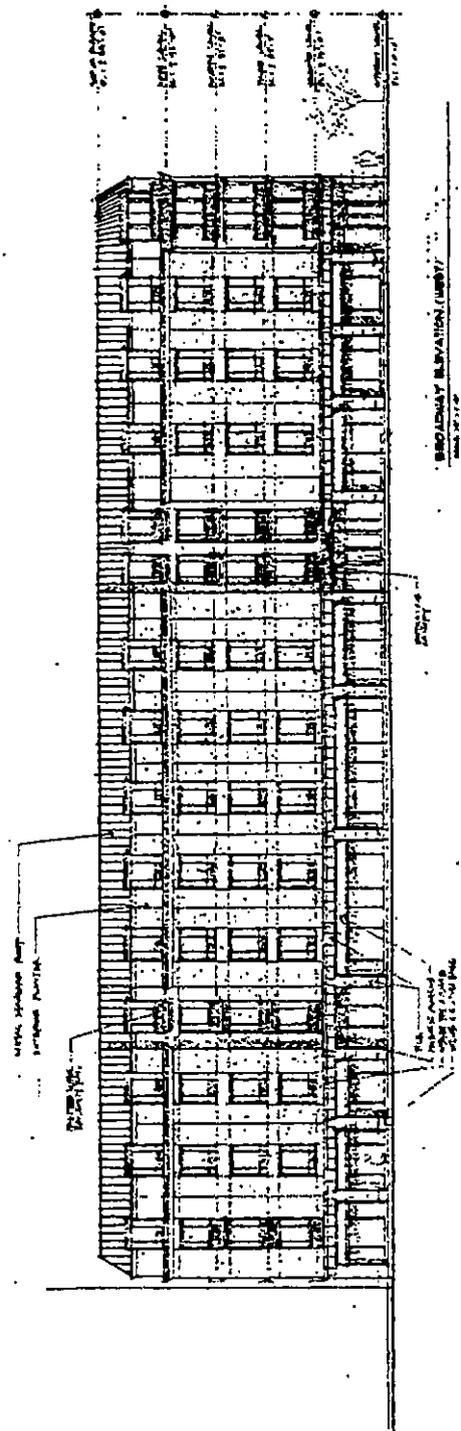
FRANKLIN STREET

EXISTING GARDEN BLOCK
 TOTAL: 17,500 G.S.P.
 NET: 2200 SF
 1 DINING ROOM (1200 SF)
 1 RESTAURANT (1000 SF)
 LOAN: 120 SEATS

PIETRO MENGER ARCHITECTS
 ARCHITECTS PLANNING ENGINEERS
 420 BUCHHEIM STREET, SUITE 400
 SAN FRANCISCO, CALIFORNIA 94107
 T 415 398 1100 F 415 398 1111

Y.H. LEE ASSOCIATES, Architects
 ARCHITECTS PLANNING ENGINEERS
 224 CALHOUN STREET, OAKLAND, CALIF. 94612
 T 415 884 8887 F 415 884 8888

 **OAKLAND GARDEN HOTEL**
 SK 2.1



THE ARCHITECT
 PROJECT ARCHITECT
 1000 AVENUE OF THE STARS
 SUITE 1000
 FORT MYERS, FL 33904
 TEL: 888.888.8888
 FAX: 888.888.8888
 WWW.AAAS.COM

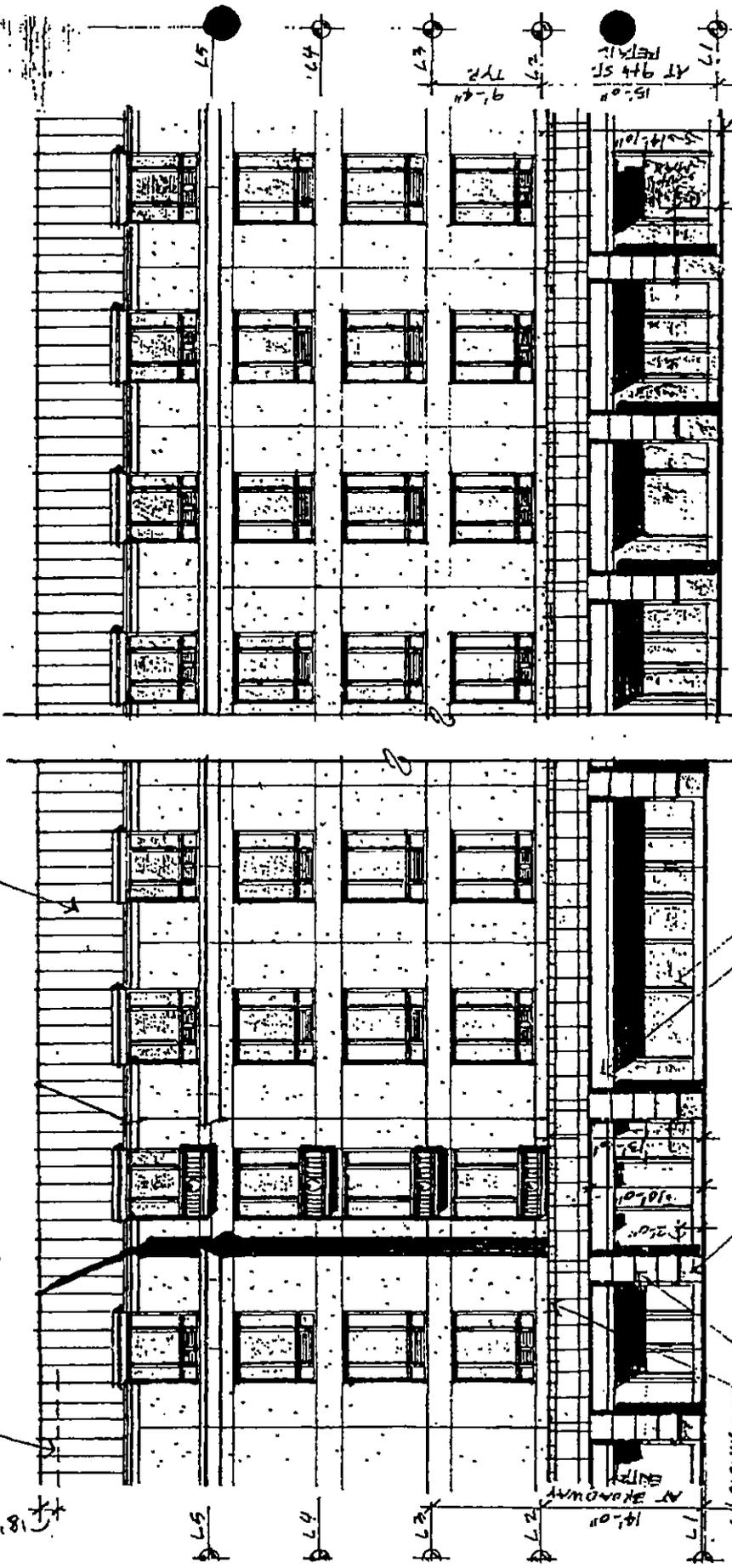
DAVID GREENBERG ARCHITECTS
 PAGE SK 3.1



PREVIOUS LINE OF ROOF
BROADWAY PARTIAL ELEVATION

STANDING SEAM METAL ROOF

NINTH ST. PARTIAL ELEVATION



ALTERNATIVE 2

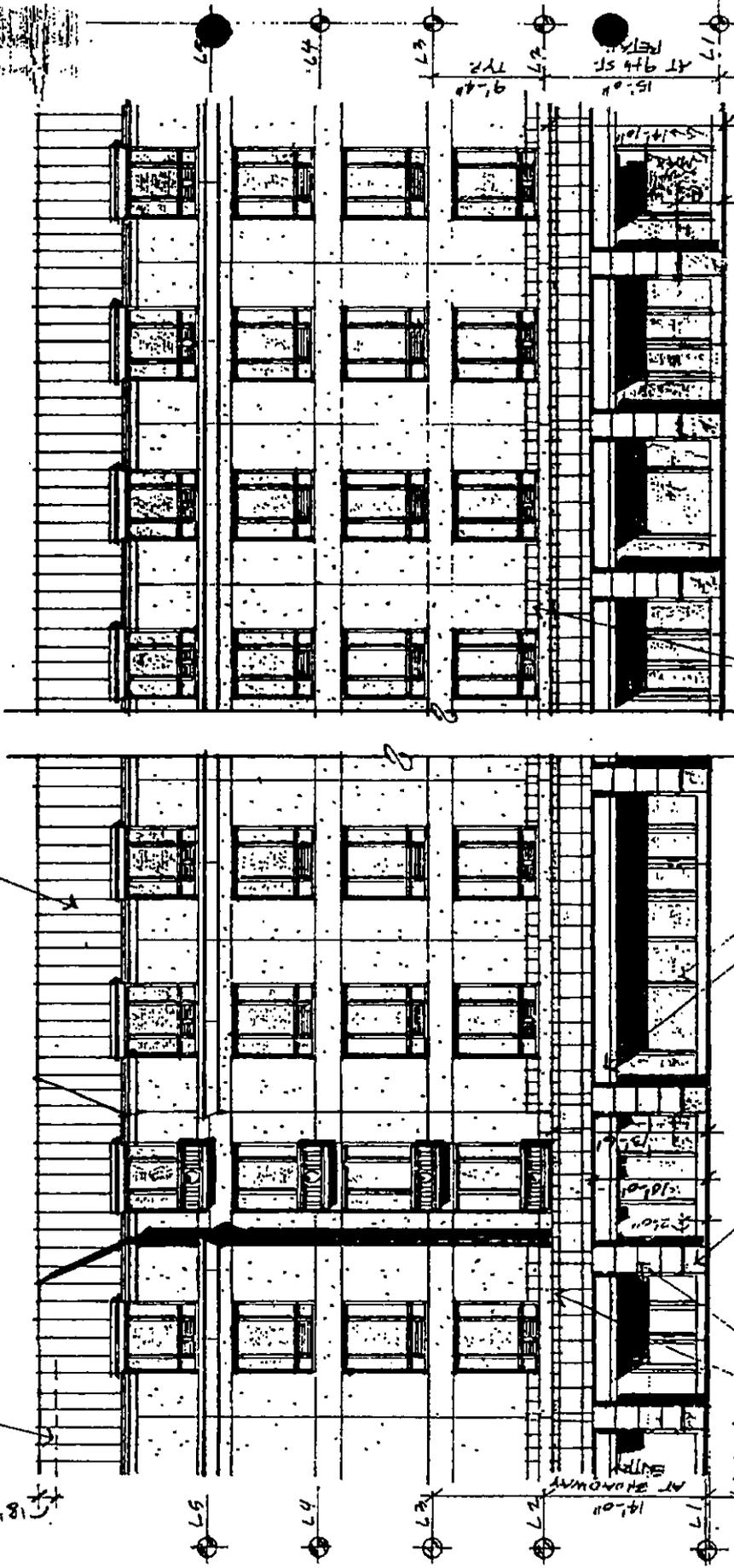
OAKLAND GARDEN HOTEL
ELEVATION STUDIES OF ROOF
HEIGHT AND BLDG. BASE ISSUES

PATRI MERKER ARCHITECTS - Y. H. LEE ASSOCIATES, ARCHITECTS
JUNE 30, 1999

STANDING SEAM METAL ROOF

PREVIOUS LINE OF ROOF
BROADWAY PARTIAL ELEVATION

NINTH ST. PARTIAL ELEVATION



ALTERNATIVE 3
OAKLAND GARDEN HOTEL

ELEVATION STUDIES OF ROOF
HEIGHT AND BLDG. BASE ISSUES

PATRI MERKER ARCHITECTS - Y.H. LEE ASSOCIATES, ARCHITECTS

JUNE 30, 1999

Exhibit F

PARKING LICENSE TERMS

The provisions of this **Exhibit F** are incorporated into that certain Disposition and Development Agreement between The Redevelopment Agency of the City of Oakland and Oakland Garden Hotel, LLC and all capitalized terms used herein shall have the meanings set forth therein.

- **Initial Term.** Commencing upon Agency's issuance of a Certificate of Completion and expiring on the date that is thirty-seven (37) years and six (6) months thereafter, unless sooner terminated as provided herein.
- **Option to Extend Term.** Provided Developer is not in default under the Agreement, Developer shall have the option to extend the term of the license for a period not to exceed twenty-eight (28) years and six (6) months by giving written notice of such exercise (including specification of the length of the extension) to Agency at least one (1) year prior to expiration of the initial term.
- **Use.** Developer shall have the right during the term of the license to use up to Ninety-four (94) parking spaces in the Parcel 2 parking lot or any other structure erected thereon, in connection with the operation of the Hotel, which spaces may or may not be contiguous, 24-hours per day. Developer and the Agency and/or the Garage Operator shall undertake good faith negotiations for the provision of (a) valet services, (b) participation in a validation program, (c) contiguous parking spaces, and /or (d) such other services as may be desired. Developer and/or its guests and invitees shall use such spaces in accordance with the rules and regulations adopted on a non-discriminatory basis, from time to time by the Agency and/or Garage Operator and shall pay for such use at the market rates established by the Agency and/or Garage Operator from time to time.
- **Insurance.** Developer's license shall be subject to the requirements of Section 15.12 of the Agreement.
- **Termination.** The license shall be binding upon Agency and any of Agency's successors-in-interest in and to the Parcel 2. The rights of Developer under the license shall run with the land with respect to Parcel 2 and may not be transferred or assigned by Developer separate or apart from such ownership. In the event that the Hotel is no longer used as the Hotel, the license shall terminate and be of no further force or effect.
- **No Real Property Interest.** The license shall not create in Developer any lease, ownership or other real property interest in Parcel 2 and/or the Garage if constructed other than expressly provided therein.

Exhibit G

FORM OF GRANT DEED

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

Oakland Garden Hotel, LLC
c/o James Murad, Esq.
Cooper, White & Cooper LLP
201 California Street, 17th Floor
San Francisco, CA 94111

**GRANT DEED
(Property)**

The undersigned grantor declares:

Documentary Transfer Tax is: \$ _____; City Tax: _____

- Computed on full value of property conveyed, or
- Computed on full value less value of liens and encumbrances remaining at time of sale
- Unincorporated area; () City of Oakland
- Realty Not Sold

FOR VALUABLE CONSIDERATION, RECEIPT OF WHICH IS HEREBY
ACKNOWLEDGED,

**The Redevelopment Agency of the City of Oakland, a public body, corporate and
politic ("Grantor")**

hereby GRANTS to

Oakland Garden Hotel, LLC, a Nevada limited liability company ("Grantee")

all of its right, title and interest in and to that property in the City of Oakland, County of
Alameda, State of California, described as:

See **Exhibit A** attached hereto and incorporated herein by reference

DDA#4 July 6, 1999

This deed is given pursuant and subject to the provisions of that certain Disposition and Development Agreement executed by Grantor and Grantee, dated _____, 1999 and recorded on _____, 1999 as Series No. _____, Alameda County Records.

Grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall Grantee or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of Developers, lessees, subdevelopers, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.

APN:

Dated: _____, 1999

REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND, a public body, corporate and politic

By: _____
Agency Administrator

State of California)
) ss.
County of Alameda)

On _____, 1999, before me, _____, a Notary Public in and for the State of California, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized

capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and Official Seal. (SEAL)

Signature

Exhibit H

FORM OF REVERSIONARY GRANT DEED

RECORDING REQUESTED BY:
The Redevelopment Agency of the
City of Oakland

WHEN RECORDED RETURN TO:
The Redevelopment Agency of the City of Oakland
c/o Oakland City Attorney's Office
One City Hall Plaza, 6th Floor
Oakland, California 94612

Attn: Vincent L. Jones, Esq.

**REVERSIONARY GRANT DEED
(Property)**

The undersigned grantor declares:

Documentary Transfer Tax is: \$ _____; City Tax: _____

- Computed on full value of property conveyed, or
- Computed on full value less value of liens and encumbrances remaining at time of sale
- Unincorporated area; () City of Oakland
- Realty Not Sold

FOR VALUABLE CONSIDERATION, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED,

Oakland Garden Hotel, LLC, a Nevada limited liability company ("Grantor")

hereby GRANTS to

The Redevelopment Agency of the City of Oakland, a public body, corporate politic ("Grantee")

of its right, title and interest in and to that property in the City of Oakland, County of Alameda, State of California, described as:

See **Exhibit A** attached hereto and incorporated herein by reference

DDA#4 July 6, 1999

This deed is given pursuant and subject to applicable provisions of that certain Disposition and Development Agreement executed by Grantor and Grantee, dated _____, 1999 and recorded on _____, 1999 as Series No. _____, Alameda County Records.

This Reversionary Grant Deed and the conveyance herein is made to Grantee, subject only to the lien of current real property taxes and assessments, a lien not yet delinquent, and to those exceptions to title described in the Preliminary Title Report dated _____, prepared by First American Title Company, Order No. _____, covering the herein described property excepting any liens or encumbrances shown therein.

APN:

Dated: _____,

OAKLAND GARDEN HOTEL, LLC,
a Nevada limited liability company

By:
Its: Member

By:
Its:

State of California)
) ss.
County of Alameda)

On _____, 1999, before me, _____, a Notary Public in and for the State of California, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and Official Seal. (SEAL)

Signature

Exhibit I

CERTIFICATE OF COMPLETION

THIS CERTIFICATE OF COMPLETION is issued this ____ day of _____, by the Redevelopment Agency of the City of Oakland, a public body, corporate and politic, ("Agency") to Oakland Garden Hotel, LLC, a Nevada limited liability company ("Developer").

RECITALS

A. Agency and Developer entered into that certain Disposition and Development Agreement dated July ____, 1999, and recorded _____, 1999, as Series No. _____, Alameda County Records, (the "DDA") for construction of a hotel (the "Hotel"), as more particularly described in the DDA, situated upon certain real property in the City of Oakland, County of Alameda as more particularly described in Exhibit A attached hereto.

B. Developer has completed construction of the Hotel.

NOW, THEREFORE, Agency hereby certifies that Developer has completed construction, of the Hotel as required by the DDA .

This Certificate is issued only to establish Developer's completion of construction of the Hotel substantially in accordance with the approved plans and specifications described above. Nothing herein shall relieve Developer of any responsibility, liability, or obligation to perform any acts or fulfill any conditions necessary for the issuance of a final certificate of occupancy for the Hotel by the Building Department of the City of Oakland or to fulfill its other obligations under the DDA.

THE REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND

By: _____
Agency Administrator

Exhibit J

WINDOW FACADE PROGRAM

Place art displays featuring the works of Oakland artists in the exterior windows of vacant retail space within the Hotel in order to create a feeling of life and occupancy in vacant space and heighten the awareness of business people, tourists, and residents regarding the rich vitality of the Oakland local arts and business community.

Where applicable, the displays should emphasize the link between commerce and the arts. Possible art forms include fashion design, cartoons, paintings, photographs, sculpture, applied art, dance, theater, etc. Displays should include an explanation of the art and artist as well as a number to call for sales or ticket information, if applicable.

Exhibit K

FORM OF ASSUMPTION AGREEMENT

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO: The Redevelopment Agency of the City of Oakland c/o Oakland City Attorney's Office One City Hall Plaza, 6th Floor Oakland, California 94612 Attn: Vincent L. Jones, Esq.	
---	--

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**ASSIGNMENT AND ASSUMPTION OF
DISPOSITION AND DEVELOPMENT AGREEMENT**

THIS ASSIGNMENT AND ASSUMPTION OF DISPOSITION AND DEVELOPMENT AGREEMENT (the "Assignment Agreement") is executed this ____ day of _____, by and among Oakland Garden Hotel, LLC, a Nevada limited liability company ("Assignor"), _____, a _____ ("Assignee") and The Redevelopment Agency of the City of Oakland, a public body, corporate and politic ("Agency") with reference to the following facts:

RECITALS

A. Assignor and Agency entered into that certain Disposition and Development Agreement dated _____, 1999 and recorded on _____, 1999, as Series No. _____, Alameda County Records (the "DDA"), concerning the construction and operation of a hotel project (the "Project") situated on certain real property located in the City of Oakland, Alameda County, and described in **Exhibit A** attached hereto and incorporated herein by reference (the "Project Site"). Unless otherwise defined herein, all capitalized terms used in this Assignment Agreement shall have the same meanings as set forth in the DDA.

B. Assignor desires to assign, transfer and convey to Assignee and Assignee desires to assume Assignor's rights and obligations under the DDA, as more specifically set forth in this Assignment Agreement.

DDA#4 July 6, 1999

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt of which are hereby acknowledged the parties agree as follows:

AGREEMENT

ASSIGNMENT. Assignor hereby sells, assigns, transfers and conveys to Assignee as of _____ (the "Effective Date") all of Assignor's rights, and obligations in, to and under the DDA and all of the instruments referenced therein executed by Assignor in connection therewith (the "Related Documents"), all of which shall continue in full force and effect.

ASSUMPTION. Assignee hereby accepts the foregoing assignment and hereby assumes and agrees to perform all of the obligations of Assignor as Developer under the DDA and Related Documents.

AGENCY CONSENT. Agency hereby consents to the assignment and assumption of the DDA and related documents hereunder.

LIQUIDATED DAMAGES FOR BREACH OF DDA. If Agency chooses to exercise its rights to obtain title to the Property, the Hotel or the project site as provided in Section 12.1 or Section 12.3, and Agency is prevented or is otherwise unable to do so, then Agency shall have the option, in its sole and absolute discretion, to waive the provisions of ARTICLE 13 concerning the payment by Developer of Liquidated Damages and to pursue all rights and remedies available at law or in equity.

DEVELOPER AND AGENCY AGREE THAT IT WOULD BE IMPRACTICAL AND EXTREMELY DIFFICULT TO ESTIMATE THE DAMAGES SUFFERED BY AGENCY AS A RESULT OF DEVELOPER'S DEFAULT IN PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT AND THAT UNDER THE CIRCUMSTANCES EXISTING AS OF THE DATE OF THIS AGREEMENT, THE LIQUIDATED DAMAGE AMOUNT WHICH IS PAYABLE TO AGENCY UNDER THE SPECIFIC PROVISIONS OF THIS AGREEMENT, REPRESENTS A REASONABLE ESTIMATE OF THE DAMAGES WHICH AGENCY WILL INCUR AS A RESULT OF SUCH SPECIFIC DEFAULT WHICH DAMAGES WOULD INCLUDE THE COST AND EXPENSE OF NEGOTIATING THIS AGREEMENT AND REVIEWING DOCUMENTS AND THE COSTS OF REMOVING THE PROPERTY FROM THE MARKET; PROVIDED, HOWEVER THAT THIS PROVISION WILL NOT LIMIT AGENCY'S RIGHT TO RECEIVE ITS ATTORNEYS' FEES NOR WAIVE NOR AFFECT DEVELOPER'S INDEMNITY OBLIGATIONS AND AGENCY'S RIGHTS TO THOSE INDEMNITY OBLIGATIONS UNDER THIS AGREEMENT NOR LIMIT AGENCY'S RIGHT TO PURSUE SPECIFIC PERFORMANCE OR OTHER EQUITABLE REMEDIES FOR SUCH DEFAULT. THE PARTIES FURTHER AGREE THAT:

DDA#4 July 6, 1999

WHERE APPLICABLE, THE LIQUIDATED DAMAGE AMOUNT WILL BE THE FULL, AGREED AND LIQUIDATED DAMAGES FOR DEVELOPER'S FAILURE TO FULFILL THE APPLICABLE OBLIGATIONS AS REQUIRED UNDER THIS AGREEMENT;

THE PAYMENT OF SUCH AMOUNT AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO AGENCY PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677.

AS PROVIDED HEREIN, AGENCY, AT AGENCY'S OPTION, MAY IN ADDITION TO RETAINING THE LIQUIDATED DAMAGE AMOUNT, TERMINATE THIS AGREEMENT AND/OR DEVELOPER'S RIGHTS HEREUNDER AND, EXCEPT FOR DEVELOPER'S INDEMNITY OBLIGATIONS WHICH MAY BE ENFORCED BY AGENCY NEITHER PARTY SHALL HAVE ANY FURTHER OBLIGATIONS HEREUNDER, EACH TO THE OTHER EXCEPT FOR THE RIGHT OF AGENCY TO RETAIN THE LIQUIDATED DAMAGE AMOUNT.

DEVELOPER'S INITIALS: _____ AGENCY'S INITIALS: _____

NO DEFAULT. Assignor and Assignee acknowledge and agree that as of the date hereof, Agency is not in default under the DDA or any Related Document and that Assignor and Assignee have no claims against Agency arising out of or related to the DDA, the Related Documents or the Project Site and that the DDA and Related Documents are in full force and effect and are unmodified. Agency acknowledges that to the best of its knowledge as of the date hereof, Assignor is not in default under the DDA or any Related Documents.

RELEASE. As of the date of this Assignment Agreement, Assignor and Assignee each for itself, its lessees, successors, assigns and every successor in interest to the Property (collectively, "successors") releases Agency and the City of Oakland, and their officers, officials, representatives, employees and agents from any and all claims, demands, administrative actions, litigation, causes of action, liabilities, damages, losses, investigative costs, response costs, remediation costs and penalties, including costs of legal proceedings and attorney's fees, that Assignor, Assignee and any of their successors may incur as a consequence of or arising directly or indirectly out of the DDA, the Related Documents or the Project Site (including without limitation, the physical condition of the Project Site) and accruing on or before the date hereof. Assignor and Assignee, for themselves and their successors, expressly waive the benefits of Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR EXPECT

ASSIGNEE:

By: _____

Name: _____

Title: _____

AGENCY:

**THE REDEVELOPMENT AGENCY OF THE CITY OF
OAKLAND, a public body, corporate and politic**

By: _____

Agency Administrator

Approved as to form and legality:

By: _____

Agency Attorney

Exhibit L

PROJECT INSURANCE REQUIREMENTS

The provisions of this Exhibit L are incorporated into that certain Disposition and Development Agreement between the Redevelopment Agency of the City of Oakland and Oakland Garden Hotel, LLC and all capitalized terms used herein shall have the meaning set forth therein.

1.

Policy Form, Content and Insurer. All insurance required to be carried by Developer shall be in a form reasonably satisfactory to Agency and written by one or more insurance companies reasonably approved by Agency and which are admitted insurers in the State of California. Insurance companies must be rated at least A in Best's Insurance Guide, or equivalent rating. All such insurance may be carried under a blanket or umbrella policy covering the Premises and other locations, provided that the coverage afforded the insuring party by such blanket policy shall not be reduced or diminished by reason of the use of such blanket policy of insurance, and provided further that the requirements of this Exhibit L are otherwise satisfied. All such insurance shall contain endorsements that (a) such insurance shall not be canceled or amended except upon sixty (60) days prior notice to the other party by the insurance company, (b) the insuring party shall be solely responsible for payment of premiums, and (c) the insuring party's insurance is primary in the event of overlapping coverage which may be carried by the other party. The minimum limits of the commercial general liability insurance policy required by Section 3 of this Exhibit L shall in no way limit or diminish the insuring party's liability under this Agreement. The insuring party shall deliver to the other party at least thirty (30) days prior to the time such insurance is first required to be carried by the insuring party, except that any insurance required to be first carried at the execution of this Lease shall be provided to the other party within twenty one (21) days following the execution date, and thereafter at least thirty (30) days prior to the expiration of such policy, either a duplicate original or a certificate clearly showing compliance by the insuring party with its obligations under this Agreement, together with evidence satisfactory to the other party of the payment of the premiums therefor.

2.

Builder's Risk Insurance. Before commencement of any construction authorized to conduct business related activities on the project site following the date of this Agreement, Developer at its sole cost and expense shall procure and thereafter maintain in force builder's risk insurance, insuring against all risk of physical loss including earthquake and flood, covering without limitation the events of collapse, transit, offsite storage, demolition and debris removal, and damage to existing facilities covering the total cost of work performed, equipment, supplies and

materials furnished on a replacement cost basis, naming agency as a loss payee as its interest may appear, with such limits and deductibles as may reasonably be required and permitted by agency from time to time, but not less than in the initial amounts as follows:

LIMITS OF COVERAGE: \$13,000,000 on Premises while at the site, except:

SUBLIMITS OF COVERAGE

\$ N/A	on Damage to Existing Facilities
\$100,000	property in Transit, any one conveyance
\$250,000	offsite Storage, any one location
\$5,000,000	demolition/Debris removal

DEDUCTIBLES:	\$10,000	all other Perils, except
	\$ 25,000	rigging and Lifting

Developer may require that Contractor provide insurance for rigging and lifting in the amounts set forth in this Section 2 and in compliance with the provisions of this Exhibit L in lieu of Developer providing such insurance.

3.

Other Insurance. From and following the date of the Agreement, Developer until the date which is seven (7) years after the date the Hotel opens for business at its sole cost and expense, shall procure and maintain in force the following insurance:

a. **Commercial General Liability Insurance.** At all times during the term of the Agreement and prior to entry of the Site pursuant to Section 6.6, Developer shall obtain and maintain commercial general liability insurance which is to include, without limitation, broad form contractual liability endorsement, and with such limits and deductibles as may reasonably be required and permitted by Agency from time to time, but not less than in an initial amount of Ten Million and 00/100 Dollars (\$10,000,000) for bodily injury (including death) and personal injury to any one person, injury and/or death to any number of persons in any one incident, and for property damage in any one occurrence, arising or in connection with the construction, ownership, or operation of the Project or use of the Garage or the exercise of any right under the Agreement. Such policy or policies shall be written on an occurrence basis, and shall name Agency and City and their Representatives, as additional insureds, and shall be primary insurance and noncontributing with any other insurance available to the Agency under any other policies.

In addition, such liability insurance shall specifically insure Developer's indemnity obligations (for Bodily Injuries and Property Damage) under this Agreement, and shall contain a provision that Agency, although an additional insured, shall nevertheless be entitled to recover under such policy or policies for any liability or damage to Agency and/or City or their Representatives.

Agency shall have the right exercisable not more frequently than once every five (5) years during the Term, to require Developer to increase the amount of such policy if Agency reasonably determines that the amount of insurance then being carried by Developer is inadequate taking into account then current practices and requirements of similar hotels located in similar locations in California at the time.

b. Workers' Compensation Insurance. Workers' Compensation insurance as required by the laws of the State of California during the term of this Agreement. The policy may include Employers' Liability coverage with limits of not less than \$1,000,000. Developer certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code, which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code. Developer shall comply with the provisions of Section 3700 of the Labor Code before commencing construction under this Agreement.

c. From and following the date of completion of the Hotel, and prior to any cancellation of Builder's Risk Insurance, until the date which is seven (7) years after the date the Hotel opens for business, Developer, at its sole cost and expense, shall provide and maintain in force the following insurance.

i. Fire and Related Insurance. Property Insurance covering All Risk of Physical Loss (or a so-called "All Risk" Policy) with an agreed amount endorsement in an amount not less than one hundred percent (100%) replacement value of the completed Hotel and other Hotel on the Site, excluding excavation, foundations and other items not generally covered by such standard forms of insurance, but including any cost required to upgrade to meet then current building code requirements. Such replacement value shall be redetermined from time to time during the Term not less frequently than once every three (3) years. Such property insurance shall also cover such other risks which Agency reasonably determines should be covered and shall include any other endorsements and/or coverages that may be required by any Holder. Agency agrees that the proceeds from any such policy or policies shall be used solely for reconstruction by Developer.

ii. Boiler and Unusual Hazards Insurance. Boiler and machinery insurance so long as such equipment is located within the Hotel and insurance against unusual hazards and all other insurable risks if Developer's activities give rise to any such risks and such risks are customarily insured in the Oakland-San Francisco Bay Area with respect to premises comparable to the Hotel.

4.

Waiver of Subrogation. The parties release each other, and their respective Representatives, from any claims for damage and/or injury to any part of the Premises, Developer's trade fixtures, personal property, and Developer's Hotel, in or on the Premises that are caused by or result from risks insured against under any insurance policies (but not workers' compensation) carried by the parties and in force at the time of any such damage to the extent of the available insurance proceeds. Each party shall cause each casualty or property damage insurance (but not workers' compensation) policy carried by it to be written to provide that the insurance company waives all right of recovery by way of subrogation against either party in connection with any damage covered by any policy.

5.

Failure to Maintain Insurance. Developer's failure or refusal to procure or to maintain insurance as required by this Agreement, or failure or refusal to furnish Agency with the required proof that such insurance has been procured and is in force and paid for shall be a default under the Agreement. In such event, Agency shall have the right, but not the obligation, to procure and maintain such insurance following five (5) days notice to Developer. Agency may recover from Developer the full amount of such premiums plus interest at the maximum legal rate on such amounts from the date when the premium is paid to the date of recovery by Agency.

6.

Developer Obligations. The insurance requirements set forth in this Exhibit L are independent of, and in addition to, Developer's indemnity obligations set forth in this Agreement and shall not be construed or interpreted in any way to restrict, limit or modify Developer's liability or indemnity obligations.

Exhibit M

HAZARDOUS MATERIALS

CONSTRUCTION FUNDING AGREEMENT

THIS HAZARDOUS MATERIALS CONSTRUCTION FUNDING AGREEMENT ("Agreement") is made and entered into as of _____ by and between OAKLAND GARDEN HOTEL, LLC, a Nevada limited liability company ("Developer"), and the REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND, a public body corporate and politic ("Agency").

RECITALS

A. Developer intends to construct and develop a hotel ("Hotel") on that portion of the Central District Urban Renewal Area described in EXHIBIT A attached hereto and incorporated herein by this reference ("Land"), pursuant to the Disposition and Development Agreement dated July __, 1999 (the "DDA") between Developer and Agency, in accordance with the plans and specifications therefor (the "Plans and Specifications").

B. Under ARTICLE 8 of the DDA, Agency is obligated to pay all of the costs and expense involved in connection with any hazardous materials on the Land on the Execution Date as defined in the DDA. This Agreement provides for Hazardous Materials Funds, as hereinafter defined, and for their disbursement to Developer by Agency.

C. Developer has secured construction financing for the Project from _____ (the "Construction Lender") in an amount of _____ Million Dollars (\$____,000,000) (the "Construction Loan") pursuant to a Construction Loan Agreement dated _____ (the "Construction Loan Agreement").

THE PARTIES HERETO AGREE AS FOLLOWS:

ARTICLE 1

DEFINITIONS

1.1 Definitions.

As used in this Agreement, the following terms shall have the following meanings. Terms not specifically defined in this Agreement shall have the meaning contained in the DDA.

1.1.1 "**Architect**" is defined in **Paragraph 2.6** hereof.

1.1.2 "**Business Day**" means any day of the year on which banks are not required or authorized to close under the laws of the State of California.

1.1.3 "**Completion Date**" means the date fixed by the Construction Lender as the date upon which Completion of the Hotel has occurred.

1.1.4 "**Completion of the Hotel**" is defined in the Construction Loan Agreement.

1.1.5 "**Construction Contract**" means the agreement entered into between Developer and the General Contractor, as hereinafter defined, dated _____ in connection with the Work, as hereinafter defined.

1.1.6 "**Contractor's Monthly Statement**" is defined in **Paragraph 2.2**.

1.1.7 "**Developer's Construction Account**" is defined in **Paragraph 3.1.1** hereof.

1.1.8 "**Environmental Change Order**" is defined in **Paragraph 2.2** hereof.

1.1.9 "**Excavation**" is defined in **Paragraph 2.2**.

1.1.10 "**General Contractor**" means _____ or any other general contractor designated by Developer as general contractor and acceptable to Agency or designated by the Construction Lender.

1.1.11 "**Hazardous Materials**" is defined in **Paragraph 2.2**.

1.1.12 "**Hazardous Materials Advances**" means that portion of each Hazardous Materials Disbursement Request to be funded with Hazardous Materials Funds pursuant to Contractor's Monthly Statement and the Hazardous Materials Indirect Cost Statement.

1.1.13 "**Hazardous Materials Costs**" are defined in **Paragraph 2.2**.

1.1.14 "**Hazardous Materials Disbursement Request**" means requests by Developer to Agency for Hazardous Materials Funds in substantially the form attached hereto as **Exhibit B**.

1.1.15 "**Hazardous Materials Funds**" is the amount to be provided pursuant to this Agreement by Agency for or in connection with Hazardous Materials.

1.1.16 "**Hazardous Materials Incident Report**" is defined in **Paragraph 2.2**.

1.1.17 "**Hazardous Materials Indirect Cost Statement**" is defined in **Paragraph 3.1.2** hereof. Each Hazardous Materials Indirect Cost Statement shall itemize the costs incurred as of the "as of" date of such Statement, in connection with Hazardous Materials other than costs reflected on Contractor's Monthly Statement.

1.1.18 "**Hotel**" is defined in **Recital A** hereof.

1.1.19 "**Inspector**" means any person or entity designated by Agency to make any inspection permitted hereunder.

1.1.20 "**Land**" is defined in **Recital A** hereof.

1.1.21 "**Construction Loan**" is defined in **Recital C** hereof.

1.1.22 "**Construction Loan Agreement**" is defined in **Recital C** hereof.

1.1.23 "**Work**" means the construction of the Hotel on the Land in accordance with the Plans and Specifications.

ARTICLE 2

CONSTRUCTION OF THE HOTEL

2.1 Construction. Developer intends to commence construction of the Hotel on or before _____ and to thereafter diligently proceed with such construction. Completion of the Hotel shall occur on the Completion Date.

2.2 Extra Work; Environmental Change. The Construction Contract shall contain a Hazardous Materials Addendum providing substantially the following:

"1. HAZARDOUS MATERIALS

1.1 Owner's Agreement with Agency. The Redevelopment Agency of the City of Oakland ("Agency") and Owner have entered into an agreement with respect to the payment for the cost of removing and otherwise dealing with Hazardous Materials on the Site. Agency has estimated that the aggregate cost thereof (including all of the costs set out below in this Paragraph 1) is in the approximate amount of _____ (\$_____) ("Remediation Estimate"). The Remediation Amount has been escrowed by Agency with First American Title Guaranty Company and will be disbursed to Developer as provided in Paragraph

3.2 of the Hazardous Materials Construction Funding Agreement dated _____, between Owner as Developer and Agency ("Funding Agreement"). Agency's obligation to pay for the Hazardous Materials Costs, as defined in the Funding Agreement and Contractor's entitlement to compensation for such costs, is not limited by or to the amount of the Remediation Estimate or the balance of the escrowed amount, but shall be determined as provided for in Paragraph 2 below.

1.2 Agency's Consultant. The Agency has retained _____ as its environmental consultant _____ ("Agency's Consultant") to (i) evaluate the Site, (ii) develop a remediation plan for the Site, (iii) oversee the remediation, (iv) develop guidelines to inform contractors of the general nature of the Site conditions, (v) to guide Contractor in the preparation of health and safety plans for the protection of Site personnel with respect to Hazardous Materials, as defined below, (vi) secure such permits and approvals from the governmental agencies having jurisdiction over the handling, removal, transportation, and disposal of Hazardous Materials as shall be required during the excavation portion of the Work (the "Excavation"), and (vii) act as Agency's Hazardous Materials consultant. "Hazardous Materials" as used herein means all hazardous or contaminated materials, substances, or wastes in concentrations requiring special handling, treatment, or disposal under California or federal law or requiring the use of respirators and other protective equipment as reasonably required by the H&S Plans described below.

1.3 Environmental Documents. To assure Owner that the Excavation will not be delayed as a consequence of the need to remove Hazardous Materials, Contractor shall, (i) within five (5) days of the hereof date, adopt and commence to enforce its job safety and health and safety plans for the Project and its plans for the protection of Site personnel (collectively "H&S Plans") and (ii) during the course of the Excavation, cause its Subcontractors to comply with the H&S Plans. To guide Contractor in developing its H&S Plans, Agency's Consultant has prepared several documents, including "Guidelines for Environmental Monitoring and Personal Protection" (the "Guidelines") and "Summary of Biological Treatment of Gasoline Contaminated Soils" (the "Summary"). A copy of the "Guidelines" is attached as Exhibit MADD-1. A list of the remainder of the documents prepared by Agency's Consultant is attached as Exhibit MADD-2. A list of various documents regarding environmental conditions at the Site is attached as Exhibit MADD-3. (The Guidelines, Summary, and remainder of the documents prepared by Agency's Consultant and the Exhibit MADD-3 documents are referred to herein collectively as the "Environmental Documents"). Contractor acknowledges prior receipt of all Environmental Documents.

1.4 H&S Plans Compliance. Contractor acknowledges that it has examined Environmental Documents, that it will comply with the Guidelines, that

it acknowledges that excavation will involve Hazardous Materials, and that it will immediately adopt, enforce, and implement H&S Plans sufficient to meet California and federal OSHA requirements for the protection of all Site personnel, and that its H&S Plans shall include without limitation, such provisions for environmental monitoring and personal protection as may be reasonable and appropriate for working on a construction site known to contain the Hazardous Materials described in Environmental Documents. In the event that Hazardous Materials are encountered at locations not specified in Environmental Documents, Contractor shall review and modify the H&S Plans as necessary. Contractor further acknowledges that the adequacy of its H&S Plans is its sole responsibility and that the Guidelines have been provided merely as guidance in the preparation and adoption of the H&S Plans. Owner, assumes no responsibility for the adequacy of the Guidelines nor for their use by Contractor in connection with the development of its H&S Plans. Contractor shall be solely responsible for notifying all Site personnel, including without limitation, all other contractors, Subcontractors, Sub-subcontractors, and their respective officers, agents, representatives, and employees, of (1) the condition of the Site as described in Environmental Documents and (2) the probability of encountering Hazardous Materials or hazardous conditions as a result of the presence of Hazardous Materials.

1.5 Hazardous Materials Training. Prior to commencement of the Work, Contractor shall meet with Agency's Consultant representatives to establish a program to efficiently monitor and respond to the presence of any Hazardous Materials at the Site during performance of the Excavation. Within five (5) days of the date of this Agreement, Contractor shall designate, among others, the following Subcontractor and supervisory personnel by trade to undergo Hazardous Materials training: one (1) supervisor, two (2) foremen, two (2) welders, six (6) laborers, and three (3) operators. The designated personnel shall have completed the Hazardous Material training prior to the commencement of the Excavation.

(a) It is the intent of the parties that the presence of trained personnel on Site during the Excavation shall minimize the risk of harm to any persons or property during the Excavation and avoid delays in the Excavation as a result of the presence of Hazardous Materials. Contractor's site safety officer shall regularly monitor air quality conditions at the Site pursuant to the H&S Plans in cooperation with Agency's Consultant site monitoring officer (including regular calibration of all monitoring instruments) and the agreed upon soil monitoring program. Owner will require Agency to cause Agency's Consultant to provide Contractor with copies of Agency's Consultant soil monitoring and analysis promptly upon their completion.

(b) Monitoring Equipment. Agency has recommended that certain Hazardous Materials monitoring equipment be employed by Contractor during the Excavation. If Contractor agrees that the recommended equipment is appropriate for the purpose intended, it shall purchase the monitoring equipment under terms specifically providing that all warranty rights shall be extended to Contractor and to any subsequent owner thereof. The cost of all such equipment shall be treated as Hazardous Materials Costs, as defined below. During the Excavation, Contractor shall be solely responsible for the proper calibration, maintenance, and operation of all such equipment. Upon completion of the Excavation, Contractor shall deliver the monitoring equipment to Owner properly calibrated and in good working order, subject to ordinary wear and tear.

1.6 Excavation Monitoring. Contractor shall meet with Agency's Consultant from time to time during the course of the Excavation to adjust the monitoring program as may be required by changing conditions at the Site. Agency, Agency's Consultant, Contractor, and Owner shall conduct weekly on-Site project meetings throughout the Excavation to assure proper monitoring of Hazardous Materials. Contractor shall use good faith efforts to work cooperatively with Harding Lawson Associates on the monitoring program. Agency shall have the right to enter the Site at any time and from time to time during the Excavation upon notification to and at Contractor's on-site offices in order to conduct additional tests for the presence of Hazardous Materials and to further inform Contractor of the general nature of the Site conditions. Contractor acknowledges that Owner, directly or at the request of Agency, may recommend further guidelines for environmental monitoring and personal protection, and modifications to the H&S Plans as necessary to respond to changing Site conditions.

1.7 Hazardous Materials Incident Report. When during the course of the Excavation, Hazardous Materials are detected at the Site, Contractor, in consultation with Agency's Consultant's site monitoring officer, shall promptly notify Owner, the Architect, and Agency. A Hazardous Materials Incident Report in the form set forth as Exhibit HMADD-4 shall be completed, agreed upon, and implemented on an expedited basis and, if appropriate, a Hazardous Materials force account in the form set forth as Exhibit HMADD-5, documenting labor, materials, and equipment employed with respect to the Hazardous Materials condition shall be completed by Contractor. When Hazardous Materials are detected, all costs incurred by reason of the existence of Hazardous Materials on or in connection with the Site as well as of handling, removal, and transportation of such materials (collectively "Hazardous Materials Costs") shall be determined based upon the Hazardous Pre-Agreed Rates set forth in Section 2.1. The Hazardous Materials Costs shall be approved by Owner, the Architect and Agency's Consultant. In recognition of Agency's interest in the Hazardous

Materials Costs, Contractor agrees that Agency shall also have the right to review and approve the Hazardous Materials Costs and Contractor agrees to cooperate fully in the evaluation of the Hazardous Materials Costs by the interested parties. Contractor and Owner shall execute an environmental Change Order pursuant to the Change Order provisions of Article ____ with respect to the Hazardous Materials Costs. All Applications for Payment that contain any Hazardous Materials Costs shall separately identify all of such costs and shall be accompanied by such supporting documents and other information and materials as shall be required by Owner and shall, among other things, identify the amount of all applicable unit prices, cost differentials, and markups.

1.8 Disposal Site Designation. Agency is entitled to designate the disposal site and the transportation method for all Hazardous Materials and is obligated to sign all manifests with respect to such disposal and transportation. Contractor shall comply with Agency's directions and instructions. Owner shall not be responsible for any Hazardous Materials Costs for the disposal or transportation of any Hazardous Materials that have not been transported or disposed of in compliance with Agency's directions."

2.3 Hazardous Materials Costs. Agency is obligated to reimburse Owner for all Hazardous Material Costs at the following rates ("Pre-Agreed Rates"). Contractor agrees to accept these amounts as full compensation for all labor, material, equipment, and supplies used in connection with the Excavation activities:

2.3.1 The amount of \$____ per cubic yard, plus ____% mark-up for the Subcontractor and __% mark-up for Contractor for a total cost of \$____ per cubic yard, for excavation of any and all soil containing Hazardous Materials ("Contaminated Soil") at the Property that requires the use of respirators and other protective gear in accordance with Paragraph ____ of the General Conditions of the Construction Contract.

(b) One Hundred _____ percent (____ %) of the difference between the cost for transporting Contaminated Soil to a disposal site selected by Agency and the cost that would have been incurred, had the soil been uncontaminated.

(c) The cost plus ____% for disposal of Contaminated Soil that cannot be disposed of at the Berkeley Landfill Closure Project or other locations arranged for by Agency. However, Agency retains the option to arrange and pay for such disposal directly with the operators of disposal sites and, if Agency elects to do so, no percentage mark-up will be allowed on disposal costs.

(d) A fully burdened rate of \$____ per hour for each hour that a Health and Safety Officer is required at the Site to deal with health and safety issues related to the Contaminated Soil.

(e) The amount of liquidated damages to Contractor in the amount of \$ _____ per day for construction delays directly related to the presence of Contaminated Soil as of the date of the Agreement. Prorata measurement of time in smaller increments is acceptable to Contractor.

(f) \$ _____ lump sum for all costs associated with the preparation of the health and safety plan and health and safety training of site workers, except for actual man-hours required of each worker to participate in training sessions.

(g) An amount equal to Developer's reimbursement to Contractor for the purchase price of safety equipment/monitoring equipment to be used for the excavation process, plus ____%.

2.3.2 The basis for establishing compensation under **Paragraph 2.2.2** for activities under the Construction Contract other than excavation, that are adversely affected by the process of excavating Contaminated Soil shall be:

(a) With respect to equipment:

(i) State of California Publication for Equipment Rates (Caltrans). [primary source]

(ii) State of California Publication Standard Specifications _____ (Caltrans) for definitions and allowable mark-up.

(iii) Rental Rate Blue Book for equipment rates. [secondary source]

(b) With respect to labor:

(i) State of California General Prevailing Wage Rates publication, _____ ("PW Schedule"). Contractor shall receive, in full satisfaction of all claims with respect to such adversely affected labor, an amount equal to the aggregate of the following, all as expressly agreed to and documented on the Incident Report as provided for in **Paragraph _____** of the General Conditions to the Construction Contract:

(ii) 100% of Contractor's actual cost for all labor idled as a result of such hazardous materials excavation activities during such reasonable period as such labor is in fact unable to perform its usual and normal activities or is not otherwise employed.

(Example: Labor A has a fully burdened cost of \$10.00 per hour and is idled for 1.5 hrs. The amount payable under this provision would be \$15.00); and

(iii) With respect to labor performed while using respirators or other protective equipment (all as reasonably required by the H&S Plans) an amount equal to ___% of the "fully burdened rate" for such labor. Fully burdened rate is defined as the aggregate of the basic hourly rate as defined in the PW Schedule ("Basic Hourly PW Rate") for such labor, plus the "employer payments" for such labor as set forth in the PW Schedule. (Example: Labor A performs 1.5 hours of service using a respirator. The Basic Hourly PW Rate is \$_____ and the "employer payments" equal _____% of the Basic Hourly PW Rate for a total fully burdened cost of \$_____. The amount payable under this provision would be ___% or \$_____.)"

2.4 Hazardous Materials Incident Report. Developer shall furnish to Agency copies of all Hazardous Materials Incident Reports and any other similar reports and information provided by the General Contractor or any third party to Developer.

2.5 Inspections and Approvals.

2.5.1 Agency, through the Inspector or through Agency's officers, agents, contractors or employees, shall have the right at any time:

(a) with notice to Developer to enter upon the Land and inspect the performance of the Work; and

(b) exercise all inspection and access rights granted Agency under the Construction Contract.

2.5.2 Developer agrees to cooperate fully (and to cause the General Contractor to cooperate fully) with the Inspector and to permit all appropriate access to the Land and to all books and records of Developer relating to or with respect to Hazardous Materials.

2.5.3 As provided in the Construction Contract, Agency shall have the right to review and, subject to the provisions of the Construction Contract, to approve all Hazardous Materials Costs and Environmental Change orders.

2.6 Architect. An architect approved in writing by the Construction Lender (the "Architect") shall be retained by Developer, at Developer's expense, to furnish periodic reports on

the progress of the Excavation Work, and to perform the services called for under the Construction Contract.

2.7 Disposal and Transportation. Agency shall designate the disposal site and the transportation method for any Hazardous Materials discovered during the Excavation and shall execute as the "owner" and/or "responsible party", all manifests, documents, indemnities, and other agreements required by the carriers of Hazardous Materials and the operators of the designated dump sites in connection with such transportation and disposal.

ARTICLE 3

HAZARDOUS MATERIALS FUNDS DISBURSEMENT PROCEDURES

3.1 Developer's Construction Account.

3.1.1 There has been or will be created in Developer's name at the office of _____, San Francisco, California _____ a special non-interest-bearing account (the "Developer's Construction Account") in which Agency shall deposit or caused to be deposited, Hazardous Materials Funds. Hazardous Materials Funds shall not be advanced more frequently than once a month as construction progresses.

3.1.2 On or about the tenth (10th) day of each month, with respect to any expenditure in connection with Hazardous Materials during the preceding month, Developer shall furnish or cause to be furnished to Agency a Hazardous Materials Disbursement Request which shall be accompanied by (i) the General Contractor's Application for Payment, together with copies of all supporting documents and other information and materials furnished in connection with Hazardous Materials, as called for in the Construction Contract (the "Contractor's Monthly Statement"), and (ii) a statement in substantially the form attached hereto as Exhibit HMADD-6, of any costs (other than Developer's overhead and Project administration costs) incurred by Developer in connection with Hazardous Materials that are not included in Contractor's Monthly Statement, (the "Hazardous Materials Indirect Cost Statement").

Each Hazardous Materials Disbursement Request shall be made to Agency in a timely fashion so that Agency may make Hazardous Materials Advances into Developer's Construction Account as provided in **Paragraph 3.2** below.

3.2 Hazardous Materials Advances. Agency shall make Hazardous Materials Advances by causing the following amounts to be transferred from the Remediation Fund or, if the Remediation Fund shall have been exhausted, from its own funds, into Developer's Construction Account on or before the twenty-fifth (25th) day of the month:

3.2.1 One Hundred percent (100%) of the amount shown to be payable as Hazardous Material Costs on the current Contractor's Monthly Statement;

3.2.2 One Hundred percent (100%) of the amount shown to be payable on the current Hazardous Materials Indirect Cost Statement; and

3.2.3 A Developer Fee equal to: (a) three percent (3 %) of the aggregate amount paid under Paragraphs 3.2.1 and 3.2.2 above.

ARTICLE 4

DISPUTES/ARBITRATION

4.1 Mandatory Disbursements. In the event of a dispute between Agency and Developer with respect to Agency's obligation to make Hazardous Materials Advances as provided in Paragraph 3.2 above, Agency shall provide such funds in the amounts and at the times requested and the dispute shall, at the election of either Agency or Developer, be resolved (i) with respect to any amount due under a Contractor's Monthly Statement, in the manner provided for the resolution of disputes under the Construction Contract but at Agency's sole cost and expense, and (ii) with respect to any amount due under a Hazardous Materials Indirect Cost Statement, by arbitration as provided in Paragraph 5.2 below. The making of any disputed disbursement by Agency shall not be deemed to constitute an approval of the disbursement, an acceptance of the Work completed, a waiver of any condition to disbursement or a waiver of any of Agency's rights hereunder.

4.2 Arbitration. Any matter permitted to be arbitrated hereunder, including without limitation, a dispute under Paragraph 4.1 above, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining, unless the parties mutually agree to the contrary.

4.2.1 The agreement to arbitrate contained herein or in any other agreement to arbitrate subsequently entered into between the parties hereto, shall be specifically enforceable under applicable law. The award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

4.2.2 Notice of the demand for arbitration shall be filed in writing with the other party to this Agreement and with the Arbitrator, and in those instances in which the matter under arbitration relates to the performance of the Hazardous Materials Work under the Construction Contract, a copy shall be filed with Project Architect and the General Contractor. The demand for arbitration shall be made within ten (10) Business Days after the claim, dispute or other matter in question has arisen, or at such later date as the party demanding arbitration discovers

such claim, dispute or other matter, but in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

4.2.3 The arbitration shall be held in Oakland, California. The provisions of California Code of Civil Procedure §1283.05, with the exception of subparagraph (e) thereof, shall be applicable in any arbitration conducted under this Paragraph 4.2.

4.3 Mutual Arbitrator. Developer and Agency have jointly appointed _____ to be the sole arbitrator of any disputes identified in Paragraph 4.2 above; provided however that this appointment shall not be binding upon the Construction Lender in the event the Construction Lender, prior to completion of the Excavation, becomes Owner of the Land or of the Project. Any decision made by _____ in its capacity as an Inspector shall not be subject to arbitration under Paragraph 4.2 and any decision made by _____ in its capacity as arbitrator, with respect to any matter subject to arbitration under this Agreement shall be binding on the parties hereto and shall not be subject to further arbitration by Developer or Agency or, absent the consent of the Construction Lender, appeal by either party hereto.

ARTICLE 5

MISCELLANEOUS

5.1 No Third Parties Benefitted. This Agreement is made and entered into for the sole protection and benefit of the parties hereto and their permitted successors and assigns, and no other person shall have any right of action hereon, or any rights to funds at any time on deposit in Developer's Construction Account.

5.2 Notices. All notices required to be given hereunder shall be served in the manner provided in the DDA.

5.3 Actions. Agency shall have the right to commence, appear in or defend any action or proceeding purporting to affect the rights, duties or liabilities of the parties hereunder, the disbursement of any funds hereunder, or otherwise arising in connection with the Hazardous Materials, if Developer fails or declines to take such action.

5.4 Assignment. The terms hereof shall be binding upon and inure to the benefit of successors and assigns of the parties hereto.

5.5 Time. Time is of the essence hereof.

5.6 Indemnity, Loss or Damage. Agency acknowledges, understands and agrees as follows:

As provided in the DDA, Agency shall be responsible for and agrees to indemnify and keep Developer free and harmless from all loss, cost or expense of any kind arising out of or in connection with Hazardous Materials including, but not limited to, any such loss, cost or expense arising in connection with Agency's failure to provide Hazardous Material Funds as required in this Agreement.

5.7 Controlling Law; Approvals.

5.7.1 This Agreement shall be governed by and construed in accordance with the laws of the State of California.

5.7.2 All consents and approvals required or permitted by any provision of this Agreement shall be in writing. The consent to or approval of any act by either party hereto shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act.

5.8 Survival of Warranties and Covenants. The warranties, representations, conditions, covenants and agreements set forth herein shall continue in full force and effect until all of the obligations of Agency hereunder or under the DDA with respect to Hazardous Materials are satisfied in full. Nothing contained in this **Paragraph 5.8** is intended to limit any provision of the DDA which by its stated terms survives the occurrence of an event.

5.9 Amendment. This Agreement may not be modified, waived, discharged or terminated except by a written instrument signed by the party against whom enforcement of the modification, waiver, discharge or termination is asserted.

5.10 Counterparts. This Agreement may be executed in any number of counterparts and by different parties in separate counterparts, each of which when executed and delivered shall be deemed an original and all of which counterparts taken together shall constitute but one and the same instrument.

5.11 Severability. If any term, provision, covenant or condition hereof or any application thereof should be held by a court of competent jurisdiction to be invalid, void or unenforceable, all terms, provisions, covenants and conditions hereof and all applications thereof not held invalid, void or unenforceable shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

5.12 Captions. All Article and Paragraph headings in this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement for any other purpose.

5.13 Superseding Effect. If any provision contained herein is inconsistent with the DDA, then except as otherwise expressly provided herein, the terms and provisions of this Agreement shall control and supersede any similar terms and provisions of the DDA.

Executed as of the date first set forth above.



CITY OF OAKLAND



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Public Works Agency
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August 27, 1998

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425 Roland Way
Oakland, CA 94621

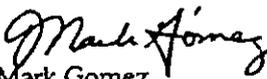
Dear Mr. Litzau:

Please find enclosed the following information regarding environmental conditions at the 9th and Broadway site:

- ▶ SECOR International Inc., *Summary Report for Limited Soil and Groundwater Investigation at 9th Street and Broadway, Oakland California, April 27, 1998.*
- ▶ Harding Lawson Associates, *Preliminary Soil Characterization, Oakland Broadway Block, Chinatown Redevelopment Project Area, 9th Street and Broadway, Oakland, California, November 11, 1993.*
- ▶ Harding Lawson Associates, *Report on Groundwater Monitoring, June 1992, Chinatown Redevelopment Project Area, Oakland, California, September 9, 1992.*
- ▶ Harding Lawson Associates, *Response to Request for Workplan, Hydrocarbon Release from Underground Storage Tanks, Chinatown Redevelopment Project Area, Oakland, California, June 16, 1992.*
- ▶ Harding Lawson Associates, *Report on Groundwater Monitoring, March 1992, Chinatown Redevelopment Project Area, Oakland, California, May 20, 1992.*

This constitutes the full set of existing data that I am aware of. If you have any questions, please do not hesitate to contact either me, at (510) 238-7314, or Mark Hersh, at (510) 238-7695.

Sincerely,


Mark Gomez
Brownfields Specialist

c: Lois Butler, CEDA

EXHIBIT A

Description of the Land

Parcel

DDA#4 June 27, 1999

Exhibit M-A-1

EXHIBIT B

Hazardous Materials Disbursement Request

DDA#4 June 27, 1999

Exhibit M-B-1

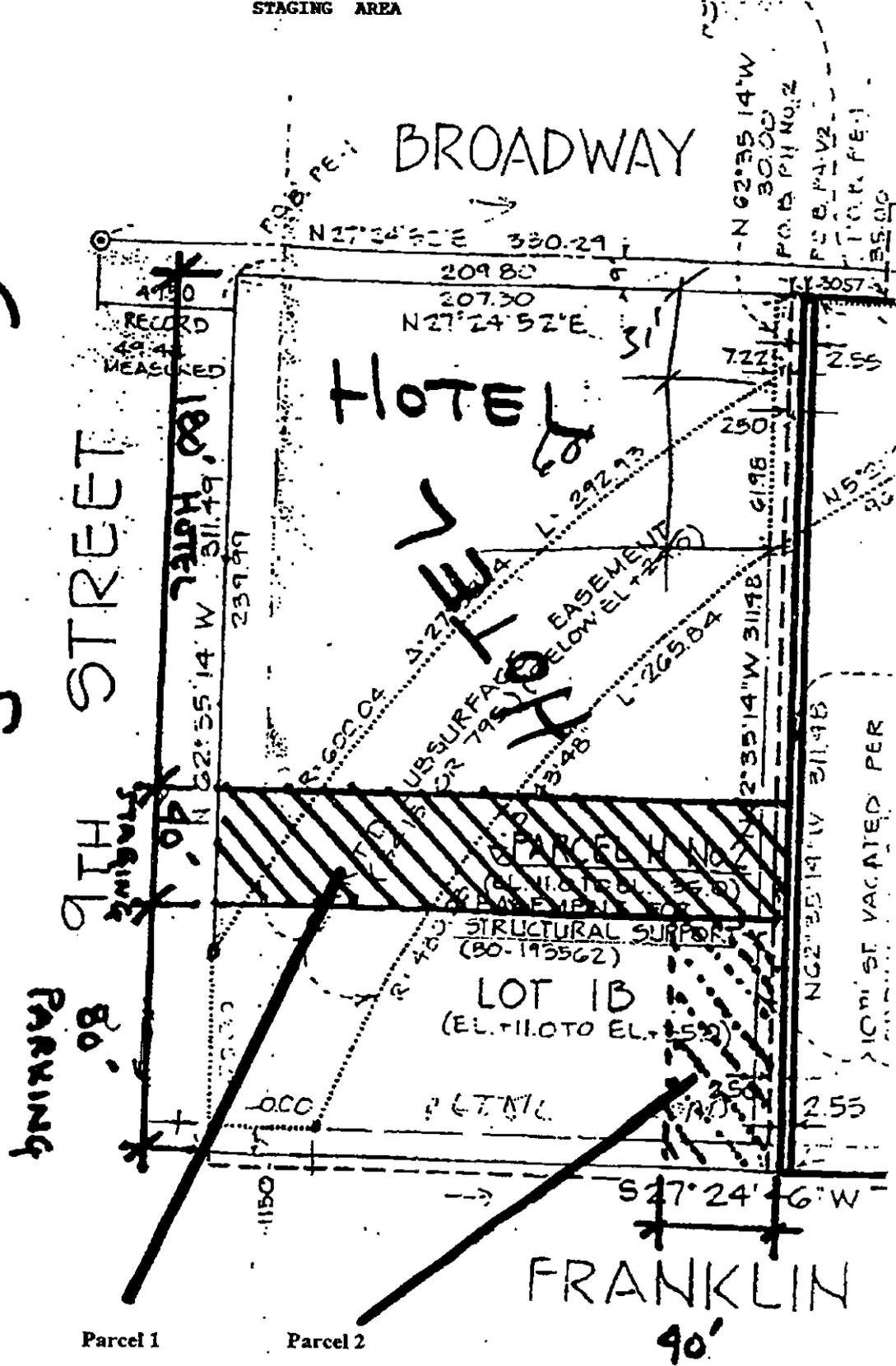
Exhibit N
STAGING AREA

DDA#4 June 27, 1999

Exhibit N-1

Exhibit N
STAGING AREA

CONTRACTOR STAGING
@ CITY PARKING



Parcel 1

Parcel 2

Exhibit N.

6.9

Exhibit O

DECLARATION OF COMPLIANCE

DDA#4 June 27, 1999

Exhibit O-1

REC'D IN THE OFFICE OF THE
CITY ATTORNEY OF THE CITY OF
OAKLAND, CA, BY PERSONAL
DELIVERY/MAIL AT
1599 DEC 10 PM 4:47
JAYNE W. WILLIAMS,
CITY ATTORNEY
PER _____