

CITY OF OAKLAND



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Planning and Building Department
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Sent via U.S. Mail and Electronic Mail

October 25, 2016

Ninth & Jefferson Associates LLC
c/o Joe Hernon
1714 Franklin St. #100-244
Oakland, CA 94612

RE: Case File No. PLN16092; 605-9th Street; (APN: 001-0211-006-00)

Dear Mr. Hernon,

Your application, as described below, has been **APPROVED** for the reasons stated in Attachment A, which contains the findings required to support this decision. Attachment B contains the Conditions of Approval for the project. This decision is effective ten (10) days after the date of this letter unless appealed as explained below.

The following table summarizes the proposed project:

Proposal:	To demolish an existing one-story commercial building and construct a new 25 residential unit, eight-story building.
Planning Permits Required:	Regular Design Review for new construction of 25 residential units. Minor Variance for a side yard setback encroachment on the south side of the building for floors 6,7 and 8 due to the stairs and elevator not stepping inward at a one foot for every five feet above portions of the building over 55 feet. Minor conditional Use Permits for (1) an elevator penthouse above 12 feet with a proposal of 19 feet; (2) 23 off-street parking spaces where 24 are required (24 parking spaces required due to an excess of bicycle parking spaces provided, thus a reduction from 25 parking spaces).
General Plan:	Central Business District
Zoning:	CBD-R Central Business District Residential Zone.
Environmental Determination:	Exempt, Section 15332 of the State CEQA Guidelines; In-fill development. Section 15183 of the State CEQA Guidelines; projects consistent with a community plan, general plan or zoning.
Historic Status:	Not A Potential Historic Property; Survey Rating: F3
Service Delivery District:	Metro
City Council District:	3

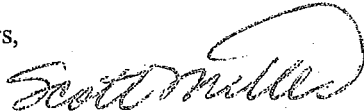
If you, or any interested party, seeks to challenge this decision, an appeal **must** be filed by no later than ten calendar (10) days from the date of this letter, by **4:00 pm on November 4th, 2016**. An appeal shall be on a form provided by the Planning and Zoning Division of the Community and Economic Development Agency, and submitted to the same at 250 Frank H. Ogawa Plaza, Suite 2114, to the attention of **Michael Bradley, Planner II**. The appeal shall state specifically

wherein it is claimed there was error or abuse of discretion by the Zoning Manager or wherein his/her decision is not supported by substantial evidence and must include payment of \$1,622.57 in accordance with the City of Oakland Master Fee Schedule. Failure to timely appeal will preclude you, or any interested party, from challenging the City's decision in court. The appeal itself must raise each and every issue that is contested, along with all the arguments and evidence in the record which supports the basis of the appeal; failure to do so may preclude you, or any interested party, from raising such issues during the appeal and/or in court. However, the appeal will be limited to issues and/or evidence presented to the Zoning Manager prior to the close of the previously noticed public comment period on the matter.

A signed Notice of Exemption (NOE) is enclosed certifying that the project has been found to be exempt from CEQA review. It is your responsibility to record the NOE and the Environmental Declaration at the Alameda County Clerk's office at 1106 Madison Street, Oakland, CA 94612, at a cost of \$50.00 made payable to the Alameda County Clerk. Please bring the original NOE related documents and five copies to the Alameda County Clerk, and return one date stamped copy to the Zoning Division, to the attention of **Michael Bradley, Planner II**. Pursuant to Section 15062(d) of the California Environmental Quality Act (CEQA) Guidelines, recordation of the NOE starts a 35-day statute of limitations on court challenges to the approval under CEQA.

If you have any questions, please contact the case planner, **Michael Bradley, Planner II** at (510) 238-6935 or mbradley@oaklandnet.com, however, this does not substitute for filing of an appeal as described above.

Very Truly Yours,



SCOTT MILLER
Zoning Manager

cc: Zachary Wald ZWald@oaklandnet.com
 Guy Sussman skyguy1299@gmail.com
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Attachments:

- A. Findings
- B. Conditions of Approval, including Standard Conditions of Approvals

ATTACHMENT A: FINDINGS

This proposal meets all the required findings under Regular Design Review findings (Section 17.136.050A), the Minor Conditional Use Permit criteria (Section 17.134.050), and the Minor Variance criteria (Section 17.148.050A), and as set forth below and which are required to approve your application. Required findings are shown in **bold type**; reasons your proposal satisfies them are shown in normal type.

17.136.050A - RESIDENTIAL DESIGN REVIEW CRITERIA:

- 1. The proposed design will create a building or set of buildings that are well related to the surrounding area in their setting, scale, bulk, height, materials, and textures.**

The proposed development would include an eight story 25 unit residential building with the demolition of an existing one-story commercial building. The project would contain earth tone exterior plaster and metal panels at the upper levels with a Terra Cotta base and accents of dark bronze in the windows and ground floor level. The other materials include glass guardrails, metal awnings, exposed concrete columns, and mesh roll up door for the parking area. The color and material palette is similar to that of other residential buildings in the area. The area contains a wide mix of building heights from a number of five and six story buildings to lower scale two story buildings and up to the large towers associated with the downtown office buildings. The building is located at the corner of Jefferson and 9th Streets with an established retail/wholesale Flower Market adjacent that wraps the site. The existing intersection of the site has a five-story multi-unit building at each corner and the proposal is to create a vertical volume at the subject corner to fill in the established intersection. The proposed building slightly exceeds the adjacent building heights, but has a much smaller lot size thus gaining density vertically while not over massing the other corner buildings. Even if the project were to build at five or six stories to match the other corner sites the same perceived bulk and scale would exist thus the additional height does not create impacts on the neighboring buildings. The proposed design will relate well with surrounding buildings in terms of setting, scale, bulk, height, materials, and textures.

- 2. The proposed design will protect, preserve, or enhance desirable neighborhood characteristics.**

The proposal will enhance desirable neighborhood characteristics by redeveloping a one-story vacant, graffiti covered building site with an attractive 25 unit residential building that is compatible with the neighborhood. Further the buildings site design proposes the only driveway towards the rear on 9th Street thus not to detract from the entrance to the retail establishments on Jefferson Street. Additionally, the proposal provides an active well-lit, corner ground floor communal space which will eliminate light outward and add eyes on the street.

- 3. The proposed design will be sensitive to the topography and landscape.**

The project site is a flat lot. New landscaping and street trees are proposed at the corner with a rooftop outdoor patio seating area.

- 4. If situated on a hill, the design and massing of the proposed building relates to the grade of the hill.**

The project site is flat.

- 5. The proposed design conforms in all significant respects with the Oakland General Plan and with any applicable design review guidelines or criteria, district plan or development control map which has been adopted by the Planning Commission or City Council.**

The proposed project is consistent with the Corridor Design Guidelines and constructing a new medium to high density residential building within close proximity to the 12th Street BART station would be consistent with the Central Business District land use classification. The proposal is consistent with the following General Plan objectives and policies:

Objective N3 of the Oakland General Plan Land Use and Transportation Element states: "Encourage the construction, conservation, and enhancement of housing resources in order to meet the current and future needs of the Oakland community". This proposal to construct eight residential units conforms to the City of Oakland Comprehensive General Plan and is consistent with the Community Commercial designation.

Objective N3.2, Encouraging Infill Development: In order to facilitate the construction of needed housing units, infill development that is consistent with the General Plan should take place throughout the City of Oakland. The project is an infill development utilizing an underutilized site located within close proximity to transit bus lines and has adequate public infrastructure to serve the development.

Policy N3.1 – Facilitating Housing Construction – Facilitating the construction of housing units should be considered a high priority for the City of Oakland.

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

Policy D10.1 – Encouraging Housing – Housing in the downtown should be encouraged as a vital component of a 24-hour community.

Policy D10.2 – Locating Housing – Housing in the downtown should be encouraged in identifiable districts, within walking distance of the 12th Street, 19th Street, City Center, and Lake Merritt BART stations to encourage transit use, and in other locations where compatible with surrounding uses.

SECTION 17.134.050 – GENERAL USE PERMIT FINDINGS:

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.

A minor conditional Use Permits for (1) an elevator penthouse above 12 feet with a proposal of 19 feet; (2) 23 off-street parking spaces where 24 are required (24 parking spaces required due to an excess of bicycle parking spaces provided, thus a reduction from 25 parking spaces). Justification for the conditional use permits is based on the proposed project meeting the required Design Review criteria and that 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. Also, the subject site is in close proximity to several forms of transit on both Broadway and 11th Streets, thus the reduction in parking will not create an impact on the surrounding neighborhood. The proposed development with a reduction in parking to 23 parking spaces will preserve a convenient and functional working and living environment; and therefore should not affect the general quality and character of the neighborhood. Further, there are several auto-fee parking lots in the area including the 171 parking space lot at 12th Street and Jefferson Street which is approximately three blocks from the subject site. The proposed additional height of seven feet for the elevator penthouse is an effective design solution as many newer elevator shafts are requiring the additional height for safety mechanical equipment.

Further the proposed elevator penthouse will consist of approximately 53 square feet thus on top of the eight-story building it will not be very visible from the street below.

B. That the location, design, and site planning of the proposed development will provide a convenient and functional living, working, shopping, or civic environment, and will be as attractive as the nature of the use and its location and setting warrant.

The location, design and site planning of the proposed development will provide a convenient and functional working and shopping environment, and will attempt to preserve the attractive nature of the use and its location and setting warrant. The proposal will provide Oakland housing stock in an established neighborhood with an active well lite ground floor space which could function for future retail or café use; therefore it would not affect the general quality and character of the neighborhood.

The proposed development with a reduction in parking to 23 parking spaces will preserve a convenient and functional working and living environment; and therefore should not affect the general quality and character of the neighborhood. Also, the subject site is in close proximity to several forms of transit on both Broadway and 11th Streets, thus the reduction in parking will not create an impact on the surrounding neighborhood. Further, the proposed elevator penthouse will be of a light color with similar materials as the lower walls to blend into the structure and will consist of approximately 53 square feet thus on top of the eight-story building it will not be very visible from the street below.

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 in its basic community function and will provide an essential service to the community or region. This will be achieved by adding a permanent housing development for individuals thus expanding the Oakland housing stock. The proposal will enhance the surrounding area by adding desirable site improvements to enhance the public safety, security and appearance of the neighborhood. This area at the outer edge of the Old Oakland neighborhood has a desirable mix of multi-family dwellings consisting of two to six stories; thus this new development will increase property values for the surrounding neighborhood and be compatible with existing and future developments. Additionally, the proposal provides an active well-lit, corner ground floor communal space which will eliminate light outward and add eyes on the street.

D. That the proposal conforms to all applicable design review criteria set forth in the DESIGN REVIEW PROCEDURE of Chapter 17.136 of the Oakland Planning Code.

The proposal conforms with all significant aspects of the design review criteria set forth in Chapter 17.136 of the Oakland Planning Code, as outlined above.

E. That the proposal conforms in all significant respects with the Oakland General Plan and with any other applicable plan or development control map which has been adopted by the City Council.

The subject site is in the Central Business District of the City of Oakland General Plan. The Central Business District (CBD) 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.

Objective N3 of the Oakland General Plan Land Use and Transportation Element states: "Encourage the construction, conservation, and enhancement of housing resources in order to meet the current and future needs of the Oakland community". This proposal, to construct an 83 residential unit mixed-use building conforms to the City of Oakland Comprehensive General Plan and is consistent with the Community Commercial general plan designation.

Objective N3.2, Encouraging Infill Development: In order to facilitate the construction of needed housing units, infill development that is consistent with the General Plan should take place throughout the City of Oakland. The project is an infill development utilizing an underutilized site located within close proximity to transit bus lines and has adequate public infrastructure to serve the development.

Policy N3.1 – Facilitating Housing Construction – Facilitating the construction of housing units should be considered a high priority for the City of Oakland.

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

Policy D10.1 – Encouraging Housing – Housing in the downtown should be encouraged as a vital component of a 24-hour community.

Policy D10.2 – Locating Housing – Housing in the downtown should be encouraged in identifiable districts, within walking distance of the 12th Street, 19th Street, City Center, and Lake Merritt BART stations to encourage transit use, and in other locations where compatible with surrounding uses.

The proposed residential development will not detract from the character of Central Business District neighborhood, but rather, should enhance it.

SECTION 17.148.050(A) - MINOR VARIANCE FINDINGS:

- A. 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.**

The minor variance for the proposed project (to demolish an existing one-story commercial building and construct a new 25 residential unit, eight-story building), is for a side yard setback encroachment on the south side of the building for floors six (6) (2'-0" encroachment), seven (7) (4'-0" encroachment) and eight (8) (6'-0" encroachment) due to the stairs, elevator and a 2 foot section of living space not stepping inward at a one foot for every five feet above portions of the building over 55 feet.

Justification for the minor variance is based on the proposed project meeting the Residential Design Review criteria, and because strict compliance with the interior lot line encroachment over 55 feet would decrease the livability and operational efficiency precluding an effective design solution. The most effective place for emergency access stairs and elevator are on the interior lot line side of the building to allow for the placement of pedestrian and auto access on 9th Street and to allow ground floor glazing at the corner and street facing elevations. Due to this appropriate

placement, a staircase and elevator cannot step inward whatsoever due to the required vertical shaft from ground floor to roof for construction. Further, the stair and elevator encroachment is very minimal with approximately 104 square feet on the sixth floor; 208 square feet on the seventh floor; and 312 square feet on the eighth floor with an additional 64 square feet of floor area and due to the adjacent lower heights of the other buildings at the intersection (approximately five stories) little to no impacts should be caused.

- B. That strict compliance with the regulations would deprive the applicant of privileges enjoyed by owners of similarly zoned property; or, as 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 inward step requirement above 55 feet would decrease the livability and operational efficiency and preclude an effective design solution. The most effective place for emergency access stairs and elevator are on the interior lot line side of the building to allow for the placement of pedestrian and auto access on 9th Street and to allow ground floor glazing at the corner and street facing elevations. Due to this appropriate placement, a staircase and elevator cannot step inward whatsoever due to the required vertical shaft from ground floor to roof for construction. Further, the stair and elevator encroachment is very minimal with approximately 104 square feet on the sixth floor; 208 square feet on the seventh floor; and 312 square feet on the eighth floor with an additional 64 square feet of floor area and due to the adjacent lower heights of the other buildings at the intersection (approximately five stories) little to no impacts should be caused. The intent of the code section is to step inward at 55 feet away from established residential buildings, however the subject site is adjacent to a fully built out one story commercial building.

- C. 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 nonconforming side yard setback stepping requirement will be consistent with the surrounding pattern of development, and will not affect the character, livability, or appropriate development of abutting properties or the surrounding area. Most downtown mid-high rise buildings are built up to the adjacent interior property line and based on the design the encroachment is an effective design solution. Further, due to the adjacent lower heights of other buildings at the intersection (approximately five stories) little to no impacts should be caused.

- D. 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 zoning regulations.**

The granting of the variance is consistent with the surrounding pattern of development and therefore will not result in the granting of a special privilege. Most downtown mid-high rise buildings are built up to the adjacent interior property line and based on the design the encroachment is an effective design solution. Further, due to the adjacent lower heights of other buildings at the intersection (approximately five stories) little to no impacts should be caused.

- E. For proposals involving one or two dwelling units on a lot: That the elements of the proposal requiring the variance (e.g. elements such as buildings, walls, fences, driveways, garages and carports, etc.) conform with the design review criteria set forth in the design review procedure at Section 17.136.050.**

The proposed project has been reviewed for, and found to comply with, all applicable design review criteria as reviewed above.

- F. For proposals involving one or two residential dwelling units on a lot: That, if the variance would relax a regulation governing maximum height, minimum yards, maximum lot coverage or building length alongside lot lines, the proposal also conforms with at least one of the following criteria:**

- a. The proposal when viewed in its entirety will not adversely impact abutting residences to the side, rear, or directly across the street with respect to solar access, view blockage and privacy to a degree greater than**

that which would be possible if the residence were built according to the applicable regulation and, for height variances, the proposal provides detailing, articulation or other design treatments that mitigate any bulk created by the additional height; or

- b. Over 60 percent of the lots in the immediate vicinity are already developed and the proposal does not exceed the corresponding as-built condition on these lots and, for height variances, the proposal provides detailing, articulation or other design treatments that mitigate any bulk created by the additional height. The immediate context shall consist of the five closest lots on each side of the project site plus the ten closest lots on the opposite side of the street (see Illustration I-4b); however, the Director of City Planning may make an alternative determination of immediate context based on specific site conditions. Such determination shall be in writing and included as part of any decision on any variance.

This finding does not apply as the proposal is not for one or two residential dwelling units on the lot, but rather 25 residential units.

**CITY OF OAKLAND
CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)
CLASS 32 (IN-FILL DEVELOPMENT) EXEMPTION FINDINGS**

CEQA, or the California Environmental Quality Act, is a statute that requires state and local agencies to identify the significant environmental impacts of their actions and to avoid or mitigate those impacts, if feasible. Categorical exemptions are descriptions of types of projects which the Secretary of the Resources Agency of the State of California has determined do not have a significant effect on the environment, and therefore are not subject to further environmental review under CEQA.

The Class 32 exemption (Section 15332 of the State CEQA Guidelines) is intended to promote infill development within urbanized areas. The class consists of environmentally benign in-fill projects which are consistent with local general plan and zoning requirements. This class is not intended to be applied to projects which would result in any significant traffic, noise, air quality, or water quality effects. In order to qualify for this exemption, projects must comply with all of the following findings.

1. The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations:

The subject site is in the Central Business District of the City of Oakland General Plan. The Central Business District (CBD) 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.

Objective N3 of the Oakland General Plan Land Use and Transportation Element states: "Encourage the construction, conservation, and enhancement of housing resources in order to meet the current and future needs of the Oakland

community". This proposal to construct 24 residential units with ground floor commercial conforms to the City of Oakland Comprehensive General Plan and is consistent with the Central Business District designation.

Objective N3.2, Encouraging Infill Development: In order to facilitate the construction of needed housing units, infill development that is consistent with the General Plan should take place throughout the City of Oakland. The project is an infill development utilizing an underutilized site located within close proximity to transit bus lines and has adequate public infrastructure to serve the development.

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

Policy D10.1 – Encouraging Housing – Housing in the downtown should be encouraged as a vital component of a 24-hour community.

Policy D10.2 – Locating Housing – Housing in the downtown should be encouraged in identifiable districts, within walking distance of the 12th Street, 19th Street, City Center, and Lake Merritt BART stations to encourage transit use, and in other locations where compatible with surrounding uses.

Policy N3.1 – Facilitating Housing Construction – Facilitating the construction of housing units should be considered a high priority for the City of Oakland.

Constructing a new mid-high density residential building within close proximity to the 12th Street BART station would be consistent with the Central Business District land use classification. The proposal is consistent with the General Plan objectives and policies cited above.

Additionally, the site does not appear on any California EPA Cortese List database. Although, previously a fuel tank was once located on the site; the site plan development will be subject to all standard conditions of approval to address any unforeseen impacts to the subject site and any adjacent properties. Thus the project is therefore categorically exempt from the *California Environmental Quality Act* (CEQA); section 15332 as an infill development.

2. The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses:

The proposed development occurs within City limits on a project site of 5,000 square feet, less than five acres.

3. The project site has no value as habitat for endangered, rare or threatened species:

The project site has been previously developed and has no value as habitat for endangered, rare or threatened species.

4. Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality:

Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality because of the relatively low amount of units and in close proximity to BART and AC Transit. Further, the project would not result in any significant effects to traffic as the 25 new units would generate less than 20 peak hour trips, which are well the 50 peak hour trips that could warrant a traffic impact analysis.

5. The site can be adequately served by all required utilities and public services:

The project site can be adequately served by all required utilities and public services.

ATTACHMENT B: CONDITIONS OF APPROVAL

The proposal is hereby approved subject to the following Conditions of Approval:

1. **Approved Use**

The project shall be constructed and operated in accordance with the authorized use as described in the approved application materials, and approved plans dated **March 18, 2016** and submitted **September 26, 2016**, as amended by the following conditions of approval and mitigation measures, if applicable ("Conditions of Approval" or "Conditions").

2. **Effective Date, Expiration, Extensions and Extinguishment**

This Approval shall become effective immediately, unless the Approval is appealable, in which case the Approval shall become effective in ten calendar days unless an appeal is filed. Unless a different termination date is prescribed, this Approval shall expire **two years** from the Approval date, or from the date of the final decision in the event of an appeal, unless within such period all necessary permits for construction or alteration have been issued, or the authorized activities have commenced in the case of a permit not involving construction or alteration. Upon written request and payment of appropriate fees submitted no later than the expiration date of this Approval, the Director of City Planning or designee may grant a one-year extension of this date, with additional extensions subject to approval by the approving body. Expiration of any necessary building permit or other construction-related permit for this project may invalidate this Approval if said Approval has also expired. If litigation is filed challenging this Approval, or its implementation, then the time period stated above for obtaining necessary permits for construction or alteration and/or commencement of authorized activities is automatically extended for the duration of the litigation.

3. **Compliance with Other Requirements**

The project applicant shall comply with all other applicable federal, state, regional, and local laws/codes, requirements, regulations, and guidelines, including but not limited to those imposed by the City's Bureau of Building, Fire Marshal, and Public Works Department. Compliance with other applicable requirements may require changes to the approved use and/or plans. These changes shall be processed in accordance with the procedures contained in Condition #4.

4. **Minor and Major Changes**

- a. Minor changes to the approved project, plans, Conditions, facilities, or use may be approved administratively by the Director of City Planning.
- b. Major changes to the approved project, plans, Conditions, facilities, or use shall be reviewed by the Director of City Planning to determine whether such changes require submittal and approval of a revision to the Approval by the original approving body or a new independent permit/approval. Major revisions shall be reviewed in accordance with the procedures required for the original permit/approval. A new independent permit/approval shall be reviewed in accordance with the procedures required for the new permit/approval.

5. **Compliance with Conditions of Approval**

- a. The project applicant and property owner, including successors, (collectively referred to hereafter as the "project applicant" or "applicant") shall be responsible for compliance with all the Conditions of

Approval and any recommendations contained in any submitted and approved technical report at his/her sole cost and expense, subject to review and approval by the City of Oakland.

- b. The City of Oakland reserves the right at any time during construction to require certification by a licensed professional at the project applicant's expense that the as-built project conforms to all applicable requirements, including but not limited to, approved maximum heights and minimum setbacks. Failure to construct the project in accordance with the Approval may result in remedial reconstruction, permit revocation, permit modification, stop work, permit suspension, or other corrective action.
- c. Violation of any term, Condition, or project description relating to the Approval is unlawful, prohibited, and a violation of the Oakland Municipal Code. The City of Oakland reserves the right to initiate civil and/or criminal enforcement and/or abatement proceedings, or after notice and public hearing, to revoke the Approval or alter these Conditions if it is found that there is violation of any of the Conditions or the provisions of the Planning Code or Municipal Code, or the project operates as or causes a public nuisance. This provision is not intended to, nor does it, limit in any manner whatsoever the ability of the City to take appropriate enforcement actions. The project applicant shall be responsible for paying fees in accordance with the City's Master Fee Schedule for inspections conducted by the City or a City-designated third-party to investigate alleged violations of the Approval or Conditions.

6. Signed Copy of the Approval/Conditions

A copy of the Approval letter and Conditions shall be signed by the project applicant, attached to each set of permit plans submitted to the appropriate City agency for the project, and made available for review at the project job site at all times.

7. Blight/Nuisances

The project site shall be kept in a blight/nuisance-free condition. Any existing blight or nuisance shall be abated within 60 days of approval, unless an earlier date is specified elsewhere.

8. Indemnification

- a. To the maximum extent permitted by law, the project applicant shall defend (with counsel acceptable to the City), indemnify, and hold harmless the City of Oakland, the Oakland City Council, the Oakland Redevelopment Successor Agency, the Oakland City Planning Commission, and their respective agents, officers, employees, and volunteers (hereafter collectively called "City") from any liability, damages, claim, judgment, loss (direct or indirect), action, causes of action, or proceeding (including legal costs, attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "Action") against the City to attack, set aside, void or annul this Approval or implementation of this Approval. The City may elect, in its sole discretion, to participate in the defense of said Action and the project applicant shall reimburse the City for its reasonable legal costs and attorneys' fees.
- b. Within ten (10) calendar days of the filing of any Action as specified in subsection (a) above, the project applicant shall execute a Joint Defense Letter of Agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations. These obligations and the Joint Defense Letter of Agreement shall survive termination, extinguishment, or invalidation of the Approval. Failure to timely execute the Letter of Agreement does not relieve the project applicant of any of the obligations contained in this Condition or other requirements or Conditions of Approval that may be imposed by the City.

9. **Severability**

The Approval would not have been granted but for the applicability and validity of each and every one of the specified Conditions, and if one or more of such Conditions is found to be invalid by a court of competent jurisdiction this Approval would not have been granted without requiring other valid Conditions consistent with achieving the same purpose and intent of such Approval.

10. **Special Inspector/Inspections, Independent Technical Review, Project Coordination and Monitoring**

The project applicant may be required to cover the full costs of independent third-party technical review and City monitoring and inspection, including without limitation, special inspector(s)/inspection(s) during times of extensive or specialized plan-check review or construction, and inspections of potential violations of the Conditions of Approval. The project applicant shall establish a deposit with the Bureau of Building, if directed by the Building Official, Director of City Planning, or designee, prior to the issuance of a construction-related permit and on an ongoing as-needed basis.

11. **Public Improvements**

The project applicant shall obtain all necessary permits/approvals, such as encroachment permits, obstruction permits, curb/gutter/sidewalk permits, and public improvement ("p-job") permits from the City for work in the public right-of-way, including but not limited to, streets, curbs, gutters, sidewalks, utilities, and fire hydrants. Prior to any work in the public right-of-way, the applicant shall submit plans for review and approval by the Bureau of Planning, the Bureau of Building, and other City departments as required. Public improvements shall be designed and installed to the satisfaction of the City.

12. **Compliance Matrix**

The project applicant shall submit a Compliance Matrix, in both written and electronic form, for review and approval by the Bureau of Planning and the Bureau of Building that lists each Condition of Approval (including each mitigation measure if applicable) in a sortable spreadsheet. The Compliance Matrix shall contain, at a minimum, each required Condition of Approval, when compliance with the Condition is required, and the status of compliance with each Condition. For multi-phased projects, the Compliance Matrix shall indicate which Condition applies to each phase. The project applicant shall submit the initial Compliance Matrix prior to the issuance of the first construction-related permit and shall submit an updated matrix upon request by the City.

13. **Construction Management Plan**

Prior to the issuance of the first construction-related permit, the project applicant and his/her general contractor shall submit a Construction Management Plan (CMP) for review and approval by the Bureau of Planning, Bureau of Building, and other relevant City departments such as the Fire Department and the Public Works Department as directed. The CMP shall contain measures to minimize potential construction impacts including measures to comply with all construction-related Conditions of Approval (and mitigation measures if applicable) such as dust control, construction emissions, hazardous materials, construction days/hours, construction traffic control, waste reduction and recycling, stormwater pollution prevention, noise control, complaint management, and cultural resource management (see applicable Conditions below). The CMP shall provide project-specific information including descriptive procedures, approval documentation, and drawings (such as a site logistics plan, fire safety plan, construction phasing plan, proposed truck routes, traffic control plan, complaint management plan, construction worker parking

plan, and litter/debris clean-up plan) that specify how potential construction impacts will be minimized and how each construction-related requirement will be satisfied throughout construction of the project.

14. Regulatory Permits and Authorizations from Other Agencies

Requirement: The project applicant shall obtain all necessary regulatory permits and authorizations from applicable resource/regulatory agencies including, but not limited to, the Regional Water Quality Control Board, Bay Area Air Quality Management District, Bay Conservation and Development Commission, California Department of Fish and Wildlife, U. S. Fish and Wildlife Service, and Army Corps of Engineers and shall comply with all requirements and conditions of the permits/authorizations. The project applicant shall submit evidence of the approved permits/authorizations to the City, along with evidence demonstrating compliance with any regulatory permit/authorization conditions of approval.

When Required: Prior to activity requiring permit/authorization from regulatory agency

Initial Approval: Approval by applicable regulatory agency with jurisdiction; evidence of approval submitted to Bureau of Planning

Monitoring/Inspection: Applicable regulatory agency with jurisdiction

15. Graffiti Control

Requirement:

- a. During construction and operation of the project, the project applicant shall incorporate best management practices reasonably related to the control of graffiti and/or the mitigation of the impacts of graffiti. Such best management practices may include, without limitation:
 - i. Installation and maintenance of landscaping to discourage defacement of and/or protect likely graffiti-attracting surfaces.
 - ii. Installation and maintenance of lighting to protect likely graffiti-attracting surfaces.
 - iii. Use of paint with anti-graffiti coating.
 - iv. Incorporation of architectural or design elements or features to discourage graffiti defacement in accordance with the principles of Crime Prevention Through Environmental Design (CPTED).
 - v. Other practices approved by the City to deter, protect, or reduce the potential for graffiti defacement.
- b. The project applicant shall remove graffiti by appropriate means within seventy-two (72) hours. Appropriate means include the following:
 - i. Removal through scrubbing, washing, sanding, and/or scraping (or similar method) without damaging the surface and without discharging wash water or cleaning detergents into the City storm drain system.
 - ii. Covering with new paint to match the color of the surrounding surface.
 - iii. Replacing with new surfacing (with City permits if required).

When Required: Ongoing

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

16. Landscape Plan

a. Landscape Plan Required

Requirement: The project applicant shall submit a final Landscape Plan for City review and approval that is consistent with the approved Landscape Plan. The Landscape Plan shall be included with the

set of drawings submitted for the construction-related permit and shall comply with the landscape requirements of chapter 17.124 of the Planning Code.

When Required: Prior to approval of construction-related permit

Initial Approval: Bureau of Planning

Monitoring/Inspection: N/A

b. *Landscape Installation*

Requirement: The project applicant shall implement the approved Landscape Plan unless a bond, cash deposit, letter of credit, or other equivalent instrument acceptable to the Director of City Planning, is provided. The financial instrument shall equal the greater of \$2,500 or the estimated cost of implementing the Landscape Plan based on a licensed contractor's bid.

When Required: Prior to building permit final

Initial Approval: Bureau of Planning

Monitoring/Inspection: Bureau of Building

c. *Landscape Maintenance*

Requirement: All required planting shall be permanently maintained in good growing condition and, whenever necessary, replaced with new plant materials to ensure continued compliance with applicable landscaping requirements. The property owner shall be responsible for maintaining planting in adjacent public rights-of-way. All required fences, walls, and irrigation systems shall be permanently maintained in good condition and, whenever necessary, repaired or replaced.

When Required: Ongoing

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

17. Lighting

Requirement: Proposed new exterior lighting fixtures shall be adequately shielded to a point below the light bulb and reflector to prevent unnecessary glare onto adjacent properties.

When Required: Prior to building permit final

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

18. Construction-Related Air Pollution Controls (Dust and Equipment Emissions)

Requirement: The project applicant shall implement all of the following applicable air pollution control measures during construction of the project:

- a. Water all exposed surfaces of active construction areas at least twice daily. Watering should be sufficient to prevent airborne dust from leaving the site. Increased watering frequency may be necessary whenever wind speeds exceed 15 miles per hour. Reclaimed water should be used whenever feasible.
- b. Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard (i.e., the minimum required space between the top of the load and the top of the trailer).
- c. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.

- d. Pave all roadways, driveways, sidewalks, etc. within one month of site grading or as soon as feasible. In addition, building pads should be laid within one month of grading or as soon as feasible unless seeding or soil binders are used.
- e. Enclose, cover, water twice daily, or apply (non-toxic) soil stabilizers to exposed stockpiles (dirt, sand, etc.).
- f. Limit vehicle speeds on unpaved roads to 15 miles per hour.
- g. Idling times on all diesel-fueled commercial vehicles over 10,000 lbs. shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five minutes (as required by the California airborne toxics control measure Title 13, Section 2485, of the California Code of Regulations). Clear signage to this effect shall be provided for construction workers at all access points.
- h. Idling times on all diesel-fueled off-road vehicles over 25 horsepower shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five minutes and fleet operators must develop a written policy as required by Title 23, Section 2449, of the California Code of Regulations ("California Air Resources Board Off-Road Diesel Regulations").
- i. All construction equipment shall be maintained and properly tuned in accordance with the manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
- j. Portable equipment shall be powered by electricity if available. If electricity is not available, propane or natural gas shall be used if feasible. Diesel engines shall only be used if electricity is not available and it is not feasible to use propane or natural gas.

19. **Exposure to Air Pollution (Toxic Air Contaminants)**

a. ***Health Risk Reduction Measures***

Requirement: The project applicant shall incorporate appropriate measures into the project design in order to reduce the potential health risk due to exposure to toxic air contaminants. The project applicant shall choose one of the following methods:

- i. The project applicant shall retain a qualified air quality consultant to prepare a Health Risk Assessment (HRA) in accordance with California Air Resources Board (CARB) and Office of Environmental Health and Hazard Assessment requirements to determine the health risk of exposure of project residents/occupants/users to air pollutants. The HRA shall be submitted to the City for review and approval. If the HRA concludes that the health risk is at or below acceptable levels, then health risk reduction measures are not required. If the HRA concludes that the health risk exceeds acceptable levels, health risk reduction measures shall be identified to reduce the health risk to acceptable levels. Identified risk reduction measures shall be submitted to the City for review and approval and be included on the project drawings submitted for the construction-related permit or on other documentation submitted to the City.
- or -
- ii. The project applicant shall incorporate the following health risk reduction measures into the project. These features shall be submitted to the City for review and approval and be included on the project drawings submitted for the construction-related permit or on other documentation submitted to the City:
 - o Installation of air filtration to reduce cancer risks and Particulate Matter (PM) exposure for residents and other sensitive populations in the project that are in close proximity to sources of air pollution. Air filter devices shall be rated MERV-13 or higher. As part of

implementing this measure, an ongoing maintenance plan for the building's HVAC air filtration system shall be required.

- Where appropriate, install passive electrostatic filtering systems, especially those with low air velocities (i.e., 1 mph).
- Phasing of residential developments when proposed within 500 feet of freeways such that homes nearest the freeway are built last, if feasible.
- The project shall be designed to locate sensitive receptors as far away as feasible from the source(s) of air pollution. Operable windows, balconies, and building air intakes shall be located as far away from these sources as feasible. If near a distribution center, residents shall be located as far away as feasible from a loading dock or where trucks concentrate to deliver goods.
- Sensitive receptors shall be located on the upper floors of buildings, if feasible.
- Planting trees and/or vegetation between sensitive receptors and pollution source, if feasible. Trees that are best suited to trapping PM shall be planted, including one or more of the following: Pine (*Pinus nigra* var. *maritima*), Cypress (*X Cupressocyparis leylandii*), Hybrid poplar (*Populus deltoids X trichocarpa*), and Redwood (*Sequoia sempervirens*).
- Sensitive receptors shall be located as far away from truck activity areas, such as loading docks and delivery areas, as feasible.
- Existing and new diesel generators shall meet CARB's Tier 4 emission standards, if feasible.
- Emissions from diesel trucks shall be reduced through implementing the following measures, if feasible:
 - Installing electrical hook-ups for diesel trucks at loading docks.
 - Requiring trucks to use Transportation Refrigeration Units (TRU) that meet Tier 4 emission standards.
 - Requiring truck-intensive projects to use advanced exhaust technology (e.g., hybrid) or alternative fuels.
 - Prohibiting trucks from idling for more than two minutes.
 - Establishing truck routes to avoid sensitive receptors in the project. A truck route program, along with truck calming, parking, and delivery restrictions, shall be implemented.

When Required: Prior to approval of construction-related permit

Initial Approval: Bureau of Planning

Monitoring/Inspection: Bureau of Building

b. Maintenance of Health Risk Reduction Measures

Requirement: The project applicant shall maintain, repair, and/or replace installed health risk reduction measures, including but not limited to the HVAC system (if applicable), on an ongoing and as-needed basis. Prior to occupancy, the project applicant shall prepare and then distribute to the building manager/operator an operation and maintenance manual for the HVAC system and filter including the maintenance and replacement schedule for the filter.

When Required: Ongoing

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

20. Asbestos in Structures

Requirement: The project applicant shall comply with all applicable laws and regulations regarding demolition and renovation of Asbestos Containing Materials (ACM), including but not limited to California Code of Regulations, Title 8; California Business and Professions Code, Division 3; California Health and Safety Code sections 25915-25919.7; and Bay Area Air Quality Management District, Regulation 11, Rule 2, as may be amended. Evidence of compliance shall be submitted to the City upon request.

When Required: Prior to approval of construction-related permit

Initial Approval: Applicable regulatory agency with jurisdiction

Monitoring/Inspection: Applicable regulatory agency with jurisdiction

21. Archaeological and Paleontological Resources – Discovery During Construction

Requirement: Pursuant to CEQA Guidelines section 15064.5(f), in the event that any historic or prehistoric subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the project applicant shall notify the City and consult with a qualified archaeologist or paleontologist, as applicable, to assess the significance of the find. In the case of discovery of paleontological resources, the assessment shall be done in accordance with the Society of Vertebrate Paleontology standards. If any find is determined to be significant, appropriate avoidance measures recommended by the consultant and approved by the City must be followed unless avoidance is determined unnecessary or infeasible by the City. Feasibility of avoidance shall be determined with consideration of factors such as the nature of the find, project design, costs, and other considerations. If avoidance is unnecessary or infeasible, other appropriate measures (e.g., data recovery, excavation) shall be instituted. Work may proceed on other parts of the project site while measures for the cultural resources are implemented.

In the event of data recovery of archaeological resources, the project applicant shall submit an Archaeological Research Design and Treatment Plan (ARDTP) prepared by a qualified archaeologist for review and approval by the City. The ARDTP is required to identify how the proposed data recovery program would preserve the significant information the archaeological resource is expected to contain. The ARDTP shall identify the scientific/historic research questions applicable to the expected resource, the data classes the resource is expected to possess, and how the expected data classes would address the applicable research questions. The ARDTP shall include the analysis and specify the curation and storage methods. Data recovery, in general, shall be limited to the portions of the archaeological resource that could be impacted by the proposed project. Destructive data recovery methods shall not be applied to portions of the archaeological resources if nondestructive methods are practicable. Because the intent of the ARDTP is to save as much of the archaeological resource as possible, including moving the resource, if feasible, preparation and implementation of the ARDTP would reduce the potential adverse impact to less than significant. The project applicant shall implement the ARDTP at his/her expense.

In the event of excavation of paleontological resources, the project applicant shall submit an excavation plan prepared by a qualified paleontologist to the City for review and approval. All significant cultural materials recovered shall be subject to scientific analysis, professional museum curation, and/or a report prepared by a qualified paleontologist, as appropriate, according to current professional standards and at the expense of the project applicant.

When Required: During construction

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

22. Human Remains – Discovery During Construction

Requirement: Pursuant to CEQA Guidelines section 15064.5(e)(1), in the event that human skeletal remains are uncovered at the project site during construction activities, all work shall immediately halt and the project applicant shall notify the City and the Alameda County Coroner. If the County Coroner determines that an investigation of the cause of death is required or that the remains are Native American, all work shall cease within 50 feet of the remains until appropriate arrangements are made. In the event that the remains are Native American, the City shall contact the California Native American Heritage Commission (NAHC), pursuant to subdivision (c) of section 7050.5 of the California Health and Safety Code. If the agencies determine that avoidance is not feasible, then an alternative plan shall be prepared with specific steps and timeframe required to resume construction activities. Monitoring, data recovery, determination of significance, and avoidance measures (if applicable) shall be completed expeditiously and at the expense of the project applicant.

When Required: During construction

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

23. Construction-Related Permit(s)

Requirement: The project applicant shall obtain all required construction-related permits/approvals from the City. The project shall comply with all standards, requirements and conditions contained in construction-related codes, including but not limited to the Oakland Building Code and the Oakland Grading Regulations, to ensure structural integrity and safe construction.

When Required: Prior to approval of construction-related permit

Initial Approval: Bureau of Building

Monitoring/Inspection: Bureau of Building

24. Hazardous Materials Related to Construction

Requirement: The project applicant shall ensure that Best Management Practices (BMPs) are implemented by the contractor during construction to minimize potential negative effects on groundwater, soils, and human health. These shall include, at a minimum, the following:

- a. Follow manufacture's recommendations for use, storage, and disposal of chemical products used in construction;
- b. Avoid overtopping construction equipment fuel gas tanks;
- c. During routine maintenance of construction equipment, properly contain and remove grease and oils;
- d. Properly dispose of discarded containers of fuels and other chemicals;
- e. Implement lead-safe work practices and comply with all local, regional, state, and federal requirements concerning lead (for more information refer to the Alameda County Lead Poisoning Prevention Program); and
- f. If soil, groundwater, or other environmental medium with suspected contamination is encountered unexpectedly during construction activities (e.g., identified by odor or visual staining, or if any underground storage tanks, abandoned drums or other hazardous materials or wastes are encountered), the project applicant shall cease work in the vicinity of the suspect material, the area shall be secured as necessary, and the applicant shall take all appropriate measures to protect human health and the environment. Appropriate measures shall include notifying the City and applicable regulatory agency(ies) and implementation of the actions described in the City's Standard Conditions of Approval, as necessary, to identify the nature and extent of contamination. Work shall not resume in

the area(s) affected until the measures have been implemented under the oversight of the City or regulatory agency, as appropriate.

When Required: During construction

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

25. Site Contamination

a. *Environmental Site Assessment Required*

Requirement: The project applicant shall submit a Phase I Environmental Site Assessment report, and Phase II Environmental Site Assessment report if warranted by the Phase I report, for the project site for review and approval by the City. The report(s) shall be prepared by a qualified environmental assessment professional and include recommendations for remedial action, as appropriate, for hazardous materials. The project applicant shall implement the approved recommendations and submit to the City evidence of approval for any proposed remedial action and required clearances by the applicable local, state, or federal regulatory agency.

When Required: Prior to approval of construction-related permit

Initial Approval: Oakland Fire Department

Monitoring/Inspection: Oakland Fire Department

b. *Health and Safety Plan Required*

Requirement: The project applicant shall submit a Health and Safety Plan for the review and approval by the City in order to protect project construction workers from risks associated with hazardous materials. The project applicant shall implement the approved Plan.

When Required: Prior to approval of construction-related permit

Initial Approval: Bureau of Building

Monitoring/Inspection: Bureau of Building

c. *Best Management Practices (BMPs) Required for Contaminated Sites*

Requirement: The project applicant shall ensure that Best Management Practices (BMPs) are implemented by the contractor during construction to minimize potential soil and groundwater hazards. These shall include the following:

- i. Soil generated by construction activities shall be stockpiled on-site in a secure and safe manner. All contaminated soils determined to be hazardous or non-hazardous waste must be adequately profiled (sampled) prior to acceptable reuse or disposal at an appropriate off-site facility. Specific sampling and handling and transport procedures for reuse or disposal shall be in accordance with applicable local, state, and federal requirements.
- ii. Groundwater pumped from the subsurface shall be contained on-site in a secure and safe manner, prior to treatment and disposal, to ensure environmental and health issues are resolved pursuant to applicable laws and policies. Engineering controls shall be utilized, which include impermeable barriers to prohibit groundwater and vapor intrusion into the building.

When Required: During construction

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

26. Source Control Measures to Limit Stormwater Pollution

Requirement: Pursuant to Provision C.3 of the Municipal Regional Stormwater Permit issued under the National Pollutant Discharge Elimination System (NPDES), the project applicant is encouraged to incorporate appropriate source control measures to limit pollution in stormwater runoff. These measures may include, but are not limited to, the following:

- a. Stencil storm drain inlets "No Dumping – Drains to Bay;"
- b. Minimize the use of pesticides and fertilizers;
- c. Cover outdoor material storage areas, loading docks, repair/maintenance bays and fueling areas;
- d. Cover trash, food waste, and compactor enclosures; and
- e. Plumb the following discharges to the sanitary sewer system, subject to City approval:
- f. Discharges from indoor floor mats, equipment, hood filter, wash racks; and, covered outdoor wash racks for restaurants;
- g. Dumpster drips from covered trash, food waste, and compactor enclosures;
- h. Discharges from outdoor covered wash areas for vehicles, equipment, and accessories;
- i. Swimming pool water, if discharge to on-site vegetated areas is not feasible; and
- j. Fire sprinkler test water, if discharge to on-site vegetated areas is not feasible.

When Required: Ongoing

Initial Approval: N/A

Monitoring/Inspection: N/A

27. NPDES C.3 Stormwater Requirements for Small Projects

Requirement: Pursuant to Provision C.3 of the Municipal Regional Stormwater Permit issued under the National Pollutant Discharge Elimination System (NPDES), the project applicant shall incorporate one or more of the following site design measures into the project:

- a. Direct roof runoff into cisterns or rain barrels for reuse;
- b. Direct roof runoff onto vegetated areas;
- c. Direct runoff from sidewalks, walkways, and/or patios onto vegetated areas;
- d. Direct runoff from driveways and/or uncovered parking lots onto vegetated areas;
- e. Construct sidewalks, walkways, and/or patios with permeable surfaces; or
- f. Construct bike lanes, driveways, and/or uncovered parking lots with permeable surfaces.

The project drawings submitted for construction-related permits shall include the proposed site design measure(s) and the approved measure(s) shall be installed during construction. The design and installation of the measure(s) shall comply with all applicable City requirements.

When Required: Prior to approval of construction-related permit

Initial Approval: Bureau of Planning; Bureau of Building

Monitoring/Inspection: Bureau of Building

28. Construction Days/Hours

Requirement: The project applicant shall comply with the following restrictions concerning construction days and hours:

- a. Construction activities are limited to between 7:00 a.m. and 7:00 p.m. Monday through Friday, except that pier drilling and/or other extreme noise generating activities greater than 90 dBA shall be limited to between 8:00 a.m. and 4:00 p.m.

- b. Construction activities are limited to between 9:00 a.m. and 5:00 p.m. on Saturday. In residential zones and within 300 feet of a residential zone, construction activities are allowed from 9:00 a.m. to 5:00 p.m. only within the interior of the building with the doors and windows closed. No pier drilling or other extreme noise generating activities greater than 90 dBA are allowed on Saturday.
- c. No construction is allowed on Sunday or federal holidays.

Construction activities include, but are not limited to, truck idling, moving equipment (including trucks, elevators, etc.) or materials, deliveries, and construction meetings held on-site in a non-enclosed area.

Any construction activity proposed outside of the above days and hours for special activities (such as concrete pouring which may require more continuous amounts of time) shall be evaluated on a case-by-case basis by the City, with criteria including the urgency/emergency nature of the work, the proximity of residential or other sensitive uses, and a consideration of nearby residents'/occupants' preferences. The project applicant shall notify property owners and occupants located within 300 feet at least 14 calendar days prior to construction activity proposed outside of the above days/hours. When submitting a request to the City to allow construction activity outside of the above days/hours, the project applicant shall submit information concerning the type and duration of proposed construction activity and the draft public notice for City review and approval prior to distribution of the public notice.

When Required: During construction

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

29. Construction Noise

Requirement: The project applicant shall implement noise reduction measures to reduce noise impacts due to construction. Noise reduction measures include, but are not limited to, the following:

- a. Equipment and trucks used for project construction shall utilize the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures and acoustically-attenuating shields or shrouds) wherever feasible.
- b. Except as provided herein, impact tools (e.g., jack hammers, pavement breakers, and rock drills) used for project construction shall be hydraulically or electrically powered to avoid noise associated with compressed air exhaust from pneumatically powered tools. However, where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust shall be used; this muffler can lower noise levels from the exhaust by up to about 10 dBA. External jackets on the tools themselves shall be used, if such jackets are commercially available, and this could achieve a reduction of 5 dBA. Quieter procedures shall be used, such as drills rather than impact equipment, whenever such procedures are available and consistent with construction procedures.
- c. Applicant shall use temporary power poles instead of generators where feasible.
- d. Stationary noise sources shall be located as far from adjacent properties as possible, and they shall be muffled and enclosed within temporary sheds, incorporate insulation barriers, or use other measures as determined by the City to provide equivalent noise reduction.
- e. The noisiest phases of construction shall be limited to less than 10 days at a time. Exceptions may be allowed if the City determines an extension is necessary and all available noise reduction controls are implemented.

When Required: During construction

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

30. Extreme Construction Noise

a. Construction Noise Management Plan Required

Requirement: Prior to any extreme noise generating construction activities (e.g., pier drilling, pile driving and other activities generating greater than 90dBA), the project applicant shall submit a Construction Noise Management Plan prepared by a qualified acoustical consultant for City review and approval that contains a set of site-specific noise attenuation measures to further reduce construction impacts associated with extreme noise generating activities. The project applicant shall implement the approved Plan during construction. Potential attenuation measures include, but are not limited to, the following:

- i. Erect temporary plywood noise barriers around the construction site, particularly along on sites adjacent to residential buildings;
- ii. Implement "quiet" pile driving technology (such as pre-drilling of piles, the use of more than one pile driver to shorten the total pile driving duration), where feasible, in consideration of geotechnical and structural requirements and conditions;
- iii. Utilize noise control blankets on the building structure as the building is erected to reduce noise emission from the site;
- iv. Evaluate the feasibility of noise control at the receivers by temporarily improving the noise reduction capability of adjacent buildings by the use of sound blankets for example and implement such measure if such measures are feasible and would noticeably reduce noise impacts; and
- v. Monitor the effectiveness of noise attenuation measures by taking noise measurements.

When Required: Prior to approval of construction-related permit

Initial Approval: Bureau of Building

Monitoring/Inspection: Bureau of Building

b. Public Notification Required

Requirement: The project applicant shall notify property owners and occupants located within 300 feet of the construction activities at least 14 calendar days prior to commencing extreme noise generating activities. Prior to providing the notice, the project applicant shall submit to the City for review and approval the proposed type and duration of extreme noise generating activities and the proposed public notice. The public notice shall provide the estimated start and end dates of the extreme noise generating activities and describe noise attenuation measures to be implemented.

When Required: During construction

Initial Approval: Bureau of Building

Monitoring/Inspection: Bureau of Building

31. Construction Noise Complaints

Requirement: The project applicant shall submit to the City for review and approval a set of procedures for responding to and tracking complaints received pertaining to construction noise, and shall implement the procedures during construction. At a minimum, the procedures shall include:

- a. Designation of an on-site construction complaint and enforcement manager for the project;
- b. A large on-site sign near the public right-of-way containing permitted construction days/hours, complaint procedures, and phone numbers for the project complaint manager and City Code Enforcement unit;
- c. Protocols for receiving, responding to, and tracking received complaints; and

d. Maintenance of a complaint log that records received complaints and how complaints were addressed, which shall be submitted to the City for review upon the City's request.

When Required: Prior to approval of construction-related permit

Initial Approval: Bureau of Building

Monitoring/Inspection: Bureau of Building

32. Operational Noise

Requirement: Noise levels from the project site after completion of the project (i.e., during project operation) shall comply with the performance standards of chapter 17.120 of the Oakland Planning Code and chapter 8.18 of the Oakland Municipal Code. If noise levels exceed these standards, the activity causing the noise shall be abated until appropriate noise reduction measures have been installed and compliance verified by the City.

When Required: Ongoing

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

33. Construction Activity in the Public Right-of-Way

a. Obstruction Permit Required

Requirement: The project applicant shall obtain an obstruction permit from the City prior to placing any temporary construction-related obstruction in the public right-of-way, including City streets and sidewalks.

When Required: Prior to approval of construction-related permit

Initial Approval: Bureau of Building

Monitoring/Inspection: Bureau of Building

b. Traffic Control Plan Required

Requirement: In the event of obstructions to vehicle or bicycle travel lanes, the project applicant shall submit a Traffic Control Plan to the City for review and approval prior to obtaining an obstruction permit. The project applicant shall submit evidence of City approval of the Traffic Control Plan with the application for an obstruction permit. The Traffic Control Plan shall contain a set of comprehensive traffic control measures for auto, transit, bicycle, and pedestrian detours, including detour signs if required, lane closure procedures, signs, cones for drivers, and designated construction access routes. The project applicant shall implement the approved Plan during construction.

When Required: Prior to approval of construction-related permit

Initial Approval: Public Works Department, Transportation Services Division

Monitoring/Inspection: Bureau of Building

c. Repair of City Streets

Requirement: The project applicant shall repair any damage to the public right-of way, including streets and sidewalks caused by project construction at his/her expense within one week of the occurrence of the damage (or excessive wear), unless further damage/excessive wear may continue; in such case, repair shall occur prior to approval of the final inspection of the construction-related permit. All damage that is a threat to public health or safety shall be repaired immediately.

When Required: Prior to building permit final

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

34. Bicycle Parking

Requirement: The project applicant shall comply with the City of Oakland Bicycle Parking Requirements (chapter 17.118 of the Oakland Planning Code). The project drawings submitted for construction-related permits shall demonstrate compliance with the requirements.

When Required: Prior to approval of construction-related permit

Initial Approval: Bureau of Planning

Monitoring/Inspection: Bureau of Building

35. Construction and Demolition Waste Reduction and Recycling

Requirement: The project applicant shall comply with the City of Oakland Construction and Demolition Waste Reduction and Recycling Ordinance (chapter 15.34 of the Oakland Municipal Code) by submitting a Construction and Demolition Waste Reduction and Recycling Plan (WRRP) for City review and approval, and shall implement the approved WRRP. Projects subject to these requirements include all new construction, renovations/alterations/modifications with construction values of \$50,000 or more (except R-3 type construction), and all demolition (including soft demolition) except demolition of type R-3 construction. The WRRP must specify the methods by which the project will divert construction and demolition debris waste from landfill disposal in accordance with current City requirements. The WRRP may be submitted electronically at www.greenhalosystems.com or manually at the City's Green Building Resource Center. Current standards, FAQs, and forms are available on the City's website and in the Green Building Resource Center.

When Required: Prior to approval of construction-related permit

Initial Approval: Public Works Department, Environmental Services Division

Monitoring/Inspection: Public Works Department, Environmental Services Division

36. Underground Utilities

Requirement: The project applicant shall place underground all new utilities serving the project and under the control of the project applicant and the City, including all new gas, electric, cable, and telephone facilities, fire alarm conduits, street light wiring, and other wiring, conduits, and similar facilities. The new facilities shall be placed underground along the project's street frontage and from the project structures to the point of service. Utilities under the control of other agencies, such as PG&E, shall be placed underground if feasible. All utilities shall be installed in accordance with standard specifications of the serving utilities.

When Required: During construction

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

37. Recycling Collection and Storage Space

Requirement: The project applicant shall comply with the City of Oakland Recycling Space Allocation Ordinance (chapter 17.118 of the Oakland Planning Code). The project drawings submitted for construction-related permits shall contain recycling collection and storage areas in compliance with the Ordinance. For residential projects, at least two cubic feet of storage and collection space per residential unit is required, with a minimum of ten cubic feet. For nonresidential projects, at least two cubic feet of

storage and collection space per 1,000 square feet of building floor-area is required, with a minimum of ten cubic feet.

When Required: Prior to approval of construction-related permit

Initial Approval: Bureau of Planning

Monitoring/Inspection: Bureau of Building

38. Green Building Requirements

a. *Compliance with Green Building Requirements During Plan-Check*

Requirement: The project applicant shall comply with the requirements of the California Green Building Standards (CALGreen) mandatory measures and the applicable requirements of the City of Oakland Green Building Ordinance (chapter 18.02 of the Oakland Municipal Code).

i. The following information shall be submitted to the City for review and approval with the application for a building permit:

- Documentation showing compliance with Title 24 of the current version of the California Building Energy Efficiency Standards.
- Completed copy of the final green building checklist approved during the review of the Planning and Zoning permit.
- Copy of the Unreasonable Hardship Exemption, if granted, during the review of the Planning and Zoning permit.
- Permit plans that show, in general notes, detailed design drawings, and specifications as necessary, compliance with the items listed in subsection (ii) below.
- Copy of the signed statement by the Green Building Certifier approved during the review of the Planning and Zoning permit that the project complied with the requirements of the Green Building Ordinance.
- Signed statement by the Green Building Certifier that the project still complies with the requirements of the Green Building Ordinance, unless an Unreasonable Hardship Exemption was granted during the review of the Planning and Zoning permit.
- Other documentation as deemed necessary by the City to demonstrate compliance with the Green Building Ordinance.

ii. The set of plans in subsection (i) shall demonstrate compliance with the following:

- CALGreen mandatory measures.
- All pre-requisites per the green building checklist approved during the review of the Planning and Zoning permit, or, if applicable, all the green building measures approved as part of the Unreasonable Hardship Exemption granted during the review of the Planning and Zoning permit.
- Per the appropriate checklist approved during the Planning entitlement process.
- All green building points identified on the checklist approved during review of the Planning and Zoning permit, unless a Request for Revision Plan-check application is submitted and approved by the Bureau of Planning that shows the previously approved points that will be eliminated or substituted.
- The required green building point minimums in the appropriate credit categories.

When Required: Prior to approval of construction-related permit

Initial Approval: Bureau of Building

Monitoring/Inspection: N/A

b. Compliance with Green Building Requirements During Construction

Requirement: The project applicant shall comply with the applicable requirements of CALGreen and the Oakland Green Building Ordinance during construction of the project.

The following information shall be submitted to the City for review and approval:

- i. Completed copies of the green building checklists approved during the review of the Planning and Zoning permit and during the review of the building permit.
- ii. Signed statement(s) by the Green Building Certifier during all relevant phases of construction that the project complies with the requirements of the Green Building Ordinance.
- iii. Other documentation as deemed necessary by the City to demonstrate compliance with the Green Building Ordinance.

When Required: During construction

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

c. Compliance with Green Building Requirements After Construction

Requirement: Within sixty (60) days of the final inspection of the building permit for the project, the Green Building Certifier shall submit the appropriate documentation to **Build It Green** and attain the minimum required certification/point level. Within one year of the final inspection of the building permit for the project, the applicant shall submit to the Bureau of Planning the Certificate from the organization listed above demonstrating certification and compliance with the minimum point/certification level noted above.

When Required: After project completion as specified

Initial Approval: Bureau of Planning

Monitoring/Inspection: Bureau of Building

Site Specific Conditions of Approval

39. Garage Alert Buzzer

Ongoing

A buzzer warning system shall be installed in the garage that is triggered as vehicles inside the garage approach the sidewalk to serve as an alert to pedestrians that a vehicle is approaching from the garage. The buzzer volume shall be no louder than necessary for pedestrians to hear on the 9th Street sidewalk and the volume should be adjustable such that off-site impacts are avoided.

40. Encroachment Permit

Prior to issuance of building permit.

The applicant shall obtain any encroachment permits, waiver of damages or other approvals required by the Bureau of Building, for any privately constructed public improvements, or any permanent or temporary elements located in the public right of way.

41. Window and Door Details.

Prior to issuance of building permit.

The applicant shall submit to the Planning and Zoning Division for review and approval, a window and door schedule, including cross-sections and elevations, and final architectural details of the front and side elevations.

42. Meter Shielding.

Prior to issuance of building permits.

The applicant shall submit for review and approval by the Planning and Zoning Division, plans showing the location of any and all utility meters, transformers, and the like located within a box set within the building, located on a non-street facing elevation, or screened from view from any public right of way.

43. Signage

Ongoing.

All proposed signage must be applied for with the proper City of Oakland Planning and Building permits. Signage must meet the City of Oakland Small Project Design Guidelines.

44. Architectural Detailing and Building Materials

Ongoing.

All cement plaster stucco shall be smooth finish and applied wet at the job site.

45. Public Art for Private Development Condition of Approval – Residential Project

Prior to Building Permit Issuance and Ongoing.

This project is subject to the City's Public Art for Private Development Ordinance (C.M.S. 13275). As a residential project, the public art obligation is equivalent to 0.50% of the total building valuation for the project, as required by the Ordinance. The obligation can be provided through an on-site art installation or through payment to the City's established public art fund (or combination of an on-site art gallery and/or culture space and partial payment to the public art fund, pursuant to the Ordinance). The obligation must be satisfied prior to the City's issuance of a certificate of occupancy, unless a separate instrument is executed ensuring compliance within a timely manner, subject to City approval. On-site art installation shall be designed by independent artists, or artists working in conjunction with arts or community organizations, that are verified by the City to either hold a valid Oakland business license or be an Oakland-based 501(c)(3) tax designated organization in good standing.

Applicant Statement

I have read and accept responsibility for the Conditions of Approval. I agree to abide by and conform to the Conditions of Approval, as well as to all provisions of the Oakland Planning Code and Oakland Municipal Code pertaining to the project.

Name of Project Applicant

Signature of Project Applicant

Date

City of Oakland
Bureau of Planning
250 Frank H. Ogawa Plaza, Suite 2114
Oakland, CA 94612

NOTICE OF EXEMPTION

TO: Alameda County Clerk
1106 Madison Street
Oakland, CA 94612

Project Title: Case No. PLN16092
Project Applicant: Ninth & Jefferson Associates, LLC – Joe HERNON
Project Location: 605-9th Street, Oakland CA (APN: 001-0211-006-00)
Project Description: To demolish an existing one-story commercial building and construct a new 25 residential unit, eight-story building.

Exempt Status:

Statutory Exemptions

- Ministerial {Sec.15268}
- Feasibility/Planning Study {Sec.15262}
- Emergency Project {Sec.15269}
- Other: {Sec. _____}

Categorical Exemptions

- Existing Facilities {Sec.15301}
- Replacement or Reconstruction {Sec.15302}
- Small Structures {Sec.15303}
- Minor Alterations {Sec.15304}
- In-fill Development {Sec. 15332}
- General Rule {Sec.15061(b)(3)}

Other

- Projects consistent with a community plan, general plan or zoning {Sec. 15183(f)}
- _____ (Sec. _____)

Reasons why project is exempt: The construction of a new eight-story, 25 residential unit building and the demolition of an existing commercial building will not have a significant impact on the environment and is exempt from environmental review.

Lead Agency: City of Oakland, Planning & Building Department, Bureau of Planning, 250 Frank H. Ogawa Plaza, Suite 2114, Oakland, CA 94612

Department/Contact Person: Michael Bradley, Planner II

Phone: 510-238-6935

Signature (Darin Ranelletti, Environmental Review Officer)

10-25-16
Date:

Pursuant to Section 711.4(d)(1) of the Fish and Game Code, statutory and categorical exemptions are also exempt from Department of Fish and Game filing fees.

***ENVIRONMENTAL DECLARATION
(CALIF. FISH AND GAME CODE SEC. 711.4)**

: FOR COURT USE ONLY

NAME AND ADDRESS OF APPLICANT OR LEAD AGENCY :

LEAD AGENCY: CITY OF OAKLAND
Bureau of Planning
250 Frank H. Ogawa Plaza, Suite 2114
Oakland, CA 94612

APPLICANT: Ninth & Jefferson Associates LLC
c/o Joe Hernon
1714 Franklin St. #100-244
Oakland, CA 94612

: FILING NO.

CLASSIFICATION OF ENVIRONMENTAL DOCUMENT: Check the box(es) that applies. CLERKS
USE ONLY

1. **NOTICE OF EXEMPTION** PLU 117
 A - STATUTORILY OR CATEGORICALLY EXEMPT
\$50.00 (Fifty Dollars) - CLERK'S FEE

B - FEE EXEMPTION -NO IMPACT DETERMINATION ISSUED BY F&G PLU 117
\$50.00 (Fifty Dollars) - CLERK'S FEE

2. **NOTICE OF DETERMINATION**
 A - NEGATIVE DECLARATION PLU 116
\$2,210.25 (Two Thousand Two Hundred Ten Dollars and Twenty-Five Cents)-STATE FILING FEE
\$50.00 (Fifty Dollars) - CLERK'S FEE

B - MITIGATED NEGATIVE DECLARATION PLU 116
\$2,210.25 (Two Thousand Two Hundred Ten Dollars and Twenty-Five Cents)-STATE FILING FEE
\$50.00 (Fifty Dollars) - CLERK'S FEE

C - ENVIRONMENTAL IMPACT REPORT PLU 115
\$3,070.00 (Three Thousand Seventy Dollars) - STATE FILING FEE
\$50.00 (Fifty Dollars) - CLERK'S FEE

3. **OTHER** (Specify) Notice of Finding of No Significant Impact PLU 117
\$50.00 (Fifty Dollars) - CLERK'S FEE

***THIS FORM MUST BE COMPLETED AND SUBMITTED WITH ALL ENVIRONMENTAL DOCUMENTS FILED WITH THE ALAMEDA COUNTY CLERK'S OFFICE.**

FOUR COPIES OF ALL NECESSARY DOCUMENTATION ARE REQUIRED FOR FILING PURPOSES.

APPLICABLE FEES MUST BE PAID AT THE TIME OF FILING AN ENVIRONMENTAL DOCUMENT WITH THE ALAMEDA COUNTY CLERK'S OFFICE.

MAKE CHECK PAYABLE TO: ALAMEDA COUNTY CLERK