



THE CITY OF SAN DIEGO

## Report to the Planning Commission

DATE ISSUED: February 6, 2020 REPORT NO. PC-20-009

HEARING DATE: February 13, 2020

SUBJECT: MARIJUANA OUTLET 11189 SORRENTO VALLEY ROAD, UNIT 103,  
PROCESS THREE APPEAL

PROJECT NUMBER: [559038](#)

REFERENCE: [Report to the Hearing Officer No. HO-19-103](#)

OWNER/APPLICANT: Beachwalk Properties, Inc., Owner, and STWC Holdings, Inc., Applicant

### SUMMARY

Issue: Should the Planning Commission deny or affirm the Hearing Officer's decision to approve a Conditional Use Permit (CUP) to allow the operation of a Marijuana Outlet (Outlet) located at 11189 Sorrento Valley Road, Unit 103 within the Torrey Pines Community Planning area?

Staff Recommendation: Deny the appeal and affirm the Hearing Officer's decision to approve Conditional Use Permit No. 2038237.

Community Planning Group Recommendation: On October 11, 2018, the Torrey Pines Community Planning Board (TPCPB) voted 9-3-0 to recommend denial of the proposed project. The Report to the Hearing Officer No. HO-19-103 (Attachment 7) outlines the TPCPB concerns.

Environmental Review: This project was determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA section 15301, Existing Facilities. An appeal of the CEQA determination was previously made and the City Council denied the CEQA appeal on September 16, 2019 per Resolution Number [R-312655](#). The scope of the subject Planning Commission appeal hearing only includes the project, and not the environmental determination.

Fiscal Impact Statement: All costs associated with the processing of this project are paid from a deposit account funded by the applicant.

Code Enforcement Impact: None with this application.

Housing Impact Statement: The project site is designated Prime Industrial Lands by the General Plan, and Industrial Element by the Torrey Pines Community Plan. Industrial development in Sorrento Valley includes manufacturing firms, research and development, laboratories, offices, industrial services, incubator industry and business uses, and supports commercial and retail uses. The IL-3-1 (Industrial-Light) zones allows a mix of commercial, light industrial and office uses. The project site is surrounded by commercial and industrial uses consistent with the community plan. Therefore, the project would not impact the housing supply within the City of San Diego.

#### BACKGROUND:

The 3.2-acre site is located at 11189 Sorrento Valley Road in the IL-3-1 Zone within the Airport Influence Area (Miramar – Review Area 1), Airport Land Use Compatibility Overlay Zone (Marine Corps Air Station (MCAS) – Miramar), Accident Potential Zone 2 (Miramar), Special Flood Hazard Area (100 Year Floodway and 100 Year Floodplain), Transit Priority Area, Parking Impact Overlay Zone (Coastal), Coastal Height Limitation Overlay Zone, Coastal Overlay (Non-Appealable) Zone, and Prime Industrial Lands within the Torrey Pines Community Plan area in Council District 1.

The lot contains two, single-story buildings totaling 46,995 square feet constructed in 1982 and subdivide into commercial condominiums in 2008. The Outlet is proposed in a 1,767-square-foot vacant tenant space, within the southeastern building, which contains five commercial condominium units.

On November 20, 2019, the Hearing Officer approved the project. The [Report to the Hearing Officer No. HO-19-103](#) contains the project background, analysis and necessary draft findings with a staff recommendation of approval. On December 4, 2019, Stefanie N. West, on behalf of the Venture Commerce Center – Sorrento Valley, filed a Development Permit Appeal Application (Appeal) based on factual error, conflict with other matters, and findings not supported (Attachment 2).

#### PROJECT APPEAL DISCUSSION:

The project's appeal issues are summarized below with City staff responses:

Appeal Issue 1: The granting of the CUP does not serve the Community and is not appropriate at the proposed location.

Appeal Issue No. 1a: “The Torrey Pines Community Planning Board (TPCPB) determined on October 16, 2019 that the Marijuana Outlet Project at 11189 Sorrento Valley Road, Suite 103 was denied (The Hearing Officer acknowledged the same, yet apparently did not consider it when making his ruling).”

Staff Response to Issue No. 1a: On November 20, 2019, the Hearing Officer considered all the facts, including the Community Planning Group's recommendation within the Report to the Hearing Officer No. HO-19-103, and public testimony prior to making a decision to approve CUP No. 2038237.

Appeal Issue No. 1b: "The HOA for the entirety of the property located at 11189 Sorrento Valley Road, has a duly recorded Covenants, Conditions and Restrictions ("CC&Rs"), which prohibits any retail usage of any property located in 11189 Sorrento Valley Road since 2008 (The Hearing Officer was apparently fully apprised of the same, as Attachment 4 of the Hearing Officer Report, page 1-2 specifically identifies the CC&Rs were recorded on August 21, 2008 as instrument no. 2008-0044962 of official records)."

Staff Response to Issue No. 1b: The City enforces the San Diego Municipal Code (SDMC). Covenants, Conditions and Restrictions (CC&Rs) established by individual Condominium Associations are not within the City's purview.

Appeal Issue No. 1c: "No tenant or owner at the property, except the applicant, was in favor of the CUP at the November 20, 2019 hearing."

Staff Response to Issue No. 1c: The Outlet is reviewed for compliance with the SDMC, community plan, general plan, and all policies and procedures, including the State of California Cannabis Regulations. The project meets all development regulations and the Hearing Officer made the necessary findings to approve the project.

Appeal Issue No. 1d: "There are children regularly at the facility for other owners/occupiers, including other service providers, not the least of which is the Del Mar Union School District."

Staff Response to Issue No. 1d: Outlets are subject to separation requirements from sensitive uses that include a 1,000-foot measurement between property lines from the proposed project location to resource and population-based City parks, churches, child care centers, playgrounds, City libraries, minor-oriented facilities, residential care facilities, and schools. The Del Mar Union School District maintenance office is not a sensitive use.

Appeal Issue 1e: "There has been no proposed resolution of the safety concern regarding deliveries to the marijuana shop, which must occur at the corner of the building, a substantial distance from the actual MO."

Staff Response to Issue No. 1e: The Outlet CUP imposes security conditions to improve the safety of the building and surrounding neighborhood, including the requirement to have operable surveillance cameras; a metal detector; two security guards during business hours with one security guard present on the premises 24 hours a day, seven days a week; exterior and interior lighting; hours limited from 7 a.m. to 9 p.m.; emergency contact information posted on the outside of the business; an emergency contact available 24/7; odor absorbing ventilation; signs limited to business name only; and all litter and graffiti removal within 24 hours.

Appeal Issue 1f: "There is no off-street parking available nor can the parking lot be expanded as it abuts a protected green-belt."

Staff Response to Issue No. 1f: The existing development meets the parking requirements. The

required off-street parking is 137 spaces, which includes 9 spaces for the 1,767-square-foot Outlet.

Appeal Issue No. 2: "The Proposed use is not appropriate at the proposed location."

Appeal Issue No. 2a: "Parking cannot be expanded at all, despite the City's requirements that the same be done. The property abuts a green belt, which Venture Commerce Center does not own, and which cannot be purchased, and there is no street parking available on Sorrento Valley Road."

Staff Response to Issue No. 2a: See Staff Response Issue No. 1f.

Appeal Issue No. 2b: "There Del Mar School District owns a suite at the property, and the granting of this CUP is a restriction on their usage in the future, without just compensation, and thus is a takings by the City of San Diego."

Staff Response to Issue No. 2b: The CUP locational and operational restrictions only applies to the proposed Outlet.

Appeal Issue No. 2c: "Numerous owners/occupiers have clients who are children, and the granting of the CUP not only restricts the clientele of the same, but also impacts them financially, and thus the granting of the same is not only a takings, but also amounts to intentional interference with prospective economic advantage."

Staff Response to Issue No. 2c: The Outlet CUP includes conditions to ensure and promote public safety. Signage regulations are imposed to limit advertising and/or marketing of the marijuana and marijuana products. Furthermore, State law restricts marketing and signage that may be oriented towards minors. The presence of an Outlet does not restrict clientele from patronizing the premises.

Appeal Issue No. 2d: "There are no retail facilities in the entire property, as such is a violation of the CC&Rs."

Staff Response to Issue No. 2c: See Staff Response to Issue No. 1b.

Appeal Issue No. 3: "Granting of the CUP does not just leave private parties open to litigation, but also leaves the City of San Diego open to litigation for the approval of the CUP despite having full knowledge of all the facts and circumstances contained in this letter and supporting documents."

Staff Response to Issue No. 3: See Staff Response No. 1b and 1c.

#### CONCLUSION:

Staff recommends that the Planning Commission deny the Appeal, affirm the Hearing Officer's decision, and approve Conditional Use Permit No. 2038237 as the project meets all applicable development regulations and policies.

ALTERNATIVES

1. Deny the appeal, affirm the Hearing Officer's decision, and approve Conditional Use Permit No. 2038237, with modifications.
2. Grant the appeal, reverse the Hearing Officer's decision, and deny Conditional Use Permit No. 2038237, if the findings required to approve the project cannot be affirmed.

Respectfully submitted,



PJ FitzGerald  
Assistant Deputy Director  
Development Services Department



Sammi Ma  
Development Project Manager  
Development Services Department

1. [Report to the Hearing Officer No. HO-19-103](#)
2. Stephanie N. West Appeal
3. Draft Resolution with Findings
4. Draft Permit with Conditions



THE CITY OF SAN DIEGO

## Report to the Hearing Officer

DATE ISSUED: November 13, 2019 REPORT NO. HO-19-103

HEARING DATE: November 20, 2019

SUBJECT: MARIJUANA OUTLET 11189 SORRENTO VALLEY ROAD, SUITE #103,  
PROCESS THREE DECISION

PROJECT NUMBER: [559038](#)

OWNER/APPLICANT: Beachwalk Properties, Inc., Owner and STWC Holdings, Inc., Applicant

### SUMMARY

Issue: Should the Hearing Officer approve the request for a Conditional Use Permit to allow the operation of a Marijuana Outlet located at 11189 Sorrento Valley Road, Suite #103 within the Torrey Pines Community Planning area?

Staff Recommendation: Approve Conditional Use Permit No. 2038237.

Community Planning Group Recommendation: On October 11, 2018, the Torrey Pines Community Planning Board (TPCPB) voted 9-3-0 to recommend denial of the proposed project. The Board's concerns are summarized in Attachment 7.

#### Environmental Review:

This project was determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA section 15301, Existing Facilities. An appeal of the CEQA determination was previously made and the City Council denied the CEQA appeal on September 16, 2019 per Resolution Number [R-312655](#). The scope of the subject hearing only includes the project, and not the environmental determination.

### BACKGROUND

On March 25, 2014, the City of San Diego adopted Ordinance No O-20356 to implement regulations for Medical Marijuana Consumer Cooperatives (MMCCs), which allowed the sale of medicinal marijuana with the approval of a Conditional Use Permit (CUP). The ordinance limited MMCCs to four per Council District for a total of 36 MMCCs citywide.

On February 22, 2017, [Ordinance No. O-20793](#) was approved, which included amendments to the Land Development Code and the Local Coastal Program, replacing the MMCC use with a new retail

sales use, known as a Marijuana Outlet (Outlet). The Outlets are subject to the same regulations as the MMCCs, but allow the sale of both medicinal and recreational marijuana. All Outlets are subject to State licensing requirements. To date, 23 MMCCs/Outlets have been approved citywide, three in Council District 1.

The project site is located on a 3.2-acre site located at 11189 Sorrento Valley Road in a 1,767-square-foot, vacant tenant space, within an existing five-unit commercial condominium complex. The property site was developed in 1982 and was subdivided in 2008. The lot contains two, single-story buildings totaling 46,995 square feet. The site is in Council District 1, within the IL-3-1 Zone, Airport Influence Area (Miramar – Review Area 1), Airport Land Use Compatibility Overlay Zone (Marine Corps Air Station (MCAS) – Miramar), Accident Potential Zone 2 (Miramar), Special Flood Hazard Area (100 Year Floodway and 100 Year Floodplain), Transit Priority Area, Parking Impact Overlay Zone (Coastal), Coastal Height Limitation Overlay Zone, Coastal Overlay (Non-Appealable) Zone, and Prime Industrial Lands within the Torrey Pines Community Plan area.

The project site is subject to the Environmentally Sensitive Lands (ESL); Special Flood Hazard Area (100 Year Floodway and 100 Year Floodplain). However, the project was determined to be exempt from the ESL regulations pursuant to San Diego Municipal Code (SDMC) Sections 143.0110 (b)(4) and (c)(1), because there are no proposed additions or modifications to the existing development, other than interior tenant improvements for retail sales of marijuana and marijuana products.

## DISCUSSION

### Project Description:

The project is a request for a CUP to operate an Outlet in a 1,767-square-foot vacant tenant space in Unit #103, within an existing five-unit commercial condominium complex located at 11189 Sorrento Valley Road. The site is in Council District 1; only four Outlets are allowed per Council District. To date, 23 MMCCs/Outlets have been approved citywide, three in Council District 1.

Operations would include the retail sale of marijuana and marijuana products. The project proposes tenant improvements consisting of interior walls and bulletproof glasses. The project is subject to public improvements and is required to reconstruct the existing driveways to current City Standards adjacent to the site on Sorrento Valley Road. The proposed improvements would also require a change of use/occupancy building permit consistent with all California Codes and Regulations in effect at the time of building permit.

### Separation Requirements:

The SDMC allows the operation of Outlets in specific land use zones of the City and provides regulations for Marijuana Outlets. One of the criteria of the SDMC is the minimum separation requirements between an Outlet and other specified uses. SDMC Section 141.0504(a) requires a 1,000-foot separation from resource and population-based city parks, other marijuana outlets, churches, child care centers, playgrounds, libraries owned and operated by the City of San Diego, minor-oriented facilities, residential care facilities, and schools. In addition, there is a minimum distance requirement of 100 feet from all residentially zoned properties. City staff has reviewed the

100/1,000-foot radius map and spreadsheet provided by the applicant identifying all the existing uses and determined that the Outlet complies with the minimum separation requirements.

Operational and Security Requirements:

The proposed Outlet is subject to specific operational requirements and restrictions as set forth in SDMC Section 141.0504(b) through (m), which are incorporated as conditions in the CUP (Attachment 5). These include prohibition of consultation by medical professionals on-site, prohibition of specified vending machines, provision of interior and exterior lighting, operable cameras, alarms, a security guard, restriction of hours of operation to between 7:00 a.m. and 9:00 p.m. daily, and the requirement to maintain the site and adjacent public sidewalks free of litter and graffiti. Outlets must also comply with SDMC Chapter 4, Article 2, Division 15 which provides guidelines for lawful operation.

Conclusion:

City staff has reviewed the proposed project and all issues identified through the review process have been resolved in conformance with adopted City Council policies and regulations of the Land Development Code. The proposed project complies with all development regulations of the IL-3-1 Zone and no deviations are required to approve the project. Staff has provided draft findings (Attachment 4) to support the proposed development and draft conditions of approval (Attachment 5). Staff is recommending the Hearing Officer approve the project as presented.

ALTERNATIVES

1. Approve Conditional Use Permit No. 2038237, with modifications.
2. Deny Conditional Use Permit No. 2038237, if the findings required to approve the project cannot be affirmed.

Respectfully submitted,



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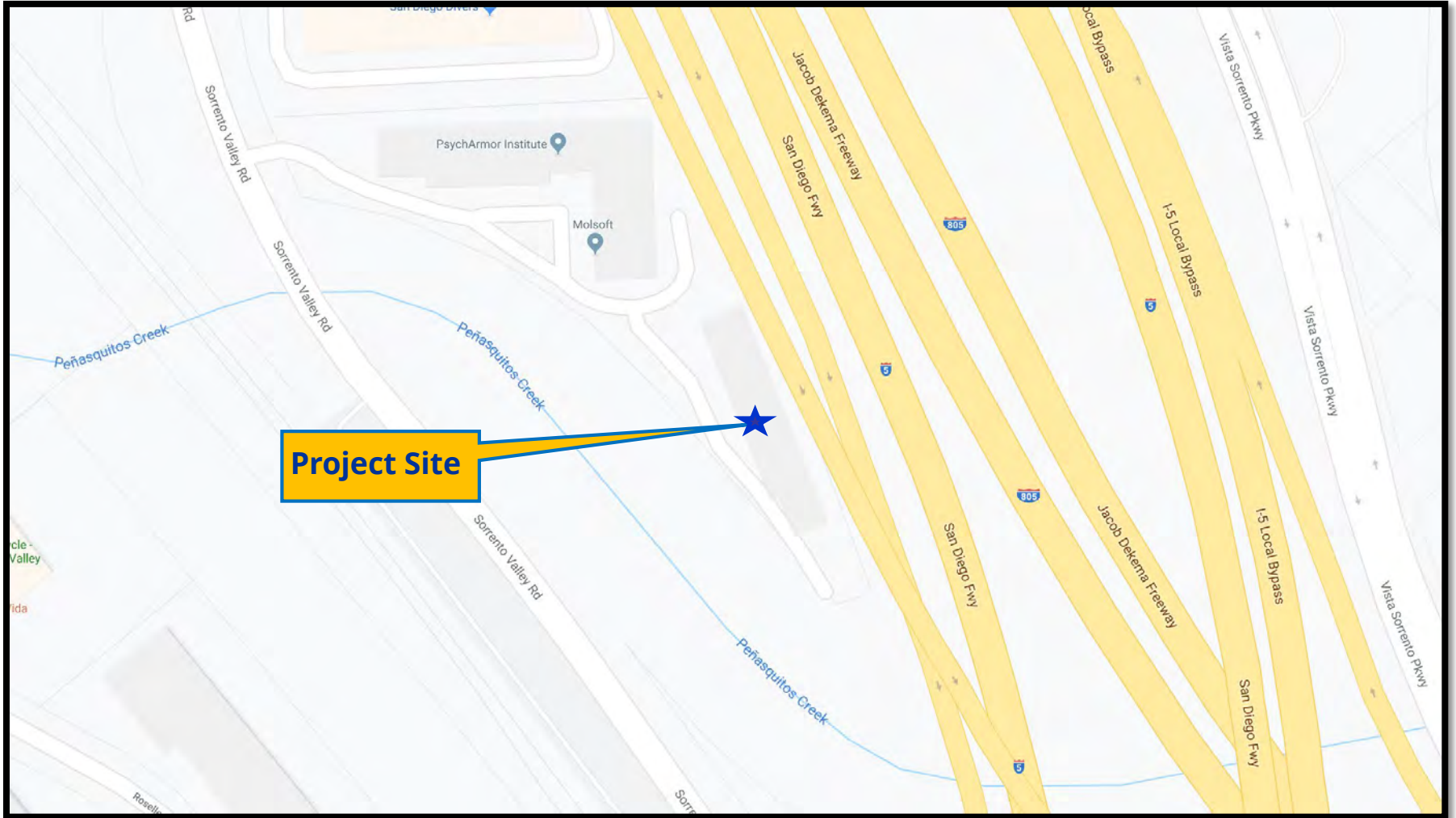
For Sammi Ma, Development Project Manager

Attachments:

1. Project Location Map
2. Community Plan Land Use Map
3. Aerial Photograph
4. Draft Resolution with Findings



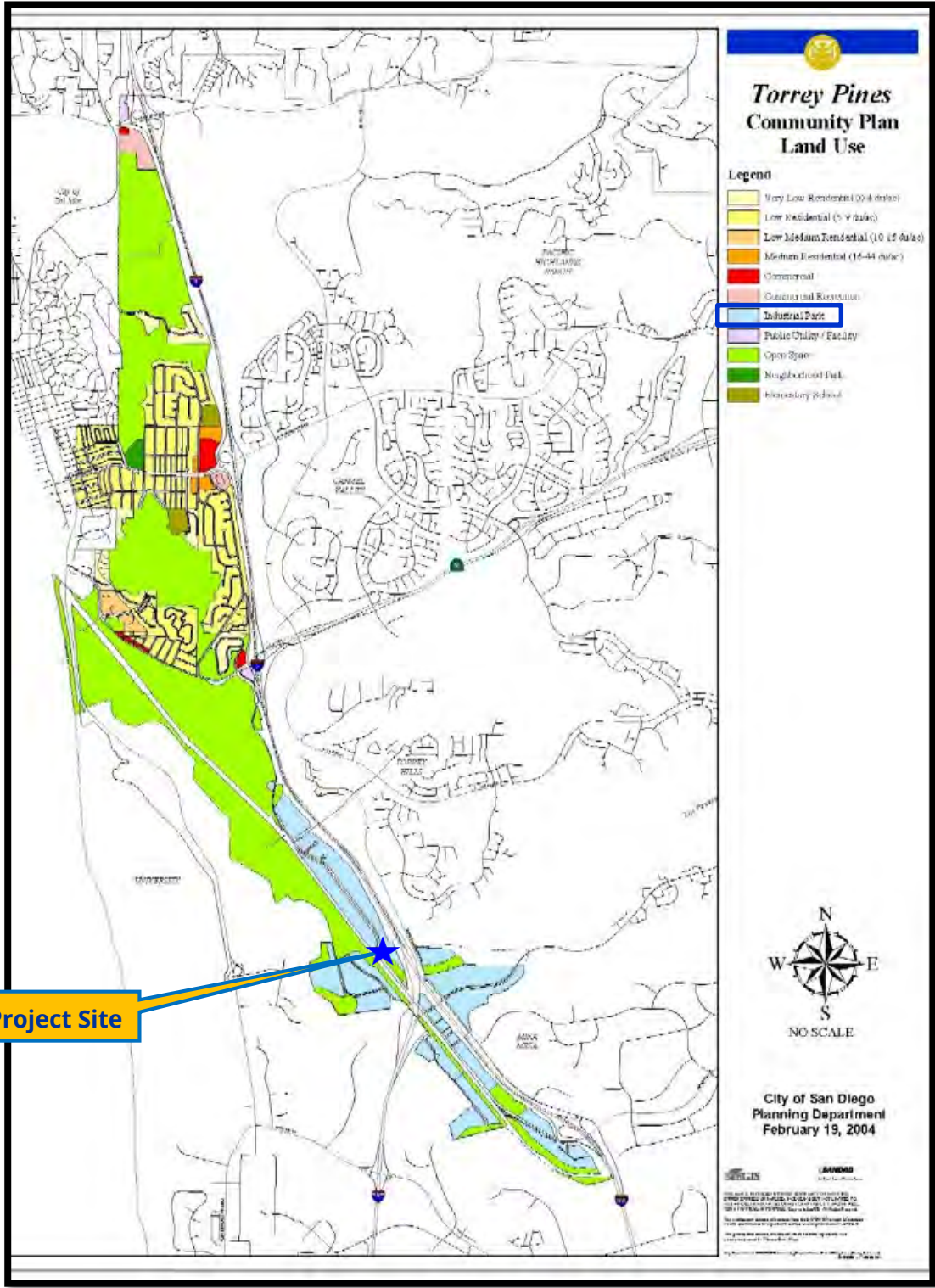
5. Draft Permit with Conditions
6. Environmental Exemption
7. Community Planning Group Recommendation
8. Ownership Disclosure Statement
9. Project Plans



## Land Use Map

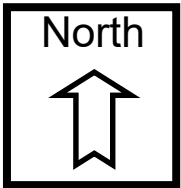
MO 1189 Sorrento Valley Road #103  
PROJECT NO. 559038





# Land Use Map

MO 1189 Sorrento Valley Road #103  
PROJECT NO. 559038

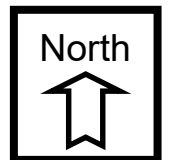






## Aerial Photo

MO 11189 Sorrento Valley Road #103  
PROJECT NO. 559038



HEARING OFFICER  
RESOLUTION NO. \_\_\_\_\_  
CONDITIONAL USE PERMIT NO. 2038237  
**MO 11189 SORRENTO VALLEY ROAD, SUITE #103 - PROJECT NO. 559038**

WHEREAS, BEACHWALK PROPERTIES, INC., a California Corporation, Owner and STWC HOLDINGS, INC., a California Corporation, Permittee, filed an application with the City of San Diego for a Conditional Use Permit to operate a Marijuana Outlet in a 1,767-square-foot tenant space in Suite #103, within an existing five-unit commercial condominium complex at 11189 Sorrento Valley Road, (as described in and by reference to the approved Exhibits "A" and corresponding conditions of approval for the associated Permit No. 2038237), on portions of a 3.2-acre site;

WHEREAS, the project site is located at 11189 Sorrento Valley Road in the IL-3-1 Zone, Coastal Overlay Zone (Non-Appealable), Coastal Height Limitation Overlay Zone, Coastal Parking Impact Overlay Zone, Special Flood Hazard Area (100 Year Floodway and 100 Year Floodplain), Transit Priority Area, and MCAS Miramar Land Use Compatibility Overlay Zone (Airport Influence Area – Review Area 1 and Accident Potential Zone 2), and Prime Industrial Lands of the Torrey Pines Community Plan;

WHEREAS, the project site is legally described as Unit 103 as shown and defined on that certain condominium plan Venture Commerce Center Sorrento, recorded August 21, 2008 as instrument No. 2008-0449961 of official records, together with an appurtenant undivided 23.95% percentage interest in and to the common area, being a portion of lot 3 of "Torrey Knolls Park", in the City of San Diego, County of San Diego, State of California, according to map thereof no. 7991, filed in the Office of the County Recorder of San Diego County on July 31, 1974; and said common area is further defined and described in that certain Declaration of Covenants and Restrictions

establishing plan for condominium ownership for Venture Commerce Center – Sorrento, recorded August 21, 2008 as instrument no. 2008-0449962 of official records;

WHEREAS, on June 12, 2019, the City of San Diego, as Lead Agency, through the Development Services Department, made and issued an Environmental Determination that the project is exempt from the California Environmental Quality Act (CEQA) (Public Resources Code Section 21000 et seq.) under CEQA Guideline Section 15301 (Existing Facilities), and the Environmental Determination was appealed to City Council, which heard and denied the appeal on September 16, 2019, pursuant to Resolution No. 312655;

WHEREAS, on November 20, 2019, the Hearing Officer of the City of San Diego considered Conditional Use Permit No. 2038237 pursuant to the Land Development Code of the City of San Diego;

BE IT RESOLVED by the Hearing Officer of the City of San Diego, that it adopts the following findings with respect to Conditional Use Permit No. 2038237:

**A. CONDITIONAL USE PERMIT [SDMC Section 126.0305]**

**1. Findings for all Conditional Use Permits:**

**a. The proposed development will not adversely affect the applicable land use plan.**

The project is a request for a Conditional Use Permit (CUP) to allow the operation of a Marijuana Outlet (Outlet) in a 1,767-square-foot tenant space in Suite 103 within an existing five-unit commercial condominium complex located at 11189 Sorrento Valley Road. The developed 3.2-acre project site is located in the IL-3-1 zone of the Torrey Pines Community Plan (TPCP).

The TPCP designates the site as Industrial Element. The industrial land use allows light industrial, retail, and commercial uses. Industrial development in Sorrento Valley includes manufacturing firms, research and development, laboratories, offices, industrial services, incubator industry and business uses, and supports commercial and retail uses. Pursuant to San Diego Municipal Code (SDMC) §131.0622, retail sales and commercial services are permitted uses in the IL-3-1 Zone. The proposed Outlet is an allowed use in the IL-3-1 Zone with a CUP pursuant to SDMC Sections §131.0622 and §141.0504. The Sorrento Valley industrial area, including this site, is identified as Prime Industrial Lands

(PIL) by the General Plan, which encourages the protection of valuable employment land for base sector industries important to the region's economy. An Outlet is not considered a base sector employment. The General Plan allows development or redevelopment of individual properties pursuant to the development regulations and permitted uses of the existing zone and community plan designation, provided a site is not critical to base sector employment. The project site is not critical to achieving the City's base sector employment goal. The General Plan policies also specifically restrict sensitive receptor land use such as residential and public assembly in PIL. An Outlet is not a sensitive receptor land use.

The TPCP contains a policy that states development of freestanding retail commercial uses in industrially designated areas shall be restricted to those uses that serve only the immediate Sorrento Valley industrial area. Due to the limited amount of Marijuana Outlets permitted in each Council District, and the use restricted to a few zones with a CUP, the proposed Outlet would serve the community. The proposed Outlet is a compatible use at this location with a Conditional Use Permit and is consistent with the community plan. Therefore, the proposed Outlet will not adversely affect the applicable land use plan.

**b. The proposed development will not be detrimental to the public health, safety, and welfare.**

The project proposes the operation of an Outlet in a 1,767 square-foot tenant space in Suite 103, within an existing five-unit, 46,995 square-foot building located at 11189 Sorrento Valley Road. The project proposes interior improvements to an existing tenant space, including walls and bulletproof glasses for secure check-in/waiting room, office area, dispensary retail area, restrooms, product check-in area, product receiving area, and safe room.

The proposed development will not be detrimental to the public health, safety and welfare because the discretionary permit controlling the development and continued use of the site contains specific regulatory conditions of approval. These regulations, which are implemented and enforced through the permit, are specifically intended to reduce, mitigate and/or prevent all adverse impacts to the public and community at large.

Approval of the CUP includes required conditions to allow the sale of marijuana and marijuana products in order to prevent potential adverse impacts on the community. The conditions include the following: prohibiting consultation by medical professionals on-site, prohibiting the use of specified vending machines, interior and exterior lighting, alarms, restriction of hours of operation to between 7:00 a.m. to 9:00 p.m. daily, maintenance of area and adjacent public sidewalks free of litter and graffiti, removal of graffiti within 24 hours, and restriction of signage to business name, two-color signs, and alphabetic characters.

In addition to the above, the CUP includes additional security conditions to improve the safety of the building and surrounding neighborhood, including the provision of operable surveillance cameras and a metal detector, use of cameras with a recording

device that maintains records for a minimum of 30 days, two security guards during business hours with one security guard present on the premises 24 hours a day, seven days a week. Outlets must also operate in compliance with the SDMC Chapter 4, Article 2, Division 14, which provides requirements for lawful operation. Furthermore, construction of the project authorized through this permit will be subject to all adopted building, electrical, mechanical, fire and plumbing codes, which will be enforced through construction review and building inspections.

Outlets must comply with SDMC §141.0504(a), which require a 1,000-foot separation, measured between property lines from resource and population-based City parks, churches, child care centers, playgrounds, City libraries, minor-oriented facilities, residential care facilities, and schools. Outlets must also be a minimum distance of 100 feet from a residential zone. The proposed Outlet complies with the separation requirements between sensitive uses set forth in SDMC §141.0504(a).

The proposed project will be required to comply with development conditions as described in CUP No. 2038237 which is valid for five years and may be revoked if the Owner or Permittee violates the terms, conditions, lawful requirements, or provisions of the Permit.

The referenced regulations and conditions have been determined as necessary to avoid adverse impact upon the health, safety, and welfare. Therefore, the proposed Outlet will not be detrimental to the public health, safety and welfare.

**c. The proposed development will comply with the regulations of the Land Development Code including any allowable deviations pursuant to the Land Development Code.**

The project proposes a CUP to operate an Outlet in a 1,767-square-foot tenant space in Suite 103 within an existing five-unit commercial condominium complex located at 11189 Sorrento Valley Road. The site was developed in 1982.

The developed 3.2-acre site is located in the IL-3-1 zone and an Outlet is allowed with a CUP pursuant to SDMC Sections 131.0622 and 141.0504. The project has been determined to be exempt from the Environmentally Sensitive Lands (ESL) regulations of the Special Flood Hazard Area (100 Year Floodplain and 100 Year Floodway) pursuant to SDMC Sections 143.0110 (b)(4) and (c)(1), because there is no addition or modification to the existing development. Only interior tenant improvements are proposed. Furthermore, the proposed Outlet is exempt from the Airport Land Use Compatibility Overlay Zone regulations set forth in Chapter 13, Article 2, and Division 15 of the SDMC pursuant to Section 132.1505 (c)(1) as the project is limited to interior modifications and will not increase the density, floor area ratio or height of the existing structure.

Outlets must comply with SDMC §141.0504(a), which require a 1,000-foot separation, measured between property lines from resource and population-based City parks, churches, child care centers, playgrounds, City libraries, minor-oriented facilities, residential care facilities, and schools. Outlets must also be a minimum distance of 100 feet from a residential zone. The proposed Outlet complies with the separation



requirements between sensitive uses set forth in SDMC §141.0504(a). Outlet must also operate in compliance with the SDMC Chapter 4, Article 2, Division 14, which provides requirements for lawful operation.

The CUP for the project includes various conditions and corresponding exhibits of approval relevant to achieving compliance with all relevant regulations of the SDMC for an Outlet. No variance or deviations are requested as part of this application, nor are any required to approve the CUP. Therefore, the proposed development will comply with the regulations of the Land Development Code.

**d. The proposed use is appropriate at the proposed location.**

The project proposes a CUP to allow the operation of an Outlet in a 1,767-square-foot tenant space in Suite 103 within an existing five-unit, 17,389-square-foot commercial condominium complex located at 11189 Sorrento Valley Road. The 3.2-acre site is in the IL-3-1 Zone of the Torrey Pines Community Plan (TSCP).

Outlets must comply with SDMC §141.0504(a), which require a 1,000-foot separation, measured between property lines from resource and population-based City parks, churches, child care centers, playgrounds, City libraries, minor-oriented facilities, residential care facilities, and schools. Outlets must also be a minimum distance of 100 feet from a residential zone. The proposed Outlet complies with the separation requirements between sensitive uses set forth in SDMC §141.0504(a). Outlet must also operate in compliance with the SDMC Chapter 4, Article 2, Division 14, which provides requirements for lawful operation.

The proposed Outlet is consistent with all land development regulations relevant for the site and the use. No variance or deviations are requested as part of this application, nor are any required to approve the CUP. The proposed Outlet is classified as retail sales use and marijuana retail sales are allowed at this location with a CUP. Therefore, based on all the facts cited above and conditions of approval, the proposed Outlet is an appropriate use at the proposed location.

The above findings are supported by the minutes, maps and exhibits, all of which are incorporated herein by this reference.

BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the Hearing Officer, Conditional Use Permit No. 2038237 is hereby GRANTED by the HEARING OFFICER to the referenced Owner/Permittee, in the form, exhibits, terms and conditions as set forth in Conditional Use Permit No. 2038237, a copy of which is attached hereto and made a part hereof.

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Sammi Ma  
Development Project Manager  
Development Services

Adopted on: November 20, 2019

IO#: 24007352

DRAFT

**RECORDING REQUESTED BY**  
CITY OF SAN DIEGO  
DEVELOPMENT SERVICES  
PERMIT INTAKE, MAIL STATION  
501

**WHEN RECORDED MAIL TO**  
**PROJECT MANAGEMENT**  
**PERMIT CLERK**  
**MAIL STATION 501**

INTERNAL ORDER NUMBER: 24007352

SPACE ABOVE THIS LINE FOR RECORDER'S USE

CONDITIONAL USE PERMIT NO. 2038237  
**MO 11189 SORRENTO VALLEY ROAD, SUITE 103 - PROJECT NO. 559038**  
HEARING OFFICER

This Conditional Use Permit No. 2038237 ("Permit") is granted by the Hearing Officer of the City of San Diego to Beachwalk Properties, Inc., a California Corporation, Owner and STWC Holdings, Inc., a California Corporation, Permittee, pursuant to San Diego Municipal Code [SDMC] section and 126.0305. The 3.2-acre site is located at 11189 Sorrento Valley Road, Suite 103, in the IL-3-1 Zone, Coastal Overlay Zone (Non-Appealable), Coastal Height Limitation Overlay Zone, Coastal Parking Impact Overlay Zone, Special Flood Hazard Area (100 Year Floodway and 100 Year Floodplain), Transit Priority Area, and MCAS Miramar Land Use Compatibility Overlay Zone (Airport Influence Area – Review Area 1 and Accident Potential Zone 2), and Prime Industrial Lands, within the Torrey Pines Community Plan area. The project site is legally described as Unit 103 as shown and defined on that certain condominium plan Venture Commerce Center Sorrento, recorded August 21, 2008 as instrument No. 2008-0449961 of official records, together with an appurtenant undivided 23.95% percentage interest in and to the common area, being a portion of lot 3 of "Torrey Knolls Park", in the City of San Diego, County of San Diego, State of California, according to map thereof no. 7991, filed in the Office of the County Recorder of San Diego County on July 31, 1974; and said common area is further defined and described in that certain Declaration of Covenants and Restrictions establishing plan for condominium ownership for Venture Commerce Center – Sorrento, recorded August 21, 2008 as instrument no. 2008-0449962 of official records.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner and Permittee to operate a Marijuana Outlet in a 1,767-square-foot tenant space within an existing five-unit commercial condominium complex, described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated November 20, 2019, on file in the Development Services Department.

The project shall include:

- a. Operation of a Marijuana Outlet in a 1,767-square-foot tenant space in Suite 103 within an existing five-unit commercial condominium complex. The operation shall include the requirements consistent with the State of California statutes and California Departments of Food and Agriculture, Consumer Affairs and Public Health regulations;

- b. Landscaping (planting, irrigation and landscape related improvements);
- c. Off-street parking; and
- d. Public and private accessory improvements determined by the Development Services Department to be consistent with the land use and development standards for this site in accordance with the adopted community plan, the California Environmental Quality Act [CEQA] and the CEQA Guidelines, the City Engineer's requirements, zoning regulations, conditions of this Permit, and any other applicable regulations of the SDMC.

**STANDARD REQUIREMENTS:**

1. This permit must be utilized within thirty-six (36) months after the date on which all rights of appeal have expired. If this permit is not utilized in accordance with Chapter 12, Article 6, Division 1 of the SDMC within the 36 month period, this permit shall be void unless an Extension of Time has been granted. Any such Extension of Time must meet all SDMC requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker. This permit must be utilized by December 5, 2022.
2. This Conditional Use Permit [CUP] and corresponding use of this site shall expire on December 5, 2023. The Owner/Permittee may request that the expiration date be extended in accordance with SDMC Section 141.0504(n).
3. No permit for the construction, occupancy, or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until:
  - a. The Owner/Permittee signs and returns the Permit to the Development Services Department; and
  - b. The Permit is recorded in the Office of the San Diego County Recorder.
  - c. An annual Operational Permit issued by the Development Services Department is approved in accordance with SDMC Section 42.1504.
4. While this Permit is in effect, the subject property shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the appropriate City decision maker.
5. This Permit is a covenant running with the subject property and all of the requirements and conditions of this Permit and related documents shall be binding upon the Owner/Permittee and any successor(s) in interest.
6. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.

7. The Owner/Permittee shall secure all necessary building permits. The Owner/Permittee is informed that to secure these permits, substantial building modifications and site improvements may be required to comply with applicable building, fire, mechanical, and plumbing codes, and State and Federal disability access laws.

8. Construction plans shall be in substantial conformity to Exhibit "A." Changes, modifications, or alterations to the construction plans are prohibited unless appropriate application(s) or amendment(s) to this Permit have been granted.

9. All of the conditions contained in this Permit have been considered and were determined necessary to make the findings required for approval of this Permit. The Permit holder is required to comply with each and every condition in order to maintain the entitlements that are granted by this Permit.

If any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo, and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.

10. The Owner/Permittee shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, relating to the issuance of this permit including, but not limited to, any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. The City will promptly notify Owner/Permittee of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the Owner/Permittee shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, Owner/Permittee shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between the City and Owner/Permittee regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the Owner/Permittee shall not be required to pay or perform any settlement unless such settlement is approved by Owner/Permittee.

**PLANNING/DESIGN REQUIREMENTS:**

11. The sale of marijuana and marijuana products shall be prohibited without a valid license from the State authorizing such activity.

12. Consultations by medical professional shall not be a permitted accessory use at the Marijuana Outlet.

13. Lighting shall be provided to illuminate the interior of the Marijuana Outlet, façade, and the immediate surrounding area, including any accessory uses, parking lots, and adjoining sidewalks. Lighting shall be hooded or oriented so as to deflect light away from adjacent properties.

14. Security shall include operable cameras and a metal detector to the satisfaction of Development Services Department. This Marijuana Outlet shall also include alarms and two security guards. The security guards shall be licensed by the State of California. Two security guards must be on the premises during business hours. At least one security guard must be on the premises 24 hours a day, seven days a week. The security guards should only be engaged in activities related to providing security for the Marijuana Outlet, except on an incidental basis. The cameras shall have and use a recording device that maintains the recordings for a minimum of 30 days.

15. All signs associated with this development shall be consistent with sign criteria established by City-wide sign regulations and shall further be restricted by this permit. Ground signs shall not be pole signs. A primary sign shall be posted on the outside of the Marijuana Outlet and shall only contain the name of the business, which shall contain only alphabetic characters, and shall be limited to two colors.

16. The Owner/Permittee shall post and maintain a sign showing the name and emergency contact phone number of an operator or manager in a location visible from outside the Marijuana Outlet in character size at least two inches in height.

17. The Marijuana Outlet shall operate only between the hours of 7:00 a.m. and 9:00 p.m., seven days a week.

18. The use of vending machines which allow access to marijuana and marijuana products except by a responsible person, as defined in the San Diego Municipal Code Section 42.1502, is prohibited. For purposes of this Section, a vending machine is any device which allows access to marijuana and marijuana products without a human intermediary.

19. The Owner/Permittee shall maintain the Marijuana Outlet, adjacent public sidewalks, and areas under the control of the Owner/Permittee, free of litter and graffiti at all times.

20. The Owner/Permittee shall provide for daily removal of trash, litter, and debris. Graffiti shall be removed from the premises within 24 hours.

21. The Owner/Permittee shall provide a sufficient odor absorbing ventilation and exhaust system capable of minimizing excessive or offensive odors emanating outside of the permitted Marijuana Outlet to the satisfaction of the Development Services Department.

**LANDSCAPE REQUIREMENTS:**

22. Prior to issuance of any construction permits, the Owner/Permittee shall submit to the Development Services Department for approval a Site Plan that documents existing landscape to remain, consistent with Exhibit 'A,' on file in the Office of the Development Services Department. The site plan shall include reconstruction of existing driveways at Sorrento Valley Road per current City Standard and demonstrate a minimum 5-ft clearance from the trunks of adjacent, existing trees to remain protected in place.

23. The Owner/Permittee shall be responsible for the maintenance of all previously required landscape improvements as shown on the approved plans. All required landscape shall be maintained in a disease, weed and litter free condition at all times consistent with the City of San Diego Landscape Regulations and Standards.

24. If any required landscape (including existing or new plantings, hardscape, landscape features, etc.) indicated on the approved construction document plans is damaged or removed during demolition or construction, the Owner/Permittee shall repair and/or replace in kind and equivalent size per the approved documents to the satisfaction of the Development Services Department within 30 days of damage or Certificate of Occupancy.

**ENGINEERING REQUIREMENTS:**

25. Prior to the issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, to reconstruct the existing driveways, per current City Standard, adjacent to the site on Sorrento Valley Road, satisfactory to the City Engineer.

26. Prior to the issuance of any construction permit the Owner/Permittee shall submit a Water Pollution Control Plan (WPCP). The WPCP shall be prepared in accordance with the guidelines in Part 2 Construction BMP Standards Chapter 4 of the City's Storm Water Standards.

**TRANSPORTATION REQUIREMENTS**

27. All automobile, motorcycle and bicycle parking spaces must be constructed in accordance with the requirements of the SDMC. All on-site parking stalls and aisle widths shall be in compliance with requirements of the City's Land Development Code and shall not be converted and/or utilized for any other purpose, unless otherwise authorized in writing by the appropriate City decision maker in accordance with the SDMC.

**INFORMATION ONLY:**

- The issuance of this discretionary permit alone does not allow the immediate commencement or continued operation of the proposed use on site. Any operation allowed by this discretionary permit may only begin or recommence after all conditions listed on this permit are fully completed and all required ministerial permits have been issued and received final inspection.

## ATTACHMENT 5

- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this Permit, may protest the imposition within ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code-section 66020.
- This development may be subject to impact fees at the time of construction permit issuance.
- =Marijuana businesses that operate or provide services within the City of San Diego are liable for a monthly gross receipts tax. As referenced in San Diego Municipal Code Section 34.0103(b), taxable activities include but are not limited to, transporting, manufacturing, cultivating, packaging, or retail sales of marijuana and any ancillary products in the City. For additional information, contact the Office of the City Treasurer at (619) 615-1580.

APPROVED by the Hearing Officer of the City of San Diego on November 20, 2019 and [Approved Resolution Number].

DRAFT



Permit Type/PTS Approval No.: Conditional Use Permit No. 2038237  
Date of Approval: November 20, 2019

AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES DEPARTMENT

\_\_\_\_\_  
Sammi Ma  
Development Project Manager

**NOTE: Notary acknowledgment  
must be attached per Civil Code  
section 1189 et seq.**

\_\_\_\_\_  
**The undersigned Owner/Permittee**, by execution hereof, agrees to each and every condition of  
this Permit and promises to perform each and every obligation of Owner/Permittee hereunder.

**Beachwalk Properties, Inc.**  
Owner

By \_\_\_\_\_  
*NAME: John Kraemer*  
*TITLE:*

**STWC Holdings, Inc.**  
Permittee

By \_\_\_\_\_  
*NAME: Erin Phillips*  
*TITLE:*

**NOTE: Notary acknowledgments  
must be attached per Civil Code  
section 1189 et seq.**

## NOTICE OF EXEMPTION

*(Check one or both)*

TO:  Recorder/County Clerk  
 P.O. Box 1750, MS A-33  
 1600 Pacific Hwy, Room 260  
 San Diego, CA 92101-2400

FROM: City of San Diego  
 Development Services Department  
 1222 First Avenue, MS 501  
 San Diego, CA 92101

Office of Planning and Research  
 1400 Tenth Street, Room 121  
 Sacramento, CA 95814

**Project Name/Number:** MO 11189 Sorrento Valley #103 / 559038

**SCH No.:** N/A

**Project Location-Specific:** 11189 Sorrento Valley Road, Suite 103, San Diego CA, 92121

**Project Location-City/County:** San Diego/San Diego

**Description of nature and purpose of the Project:** The project requests a Conditional Use Permit (CUP) and a Coastal Development Permit (CDP) to operate a Marijuana Outlet (MO) within Suite 103, comprising of an operational area of 1,767 square-feet within an existing five-unit commercial condominium complex located at 11189 Sorrento Valley Road. The 3.2-acre site is designated Industrial pursuant to the Torrey Pines Community Plan and is subject to the IL-3-1 zoning requirements. The project is also subject to the Coastal Overlay Zone (Non-Appealable 1), Airport Influence Area - Miramar (Review Area 1), Airport Land Use Compatibility Overlay Zone (MCAS Miramar), Accident Potential Zone 2 - Miramar, Special Flood Hazard Area (100 Year Floodway and 100 Year Floodplain), Parking Impact Overlay Zone (Coastal), Coastal Height Limitation Overlay Zone, and Council District 1.

**Name of Public Agency Approving Project:** City of San Diego

**Name of Person or Agency Carrying Out Project:** Erin Phillips  
 1350 Independence Street, #300  
 Lakewood, CO 80215  
 (303) 961-2204

**Exempt Status:** (CHECK ONE)

- Ministerial (Sec. 21080(b)(1); 15268);
- Declared Emergency (Sec. 21080(b)(3); 15269(a));
- Emergency Project (Sec. 21080(b)(4); 15269 (b)(c))
- Categorical Exemption: CEQA State Guidelines, Section 15301, *Existing Facilities*.

**Reasons why project is exempt:** The City conducted an environmental review which determined that the proposed project is exempt from CEQA pursuant to CEQA Guidelines Section 15301, which allows for the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing facilities (public or private), involving negligible or no expansion of existing or former use. The proposed project, as included in the Project Description of this notice, is not an expansion of use as all operations will be contained within the existing building. No environmental impacts were identified for the proposed project. Additionally, none of the exceptions described in CEQA Guidelines Section 15300.2 apply.

Lead Agency Contact Person: Rachael Lindquist

Telephone: (619) 446-5129

If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a notice of exemption been filed by the public agency approving the project? ( ) Yes ( ) No

It is hereby certified that the City of San Diego has determined the above activity to be exempt from CEQA



Senior Planner

Signature/Title

10/22/19

Date

Check One:

(X) Signed By Lead Agency

( ) Signed by Applicant

Date Received for Filing with County Clerk or OPR:



Torrey Pines Community Planning Board  
[www.torreypinescommunity.org](http://www.torreypinescommunity.org)

BOARD MEMBERS: Dennis Ridz, Chair; Dee Rich, Vice Chair; Patti Ashton, Treasurer; Wayne Cox, Secretary; Jake Mumma; Susan Lyon; Barbara Cerny; Pat Whitt; Troy Van Horst; Mike Hastings; Samson Gavranian; Brad Remy; Sheryl Adams:

To: Tim P. Daly, Project Manager, DSD October 16, 2018

Torrey Pines Committee Planning Board MONTHLY MEETING

THURSDAY October 11, 2018 at 7:00 PM– 9:00 PM

**ACTION Items:**

1. Retail Marijuana Operation (MO) #559038 at 11189 Sorrento Valley Rd. suite 103 –Gina Austin STWC 1,767 sq ft. Note: Del Mar Union School District Maintenance and Operation office located Suite 101-102. Existing five unit condominium complex.

**Results** of TPCPB vote on project #559038 – This MO project was **DENIED** by a 9-3 vote. The following describes some of the issues raised and reasons for rejection of this application for a marijuana retail outlet at 11189 Sorrento Valley Rd., Suite 103.

**Quasi Legal Issues**

The Del Mar Union School District’s attorney, presented to the TPCPB , “Second Amendment to the Declaration of Covenants, Conditions and Restrictions establishing a plan for Condominium ownership **for Venture Commerce Center – Sorrento**”. Under Article 7, Section 7.1 A line (9) Marijuana dispensary are not allowed. Strainwise marijuana Outlet, along with DSD were aware of this prohibition against allowing a marijuana outlet within Venture Commerce Center. The Board is not involved in what will clearly be a future legal action which may take years to adjudicate. This lengthy delay will mean that NO 4<sup>th</sup> Marijuana retail shop will be viable at this site for years. Therefore, the City should move on to the next application and reject this site as being suitable for a MO.

### **Lack of Proper Notification**

DSD only sent notices to businesses within 300 feet of suite 103 and the applicant posted notice on their suite's front door. Venture Commerce Center and other firms within the complex were not aware of redesign of driveway entrance or American's with Disabilities Act (ADA) creation of a pathway into the complex. This improper notification is alone reason to deny the project until all firms within the Commerce Center have a chance to weigh-in on this issue.

The legal precedent regarding "Grandfathering" established city guidelines for Marijuana Outlets was clearly provided in the approval of Torrey Holistics on Roselle Street. DSD should review it's own rulings on ADA requirements which Grandfathered that project from needing to meet current standards. The same holds true for Driveway Enlargement which was handled after the fact as a Ministerial permit.

### **Security Plan –Public Safety**

Two Armed Security guards are present 24/7. Suite 103 is 'bullet-proofed' but **zero protection** is afforded to suites adjacent to Suite 103. DMUSD office at Suite 101-102 has a very large glass frontage with a reception area, offices and conference room within a few feet of 'armed guards'. Again the precedent was establish by DSD regarding Torrey Holistic facility that all adjacent commercial uses within the building to be provide with 'bullet-proofing measures'. This lack of concern for the public's safety is direct grounds to deny this application.

### **Parking Concerns**

The applicant claims that the complex provides approximately 143 spaces. This ignores the fact that Suite 103 via the Venture Commerce Center – Sorrento Condominium Association, allows a **total of 3 spaces for this suite**. Applicant stated that they plan to hire 8 to 10 employees and contract for 2 armed guards. No plans were provided to indicate that staff could park offsite. The applicant indicated that at peak hours of operation that 19 marijuana customers could be expect to access the site. The applicant claims that there is adequate parking at the far end of the complex. IT is worth noting that there is no street parking due to bicycle lanes Posted No Parking. This does not account for the fact that the two end units are currently unoccupied. This lack of parking for a retail unit within a commercial venture is **clear grounds** for denial.

## **Environmental Issues**

Some of the following commentary was provided by the Executive Director of the Los Penasquitos Lagoon Foundation, a member of the TPCPB. Working beyond the parcel boundary (ADA patch), are major concerns about encroachment and potential modification to the designated floodway. Has this been cleared with City departments of Transportation and Storm Water? In fact the City has been sued for allowing construction within the floodplain when construction occurred in Sorrento Valley prior to issuance of FEMA 100-year floodplain designation and mapping. BioMed Reality has sued the City for flooding of their properties. Altering the floodway could trigger lawsuits from property owners or tenants at this location.

Will this ADA walkway comply with Standard Urban Storm Water Mitigation Plan (SUSMP)? This is a county and city-wide document that looks to reduce impacts related to **hydromodification** (e.g. increased volume of storm water entering the system and/or increase peak flow velocities at the intake/discharge point or downstream that can occur through new development or improvements to existing developments. Typically both volume and velocity of storm water discharge off the property cannot be increased due to improvements of existing facilities or new construction such as building new ADA walkways within the 'Green Belt' next to the Los Penasquitos Creek.

Addition construction concerns over discharges into the Los Penasquitos Creek which is a tributary to Los Penasquitos Lagoon (State Preserve and 303(d) listed waterbody for sediment/siltation and light/noise along a **primary wildlife corridor**. San Diego Waterboard requires a stricter level of monitoring for SWAPP compliance when discharges enter a 303(d) waterbody or tributary. Furthermore, there is a potential conflict with CIP projects identified by the City for floodway improvements that will be part of a 84 acre habitat restoration project. Simply stated the ADA walkway removes at least 5 feet of grass and plants from a slope leading directly in the Los Penasquitos Creek and replace the slope with a level concrete walkway that increases runoff and decreases ground absorption.

Direct impact on **circadian rhythm within a wildlife corridor**

The project creates both **noise and security lighting** within a major wildlife corridor due to hours of operation (i.e., open until (9:00 PM). Additional time for clean-up, trash disposal and getting both workers and marijuana clients with vehicle lights on

will extend past 9:00 PM for all practical purposes. This parcel is adjacent to the major and the only wildlife corridor that connects Los Penaquitos Canyon to Los Penaquitos Lagoon and other sub watersheds within Carroll Canyon and Carmel Valley. Los Penaquitos Canyon is the largest of the three sub watersheds with over 20,000 acres. Wildlife corridors are vital for species survival in both short term (foraging, refuge from predators, access to prey) and long term genetic diversity.


**Clapper Rail –listed as an Endangered subspecies**

The Clapper Rail (*Rallus Longirostris obsoletus*) has been identified as living within this wildlife corridor and uses this area as a nesting ground.

**Conclusion**

Board members even questioned the applicant as to why they would even consider this site to be viable, knowing both the legal challenges and the ultra-sensitive environmental issues. The final result was that the TPCPB **denied this application for numerous issues.**

Dennis E. Ridz, Chair Torrey Pines Community Planning Board

	<p><b>City of San Diego Development Services</b> 1222 First Ave., MS 302 San Diego, CA 92101 (619) 446-5000</p>	<h1 style="margin: 0;">Ownership Disclosure Statement</h1>	<p><b>FORM DS-318</b></p> <p>October 2017</p>
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**Approval Type:** Check appropriate box for type of approval(s) requested:  Neighborhood Use Permit  Coastal Development Permit  
 Neighborhood Development Permit  Site Development Permit  Planned Development Permit  Conditional Use Permit  Variance  
 Tentative Map  Vesting Tentative Map  Map Walver  Land Use Plan Amendment  Other \_\_\_\_\_

**Project Title:** 11189 Sorrento Valley Road Marijuana Outlet, #103 **Project No. For City Use Only:** \_\_\_\_\_  
**Project Address:** 11189 Sorrento Valley Road, #103

**Specify Form of Ownership/Legal Status (please check):**  
 Corporation  Limited Liability -or-  General - What State? \_\_\_\_\_ Corporate Identification No. \_\_\_\_\_  
 Partnership  Individual

By signing the Ownership Disclosure Statement, the owner(s) acknowledge that an application for a permit, map or other matter will be filed with the City of San Diego on the subject property with the intent to record an encumbrance against the property. Please list below the owner(s), applicant(s), and other financially interested persons of the above referenced property. A financially interested party includes any individual, firm, co-partnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, receiver or syndicate with a financial interest in the application. If the applicant includes a corporation or partnership, include the names, titles, addresses of all individuals owning more than 10% of the shares. If a publicly-owned corporation, include the names, titles, and addresses of the corporate officers. (A separate page may be attached if necessary.) If any person is a nonprofit organization or a trust, list the names and addresses of **ANY** person serving as an officer or director of the nonprofit organization or as trustee or beneficiary of the nonprofit organization. A signature is required of at least one of the property owners. Attach additional pages if needed. Note: The applicant is responsible for notifying the Project Manager of any changes in ownership during the time the application is being processed or considered. Changes in ownership are to be given to the Project Manager at least thirty days prior to any public hearing on the subject property. Failure to provide accurate and current ownership information could result in a delay in the hearing process.

**Property Owner**  
Name of Individual: Beachwalk Properties, Inc.  Owner  Tenant/Lessee  Successor Agency  
Street Address: 777 S. Highway 101, Suite 210  
City: Solana Beach State: CA Zip: 92075  
Phone No.: 858-350-1907 Fax No.: \_\_\_\_\_ Email: john@beachwalk.com  
Signature: John Kraemer Date: 7-8-19  
Additional pages Attached:  Yes  No

**Applicant**  
Name of Individual: STWC Sorrento Valley, LLC c/o Erin Phillips  Owner  Tenant/Lessee  Successor Agency  
Street Address: 1350 Independence St. #300  
City: Lakewood State: CO Zip: 80215  
Phone No.: 303-961-2204 Fax No.: \_\_\_\_\_ Email: erin@strainwise.com  
Signature: [Signature] Date: 7-8-19  
Additional pages Attached:  Yes  No

**Other Financially Interested Persons**  
Name of Individual: \_\_\_\_\_  Owner  Tenant/Lessee  Successor Agency  
Street Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Phone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_ Email: \_\_\_\_\_  
Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Additional pages Attached:  Yes  No





# State of California Secretary of State

S

## Statement of Information

(Domestic Stock and Agricultural Cooperative Corporations)

FEES (Filing and Disclosure): \$25.00.

If this is an amendment, see instructions.

**IMPORTANT – READ INSTRUCTIONS BEFORE COMPLETING THIS FORM**

G632529

FILED

In the office of the Secretary of State  
of the State of California

MAY-06 2019

**1. CORPORATE NAME**

BEACHWALK PROPERTIES, INC.

**2. CALIFORNIA CORPORATE NUMBER**

C3305061

This Space for Filing Use Only

**No Change Statement** (Not applicable if agent address of record is a P.O. Box address. See instructions.)

**3. If there have been any changes to the information contained in the last Statement of Information filed with the California Secretary of State, or no statement of information has been previously filed, this form must be completed in its entirety.**

If there has been no change in any of the information contained in the last Statement of Information filed with the California Secretary of State, check the box and proceed to **Item 17**.

**Complete Addresses for the Following** (Do not abbreviate the name of the city. Items 4 and 5 cannot be P.O. Boxes.)

4. STREET ADDRESS OF PRINCIPAL EXECUTIVE OFFICE CITY STATE ZIP CODE  
777 S. HIGHWAY 101 210, SOLANA BEACH, CA 92075

5. STREET ADDRESS OF PRINCIPAL BUSINESS OFFICE IN CALIFORNIA, IF ANY CITY STATE ZIP CODE  
777 S. HIGHWAY 101 210, SOLANA BEACH, CA 92075

6. MAILING ADDRESS OF CORPORATION, IF DIFFERENT THAN ITEM 4 CITY STATE ZIP CODE  
MARY USHER 777 S. HIGHWAY 101 210, SOLANA BEACH, CA 92075

**Names and Complete Addresses of the Following Officers** (The corporation must list these three officers. A comparable title for the specific officer may be added; however, the preprinted titles on this form must not be altered.)

7. CHIEF EXECUTIVE OFFICER/ ADDRESS CITY STATE ZIP CODE  
JOHN KRAEMER 15115 PASO DEL SOL, DEL MAR, CA 92014

8. SECRETARY ADDRESS CITY STATE ZIP CODE  
JOHN KRAEMER 15115 PASO DEL SOL, DEL MAR, CA 92014

9. CHIEF FINANCIAL OFFICER/ ADDRESS CITY STATE ZIP CODE  
JOHN KRAEMER 15115 PASO DEL SOL, DEL MAR, CA 92014

**Names and Complete Addresses of All Directors, including Directors Who are Also Officers** (The corporation must have at least one director. Attach additional pages, if necessary.)

10. NAME ADDRESS CITY STATE ZIP CODE  
JOHN KRAEMER 15115 PASO DEL SOL, DEL MAR, CA 92014

11. NAME ADDRESS CITY STATE ZIP CODE

12. NAME ADDRESS CITY STATE ZIP CODE

13. NUMBER OF VACANCIES ON THE BOARD OF DIRECTORS, IF ANY: 0

**Agent for Service of Process** If the agent is an individual, the agent must reside in California and Item 15 must be completed with a California street address, a P.O. Box address is not acceptable. If the agent is another corporation, the agent must have on file with the California Secretary of State a certificate pursuant to California Corporations Code section 1505 and Item 15 must be left blank.

14. NAME OF AGENT FOR SERVICE OF PROCESS  
JOHN THOMAS KRAEMER

15. STREET ADDRESS OF AGENT FOR SERVICE OF PROCESS IN CALIFORNIA, IF AN INDIVIDUAL CITY STATE ZIP CODE  
777 S. HIGHWAY 101 210, SOLANA BEACH, CA 92075

**Type of Business**

16. DESCRIBE THE TYPE OF BUSINESS OF THE CORPORATION  
BEACHWALK PROPERTIES, LLC

17. BY SUBMITTING THIS STATEMENT OF INFORMATION TO THE CALIFORNIA SECRETARY OF STATE, THE CORPORATION CERTIFIES THE INFORMATION CONTAINED HEREIN, INCLUDING ANY ATTACHMENTS, IS TRUE AND CORRECT.

05/06/2019 MARY USHER ASSISTANT  
DATE TYPE/PRINT NAME OF PERSON COMPLETING FORM TITLE SIGNATURE



**State of California  
Secretary of State**

**F**

**Statement of Information  
(Foreign Corporation)**

**FEES (Filing and Disclosure): \$25.00.**

**If this is an amendment, see instructions.**

**IMPORTANT – READ INSTRUCTIONS BEFORE COMPLETING THIS FORM**

1. **CORPORATE NAME**

2. **CALIFORNIA CORPORATE NUMBER**

This Space for Filing Use Only

**No Change Statement** (Not applicable if agent address of record is a P.O. Box address. See instructions.)

3. **If there have been any changes to the information contained in the last Statement of Information filed with the California Secretary of State, or no statement of information has been previously filed, this form must be completed in its entirety.**

If there has been no change in any of the information contained in the last Statement of Information filed with the California Secretary of State, check the box and proceed to **Item 13**.

**Complete Addresses for the Following** (Do not abbreviate the name of the city. Items 4 and 5 cannot be P.O. Boxes.)

4. STREET ADDRESS OF PRINCIPAL EXECUTIVE OFFICE	CITY	STATE	ZIP CODE
5. STREET ADDRESS OF PRINCIPAL BUSINESS OFFICE IN CALIFORNIA, IF ANY	CITY	STATE	ZIP CODE
6. MAILING ADDRESS OF THE CORPORATION, IF DIFFERENT THAN ITEM 4	CITY	STATE	ZIP CODE

**Names and Complete Addresses of the Following Officers** (The corporation must list these three officers. A comparable title for the specific officer may be added; however, the preprinted titles on this form must not be altered.)

7. CHIEF EXECUTIVE OFFICER/	ADDRESS	CITY	STATE	ZIP CODE
8. SECRETARY	ADDRESS	CITY	STATE	ZIP CODE
9. CHIEF FINANCIAL OFFICER/	ADDRESS	CITY	STATE	ZIP CODE

**Agent for Service of Process** If the agent is an individual, the agent must reside in California and Item 11 must be completed with a California street address, a P.O. Box address is not acceptable. If the agent is another corporation, the agent must have on file with the California Secretary of State a certificate pursuant to California Corporations Code section 1505 and Item 11 must be left blank.

10. NAME OF AGENT FOR SERVICE OF PROCESS

11. STREET ADDRESS OF AGENT FOR SERVICE OF PROCESS IN CALIFORNIA, **IF AN INDIVIDUAL** CITY STATE ZIP CODE

**Type of Business**

12. DESCRIBE THE TYPE OF BUSINESS OF THE CORPORATION

13. THE INFORMATION CONTAINED HEREIN IS TRUE AND CORRECT.

\_\_\_\_\_  
DATE TYPE/PRINT NAME OF PERSON COMPLETING FORM TITLE SIGNATURE



**Secretary of State**  
**Statement of Information**  
 (California Nonprofit, Credit Union and  
 General Cooperative Corporations)

SI-100

114

**FILED**  
 Secretary of State  
 State of California  
**MAY 20 2019**

**IMPORTANT** — Read instructions before completing this form.

**Filing Fee** — \$20.00;

**Copy Fees** — First page \$1.00; each attachment page \$0.50;  
 Certification Fee — \$5.00 plus copy fees

**1. Corporation Name** (Enter the exact name of the corporation as it is recorded with the California Secretary of State)

Venture Commerce Center Sorrento  
 Condominium Association

NF

This Space For Office Use Only

**2. 7-Digit Secretary of State File Number**

C3085169

**3. Business Addresses**

a. Street Address of California Principal Office, if any - Do not enter a P.O. Box	City (no abbreviations)	State	Zip Code
2555 Camino Del Rio S. Ste. 201	San Diego	CA	92108
b. Mailing Address of Corporation, if different than item 3a	City (no abbreviations)	State	Zip Code

**4. Officers**

The Corporation is required to enter the names and addresses of all three of the officers set forth below. An additional title for Chief Executive Officer or Chief Financial Officer may be added; however, the preprinted titles on this form must not be altered.

a. Chief Executive Officer/	First Name	Middle Name	Last Name	Suffix
	Boris		Dantus	
Address	1199 Sorrento Valley Rd Ste. 205		San Diego	CA 92121
b. Secretary	First Name	Middle Name	Last Name	Suffix
	Steve		Laverson	
Address	1199 Sorrento Valley Rd Ste. 202		San Diego	CA 92121
c. Chief Financial Officer/	First Name	Middle Name	Last Name	Suffix
	Jeff		Muenl	
Address	1199 Sorrento Valley Rd Ste. 208		San Diego	CA 92121

**5. Service of Process** (Must provide either Individual OR Corporation.)

**INDIVIDUAL** — Complete Items 5a and 5b only. Must include agent's full name and California street address.

a. California Agent's First Name (if agent is not a corporation)	Middle Name	Last Name	Suffix
Scott	Alan	Cook	
b. Street Address (if agent is not a corporation) - Do not enter a P.O. Box	City (no abbreviations)	State	Zip Code
2555 Camino Del Rio S. Ste. 201	San Diego	CA	92108

**CORPORATION** — Complete Item 5c only. Only include the name of the registered agent Corporation.

c. California Registered Corporate Agent's Name (if agent is a corporation) — Do not complete Item 5a or 5b

Scott A. Cook

**6. Common Interest Developments**

Check here if the corporation is an association formed to manage a common interest development under the Davis-Sterling Common Interest Development Act (California Civil Code section 4000, et seq.) or under the Commercial and Industrial Common Interest Development Act (California Civil Code section 6500, et seq.). The corporation must file a Statement by Common Interest Development Association (Form SI-CID) as required by California Civil Code sections 5405(a) and 6760(a). See Instructions.

**7. The information contained herein, including in any attachments, is true and correct.**

5-10-19  
Date

Scott A. Cook  
Type or Print Name of Person Completing the Form

President  
Title

*Signature*  
Signature



# S. T. W. C. SORRENTO VALLEY, LLC

11189 SORRENTO VALLEY RD, CA. 92121

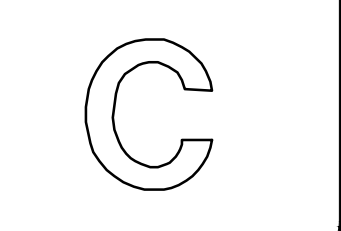
ATTACHMENT 9

REVISIONS	BY
06-14-18	MJC
06-18-18	MJC
09-10-18	MJC
07-31-2019	QQ

S T W C  
SORRENTO VALLEY, LLC  
11189 SORRENTO VALLEY ROAD SUITE 103

AUSTIN & ASSOCIATES  
ALAN LLOYD AUSTIN  
1622 PIONEER WAY EL CAJON CA. 92020  
RESIDENTIAL & COMMERCIAL PLANNING AND DESIGN  
MEMBER - AMERICAN INSTITUTE OF BUILDING DESIGN  
Ph: (619)440-3624

DRAWN BY:  
MJC  
CHECKED BY:  
ALA  
DATE:  
11-6-17  
SCALE:  
AS NOTED  
JOB NO.



- The sale of recreational marijuana shall be prohibited without a valid license from the State authorizing such activity.
- Consultations by medical professional shall not be a permitted accessory use at the Marijuana Outlet.
- Lighting shall be provided to illuminate the interior of the Marijuana Outlet, fa-ad e, and the immediate surrounding area, including any accessory uses, parking lots, and adjoining sidewalks. Lighting shall be hooded or oriented so as to deflect light away from adjacent properties. Security shall include operable cameras and a metal detector to the satisfaction of Development Services Department. This Marijuana Outlet shall also include alarms and two security guards. The security guards shall be licensed by the State of California. Two security guards must be on the premises during business hours. At least one security guard must be on the premises 24 hours a day, seven days a week. The security guards should only be engaged in activities related to providing security for the Marijuana Outlet, except on an incidental basis. The cameras shall have and
- use a recording device that maintains the recordings for a minimum of 30 days.
- All signs associated with this development shall be consistent with sign criteria established by City-wide sign regulations and shall further be restricted by this permit. Ground signs shall not be pole signs. A primary sign shall be posted on the outside of the Marijuana Outlet and shall only contain the name of the business, which shall contain only alphabetic characters, and shall be limited to two colors. The Owner/Permittee shall post and maintain a sign showing the name and emergency contact phone number of an operator or manager in a location visible from outside the Marijuana Outlet in character size at least two inches in height.
- The Marijuana Outlet shall operate only between the hours of 7:00 a.m. and 9:00 p.m., seven days a week.
- The use of vending machines which allow access to marijuana and marijuana products except by a responsible person, as defined in the San Diego Municipal Code Section 42.1502, is prohibited. For purposes of this Section, a vending machine is any device which allows access to marijuana and marijuana products without human intermediary.
- The Owner/Permittee shall maintain the Marijuana Outlet, adjacent public sidewalks, and areas under the control of the Owner/Permittee, free of litter and graffiti at all times. The Owner/Permittee shall provide for daily removal of trash, litter, and debris. Graffiti shall be removed from the premises within 24 hours.

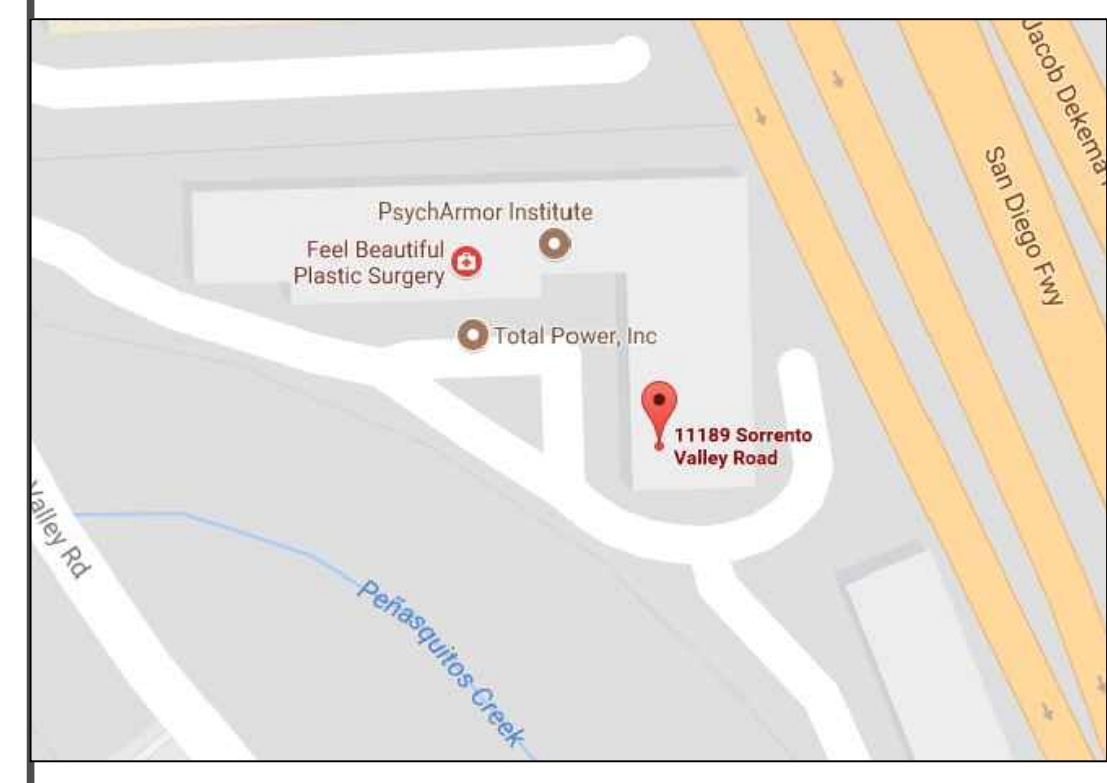
### APPLICABLE CODES

THE CURRENT PREVAILING BUILDING AND CONSTRUCTION CODES IN THE CITY OF SAN DIEGO ARE:

2016 CALIFORNIA BUILDING CODE (CBC), PART 2, TITLE 24 C.C.R.  
2016 CALIFORNIA MECHANICAL CODE (CMC), PART 4, TITLE 24 C.C.R.  
2016 CALIFORNIA PLUMBING CODE (CPC), PART 5, TITLE 24 C.C.R.  
2016 CALIFORNIA ELECTRICAL CODE (CEC), PART 3, TITLE 24 C.C.R.  
2016 CALIFORNIA GREEN BUILDING STANDARDS CODE  
2016 CALIFORNIA ENERGY EFFICIENCY STANDARDS, AND TITLE 18 OF THE LONG BEACH MUNICIPAL CODE

2016 CALIFORNIA ELEVATOR SAFETY CONSTRUCTION CODE, PART 7, TITLE 24 C.C.R.  
2016 CALIFORNIA HISTORICAL BUILDING CODE, PART 8, TITLE 24 C.C.R.  
2016 CALIFORNIA FIRE CODE, PART 9, TITLE 24 C.C.R.  
2016 CALIFORNIA REFERENCED STANDARDS, PART 12, TITLE 24 C.C.R.

### VICINITY MAP



### SHEET INDEX

- C COVER SHEET
- S SITE PLAN
- A-1 FLOOR PLAN
- A-2 SURVEILLANCE & LIGHTING PLAN
- A-3 SITE LIGHT PLAN
- A-4 FLOODWAY PLAN

### SITE DATA

ZONE: IL-3-1  
EXISTING OCCUPANCY: B  
EXISTING USE: OFFICE SPACE  
PROPOSED USE: MARIJUANA OUTLET  
PROPOSED OCCUPANCY: B

SITE: 11189 SORRENTO VALLEY ROAD SUITE 103  
SAN DIEGO, CA. 92121  
LOT SIZE: 140,503 SF. (3,225 A)  
PAVING AREA: 54,632 SF.  
LANDSCAPE AREA: 32,211 SF.  
EXISTING F.A.R.: 323 (EXIST'G BUILDING SIZE 46,935 SF.)  
LOT COVERAGE: 32%  
YEAR BUILT: 1982 CONVERTED TO CONDOMINIUM 2008  
TYPE OF CONSTRUCTION: VS  
NUMBER OF STORIES: 2  
BUILDING AREA: 46,935 SQ. FT.  
SETBACK:  
FRONT: 15' 20'  
SIDES: 10'  
STREET SIDE YARD: 15' 20'  
REAR YARD: 0' 10'  
SAFETY ZONE: 2

### PROJECT CONSULTANTS

DESIGNER:

AUSTIN & ASSOCIATES  
ALAN LLOYD AUSTIN  
1622 PIONEER WAY  
EL CAJON, CA 92020  
619-440-3624

### LEGAL DESCRIPTION

A.P.N. No. 310-121-10-03  
PARCEL A,B,C TORREY KNOLLS PARK MAP 1991, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA

REAL PROPERTY IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS: A CONDOMINIUM COMPRISE OF:

PARCEL A:  
UNIT 301 AS SHOWN AND DEFINED ON THAT CERTAIN CONDOMINIUM PLAN VENTURE COMMERCE CENTER SORRENTO, RECORDED AUGUST 21, 2008 AS INSTRUMENT NO. 2008-0449361 OF OFFICIAL RECORDS, TOGETHER WITH AN AFFURTEMENT UNDIVIDED 3.95% PERCENTAGE INTEREST IN AND TO THE COMMON AREA, BEING A PORTION OF LOT 3 OF "TORREY KNOLLS PARK", IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 1991 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY ON JULY 31, 1914; AND AS SAID COMMON AREA IS FURTHER DEFINED AND DESCRIBED IN THAT CERTAIN DECLARATION OF COVENANTS AND RESTRICTIONS ESTABLISHING A PLAN FOR CONDOMINIUM OWNERSHIP FOR VENTURE COMMERCE CENTER-SORRENTO, RECORDED AUGUST 21, 2008 AS INSTRUMENT NO. 2008-0449362 OF OFFICIAL RECORDS.

EXCEPTING THEREFROM, THE RIGHT AND TITLE TO ONE-HALF OF ALL PETROLEUM, OIL OR GAS OR BY-PRODUCTS OF SUCH PETROLEUM, OIL OR GAS WHICH MAY BE HEREAFTER FOUND UPON SAID PROPERTY OR IN THE EARTH UNDER SAID PROPERTY WITHOUT RIGHTS OF SURFACE ENTRY AND WITHOUT THE RIGHT TO ENTER, DRILL, EXTRACT OR REMOVE ANY MINERALS, INCLUDING OIL AND GAS ABOVE A DEPTH OF 500 FEET BELOW THE PRESENT SURFACE OF SAID PROPERTY, AND TOGETHER WITH THE PROCEEDS AVAILS AND PROFITS ARISING FROM THE SALE OR DISPOSITION OF SAID ONE-HALF OF THE AFORESAID MINERAL PRODUCTS, FOR THE TERM OF 99 YEARS, AS RESERVED BY D.C. HANDLEY IN DEED RECORDED IN BOOK 650, PAGE 191 OF DEEDS.

EXCEPTING THEREFROM CERTAIN EXCLUSIVE, RESTRICTED AND/OR NON-EXCLUSIVE EASEMENTS FOR ACCESS AND OTHER PURPOSES, OVER AND ACROSS THE COMMON AREA, AS SAID COMMON AREA IS FURTHER SET FORTH AND DEFINED IN THAT CERTAIN DECLARATION OF COVENANTS AND RESTRICTIONS ESTABLISHING A PLAN FOR CONDOMINIUM OWNERSHIP FOR VENTURE COMMERCE CENTER-SORRENTO, RECORDED AUGUST 21, 2008 AS INSTRUMENT NO. 2008-0449362 OF OFFICIAL RECORDS.

PARCEL B:  
THE EXCLUSIVE RIGHT TO USE THOSE PORTIONS OF THE EXCLUSIVE USE COMMON AREAS DESIGNATED AS P71 AND P72, BEING THOSE PARKING SPACES DESIGNATED AS AFFURTEMENT TO THE UNITS(S) DEFINED IN PARCEL A HEREIN ABOVE; SAID EXCLUSIVE USE COMMON AREAS ARE FURTHER DEFINED IN THAT CERTAIN DECLARATION OF COVENANTS AND RESTRICTIONS ESTABLISHING A PLAN FOR CONDOMINIUM OWNERSHIP FOR VENTURE COMMERCE CENTER-SORRENTO, RECORDED AUGUST 21, 2008 AS INSTRUMENT NO. 2008-0449362 OF OFFICIAL RECORDS.

PARCEL C:  
CERTAIN NON-EXCLUSIVE EASEMENTS FOR INGRESS AND EGRESS AND OTHER PURPOSES, WHICH EASEMENTS SHALL BE AFFURTEMENT TO THE CONDOMINIUM UNIT(S) DESCRIBED IN PARCEL A HEREIN ABOVE, OVER AND ACROSS THE COMMON AREA, AS SET FORTH AND DEFINED IN THAT CERTAIN DECLARATION OF COVENANTS AND RESTRICTIONS ESTABLISHING A PLAN FOR CONDOMINIUM OWNERSHIP FOR VENTURE COMMERCE CENTER-SORRENTO, RECORDED AUGUST 21, 2008 AS INSTRUMENT NO. 2008-0449362 OF OFFICIAL RECORDS.

### ZONING

ZONE: IL-3-1  
OVERLAY ZONES:  
AIRPORT INFLUENCE AREA FOR MIRAMAR REVIEW AREA 1, AIRPORT LAND USE COMPATIBILITY OVERLAY ZONE (MCA9 MIRAMAR), ACCIDENT POTENTIAL ZONE 2 FOR MIRAMAR, COASTAL OVERLAY ZONE (NON-APPEALABLE AREA 1), SPECIAL FLOOD HAZARD AREA (100 YEAR FLOODWAY AND 100 YEAR FLOODPLAIN) PARKING IMPACT OVERLAY ZONE (COASTAL), WITHIN A TRANSIT PRIORITY AREA (TPA).  
PREVIOUS DISCRETIONARY: CONDO PLAN, MAP 1991 CDP-411195.

### SCOPE OF WORK

A COASTAL DEVELOPMENT PERMIT FOR A MARIJUANA OUTLET PERMIT TO LEGALLY OPERATE THE STUC SORRENTO VALLEY, LLC MARIJUANA OUTLET 1767 SF. THE CURRENT SITE CONSISTS OF A COMMERCIAL CONDOMINIUM THAT CONTAINS FIVE (5) UNITS. THIS PROJECT WILL UTILIZE UNIT 103 WHICH IS 1767 SQUARE FEET. THE PROJECT WILL ONLY CONSIST OF INTERIOR IMPROVEMENTS (TENANT FINISH) TO ALLOW THE SPACE TO BE SUITABLE FOR USE AS A MARIJUANA OUTLET. REBUILD TWO DRIVEWAYS TO BE CONSTRUCTED PER CITY STANDARDS AND PROPOSED PEDESTRIAN PATH.

### OWNER:

BEACHFRONT PROPERTIES, INC.  
1189 SORRENTO VALLEY ROAD # 103  
SAN DIEGO, CA 92121  
JOHN KREMER  
858-344-0355

### TENANT:

STUC SORRENTO VALLEY, LLC  
1189 SORRENTO VALLEY RD. NO. 103  
SAN DIEGO, CA. 92121

### TENANTS:

SUITE 101	DEL MAR UNION SCHOOL DISTRICT MAINTENANCE	3,178 SF.
02	AND OPERATION OFFICE	2,426 SF.
SUITE 103	STUCW MARIJUANA OUTLET	1,761 SF.
SUITE 104	ARISAN (THERAPEUTIC), DOCTORS OFFICE	4,543 SF.
SUITE 105	INTO THE SUNSET (WILLOW CENTER), INTEGRATIVE VETERINARY, DOCTORS OFFICE	2,282 SF.
SUITE 201	BACK IN MOTION (CHIROPRACTIC & REHABILITATION), DOCTORS OFFICE	3,346 SF.
SUITE 202	FEEL BEAUTIFUL (PLASTIC SURGERY), DOCTORS OFFICE	3,159 SF.
SUITE 203	PSYCHARTIOR INSTITUTE, MILITARY ONLINE SUPPORT TRAINING	3,453 SF.
SUITE 204	TORREY FINES (MICRO ENDODONTICS), DOCTORS OFFICE	2,173 SF.
SUITE 205	Dx BIOSAMPLE (SYNTHETIC FUEL ADDITIVES AND FUEL MANAGEMENT SYSTEM), MEDICAL OFFICE	3,278 SF.
SUITE 206	CHEM BRIDGE, CORP. / MEDICAL RESEARCH	4,992 SF.
SUITE 207	VACANT	3,159 SF.
208	DENTIST (COSMETIC DENTISTRY), DOCTORS OFFICE	2,584 SF.
SUITE 209	MOLSOLO (MOLECULES IN SILICO), LAB, OFFICE	4,211 SF.



**SITE PLAN NOTE:**

- A. TRANSIT STOPS. EXISTING BUS STOP IS 1660 FT. AWAY
- B. VISIBILITY TRIANGLE: NO PERMITS INCLUDING LANDSCAPING OR SOLID WALL WITHIN THE VISIBILITY AREA SHALL EXCEED 36" HIGH.
- C. DRIVEWAY: RECONSTRUCT TWO 24 FT. WIDE DRIVEWAYS PER CURRENT CITY STANDARDS.
- D. CARBON AIR FILTERS WILL BE INSTALLED TO LIMIT THE RELEASE OF ODORS TO ADJACENT USES. ALL MECHANICAL SYSTEMS HAVE FILTERS TO CONTROL ODOR, PER SDMC SECTION 142.010.
- E. IN ACCORDANCE WITH SDMC 9514.0406, SIGN PLANS SHALL BE A REQUIRED ELEMENT OF SAN DIEGO DEVELOPMENT PERMIT APPLICATION SUBMITTALS AND SIGNAGE SHALL BE IN CONFORMANCE WITH LAND DEVELOPMENT CODE CHAPTER 12, ARTICLE 9 DIVISION 8 (SIGN PERMIT PROCEDURES) AND ARTICLE 9 DIVISION 8 (SIGN PERMIT PROCEDURES) AND CHAPTER 14, ARTICLE 2 DIVISION 12, SDMC 1410614 MARIJUANA OUTLET (SIGN REGULATIONS).
- F. ALL USES OF THIS PROPERTY MAY BE ANY USE PERMITTED IN THE IL-3-1 ZONE.
- G. PRIOR TO THE ISSUANCE OF ANY CONSTRUCTION PERMIT, THE OWNER/PERMITTED SHALL INCORPORATE ANY CONSTRUCTION BEST MANAGEMENT PRACTICES NECESSARY TO COMPLY WITH CHAPTER 14, ARTICLE 2, DIVISION 1 (GRADING REGULATIONS) OF THE SAN DIEGO MUNICIPAL CODE, INTO THE CONSTRUCTION PLANS OR SPECIFICATION.

**LANDS OF PUBLIC STORAGE, INC. PARCEL 2**  
 FM No. 3360  
 A.P.N. = 310-121-18  
 TYPE V-B  
 3.79 ACRES, OCC 9

- H. THIS PROJECT PROPOSES NO DEVELOPMENT IMPROVEMENT OUTSIDE THE EXISTING BUILDING FOOTPRINT FOR THIS DISCRETIONARY REVIEW AND THEREFORE DOES NOT REQUIRE ANY PERMANENT STORM WATER BEST MANAGEMENT PRACTICES (BMP's).
- I. NO PERMANENT STRUCTURE IS ALLOWED WITHIN THE EASEMENT LIMITS.
- J. NO GRADING IS PROPOSED FOR THIS PROJECT.
- K. SIGNS SHALL BE POSTED ON THE OUTSIDE OF THE MARIJUANA OUTLET AND SHALL ONLY CONTAIN THE NAME OF THE BUSINESS, LIMITED TO TWO COLORS.
- L. SDMC 1410614 STATES THAT THE NAME AND EMERGENCY CONTACT PHONE NUMBER OF AN OPERATOR OR MANAGER SHALL BE POSTED IN A LOCATION VISIBLE FROM OUTSIDE OF THE MARIJUANA OUTLET IN CHARACTER SIZE AT LEAST TWO INCHES IN HEIGHT.
- M. SDMC 1410614 LIMITS THE MARIJUANA OUTLET TO OPERATION ONLY BETWEEN THE HOURS OF 7:00 AM AND 9:00 PM, SEVEN DAYS A WEEK. THERE WILL BE A CONDITION PROPOSED TO LIMIT THE HOURS OF OPERATION. HOURS OF OPERATION: 7:00 AM TO 9:00 PM SEVEN DAYS OF WEEK.
- N. SDMC 1410614 PROHIBITS THE USE OF VENDING MACHINES WHICH ALLOW ACCESS TO MARIJUANA EXCEPT BY A RESPONSIBLE PERSON, AS DEFINED IN SAN DIEGO MUNICIPAL CODE SECTION 42.1502. A VENDING MACHINE IS ANY DEVICE WHICH ALLOWS ACCESS TO MARIJUANA WITHOUT A HUMAN INTERMEDIARY.

- O. CONSULTATIONS BY MEDICAL PROFESSIONAL SHALL NOT BE A PERMITTED ACCESSORY USE AT THE MARIJUANA OUTLET.
- P. THE OWNER/PERMITTEE OR OPERATOR SHALL MAINTAIN THE MARIJUANA OUTLET, ADJACENT PUBLIC SIDEWALKS, AND AREAS UNDER THE CONTROL OF THE OWNER OR OPERATOR, FREE OF LITTER AND GRAFFITI AT ALL TIMES. THE OWNER OR OPERATOR SHALL PROVIDE FOR DAILY REMOVAL OF TRASH, LITTER, AND DEBRIS. GRAFFITI SHALL BE REMOVED WITHIN 24 HOURS.
- Q. MARIJUANA OUTLET SHALL NOT BE CONSUMED ANYWHERE WITHIN THE SITE.
- R. THE OWNER/PERMITTEE OR OPERATOR SHALL POST ANTI-LOITERING SIGNS NEAR ALL ENTRANCES OF THE MARIJUANA OUTLET.
- S. EXISTING SERVICES WILL REMAIN.
- T. THE FACILITY SHALL PROVIDE A SUFFICIENT ODOR ABSORBING VENTILATION AND EXHAUST SYSTEM CAPABLE OF ELIMINATING EXCESSIVE OR OFFENSIVE ODORS CAUSING DISCOMFORT OR ANNOYANCE TO ANY REASONABLE PERSON OF NORMAL SENSITIVITIES STANDING OUTSIDE OF THE STRUCTURAL ENVELOPE OF THE PERMITTED FACILITY IN COMPLIANCE WITH SDMC SECTION 142.010.

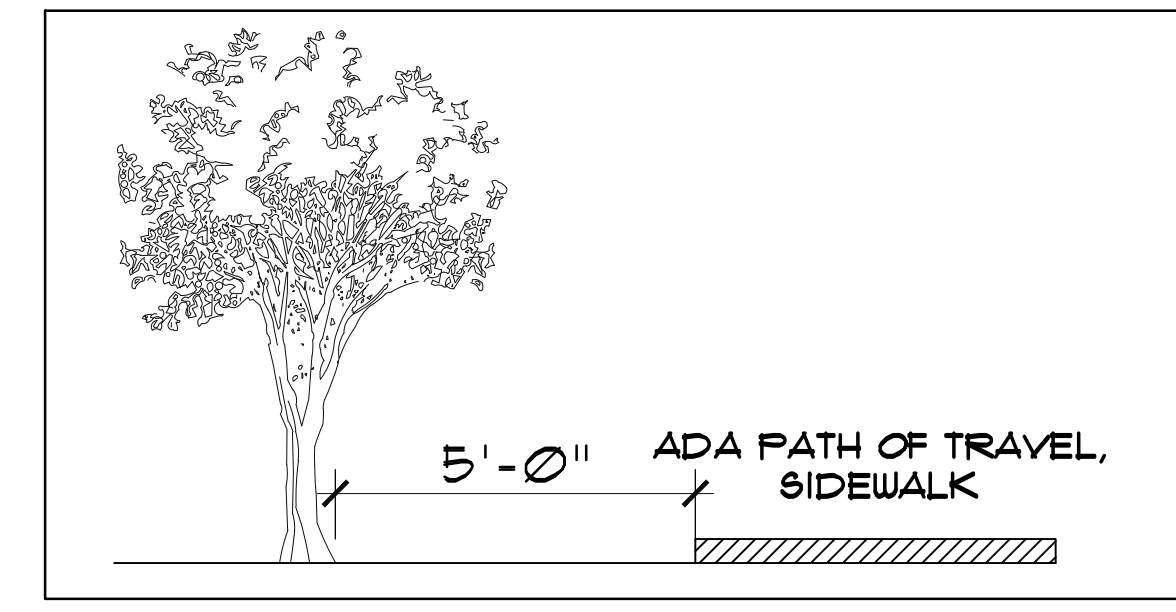
**TREE PROTECTION NOTES:**

- 1. PROVIDE A MINIMUM SEPARATION OF 5 FEET BETWEEN THE PROPOSED ADA PATH OF TRAVEL FROM SORRENTO VALLEY ROAD AND MATURE TREE ON SITE. TREE SPECIES ARE PLATANUS RACEMOSA / CALIFORNIA SYCAMORE, CALIFERN SIZE: 24" INCHES.
- 1. A BRIGHT YELLOW OR ORANGE TEMPORARY FENCE WILL BE PLACED AROUND EXISTING TREES AT THE DRIP LINE.
- 2. STOCKPILING, TOPSOIL DISTURBANCE, CONSTRUCTION MATERIAL STORAGE, VEHICLE USE, FOOT TRAFFIC, AND STORAGE OF ANY KIND IS PROHIBITED WITHIN THE DRIP LINE.
- 3. ROOT SYSTEMS OF EXISTING TREES WILL BE PROTECTED FROM FLOODING, EROSION, CHEMICAL SPILLS, AND EXCESSIVE WETTING AND DRYING DURING DEWATERING.
- 4. THE EXISTING GRADE WILL BE MAINTAINED WITHIN THE DRIP LINE OF EXISTING TREES.
- 5. ROOTS OF EXISTING TREES WILL BE CUT APPROXIMATELY 6" INCHES BACK FROM NEW CONSTRUCTION AND ALL CUTS WILL BE SEALED WITH WOOD PAINT AS MANUFACTURED BY FLINTKOTE OR APPROVED EQUAL.
- 6. A CERTIFIED CONSULTING ARBORIST SHALL OVERSEE PRUNING OF ANY ROOTS 6" IN OR GREATER IN DIAMETER.
- 7. MAINTAIN AND DOCUMENT A TREE WATURING SCHEDULE DURING CONSTRUCTION.
- 8. ALL DAMAGED TREES WILL BE REPLACED WITH ONE EQUAL OR GREATER SIZE.

**PARKING SPACE DIMENSION TABLE:**

(A)	8.5' x 18'
(B)	8.0' x 18'
(C)	8.0' x 20'
(D)	9.0' x 18'
(E)	8.5' x 19'
(F)	15' x 16.5' (INCLUDES 2' OVERHANG)
(H)	7.5' x 18'
HC	9.0' x 18'

PARALLEL SPACES ARE 8' x 18'



**SITE DATA:**

ZONE: IL-3-1  
 EXISTING OCCUPANCY: B  
 EXISTING USE: OFFICE SPACE  
 PROPOSED USE: MARIJUANA OUTLET  
 PROPOSED OCCUPANCY: B

**ATTACHMENT 9**

SITE: 1189 SORRENTO VALLEY ROAD SUITE 103  
 SAN DIEGO, CA 92121  
 1420293 SF. (3229 A)  
 PAVING AREA: 54,632.0 SF.  
 LANDSCAPE AREA: 32,211.7 SF.  
 EXISTING F.A.R.: 323 (EXIST'G BUILDING SIZE 46,995 SF.)  
 LOT COVERAGE: 37%  
 YEAR BUILT: 1984 CONVERTED TO CONDOMINIUM 2008  
 TYPE OF CONSTRUCTION: VB  
 NUMBER OF STORIES: 2  
 BUILDING AREA: 46,995 SQ. FT.  
 SETBACK:  
 FRONT: 15' / 20'  
 SIDES: 10'  
 STREET SIDE YARD: 15' / 20'  
 REAR YARD: 0' / 10'  
 SAFETY ZONE: 2'

EXISTING CONDOMINIUMS: 43,976 SF. X 2.5 SPACES/1,000 SF. (PREVIOUSLY APPROVED PARKING RATIO PER CDP No. 471195) = 110 SPACES  
 PROPOSED MO: 1,761 SF. X 5.0 SPACES/1,000 SF. (PER TABLE 142-05E) = 9 SPACES

TOTAL: 110 SPACES + 9 SPACES = 119 SPACES  
 REQUIRED PARKING SPACES: 131 SPACES (PER CDP No. 471195)  
 ACCESSIBLE PARKING SPACE REQUIRED = 5  
 ACCESSIBLE PARKING SPACE PROVIDED = 7

PROPOSED TENANT: 1,761 SF. SUITE 103

**ZONING:**

ZONE: IL-3-1  
 OVERLAY ZONES:  
 AIRPORT INFLUENCE AREA FOR MIRAMAR REVIEW AREA | AIRPORT AND USE COMPATIBILITY OVERLAY ZONE (C49 MIRAMAR ACCIDENT POTENTIAL ZONE 2 FOR MIRAMAR COASTAL OVERLAY ZONE (NON-APPEALABLE AREA 1) SPECIAL FLOOD HAZARD AREA (100 YEAR FLOODWAY AND 100 YEAR FLOODPLAIN) PARKING IMPACT OVERLAY ZONE (COASTAL).  
 WITHIN A TRANSIT PRIORITY AREA (TPA).  
 PREVIOUS DISCRETIONARY: CONDO PLAN, MAP 1991 CDP-471195.  
 THE PROPOSED PROJECT IS WITHIN THE PARKING IMPACT AREA ZONE.

**SCOPE OF WORK:**

A COASTAL DEVELOPMENT PERMIT FOR A MARIJUANA OUTLET PERMIT TO LEGALLY OPERATE THE STUC SORRENTO VALLEY, LLC MARIJUANA OUTLET 1,761 SF. THE CURRENT SITE CONSISTS OF A COMMERCIAL CONDOMINIUM THAT CONTAINS FIVE (5) UNITS. THIS PROJECT WILL UTILIZE UNIT 103 WHICH IS 1,761 SQUARE FEET. THE PROJECT WILL ONLY CONSIST OF INTERIOR IMPROVEMENTS (TENANT FINISH) TO ALLOW THE SPACE TO BE SUITABLE FOR USE AS A MARIJUANA OUTLET. REBUILD TWO DRIVEWAYS TO BE CONSTRUCTED PER CITY STANDARDS AND PROPOSED PEDESTRIAN PATH.

**OWNER:**

BEACHFRONT PROPERTIES, INC.  
 1189 SORRENTO VALLEY ROAD # 103  
 SAN DIEGO, CA 92121  
 JOHN KREAMER  
 858-344-0355

**TENANT:**

STUC SORRENTO VALLEY, LCC  
 1189 SORRENTO VALLEY RD. NO. 103  
 SAN DIEGO, CA 92121

**CONSULTANT:**

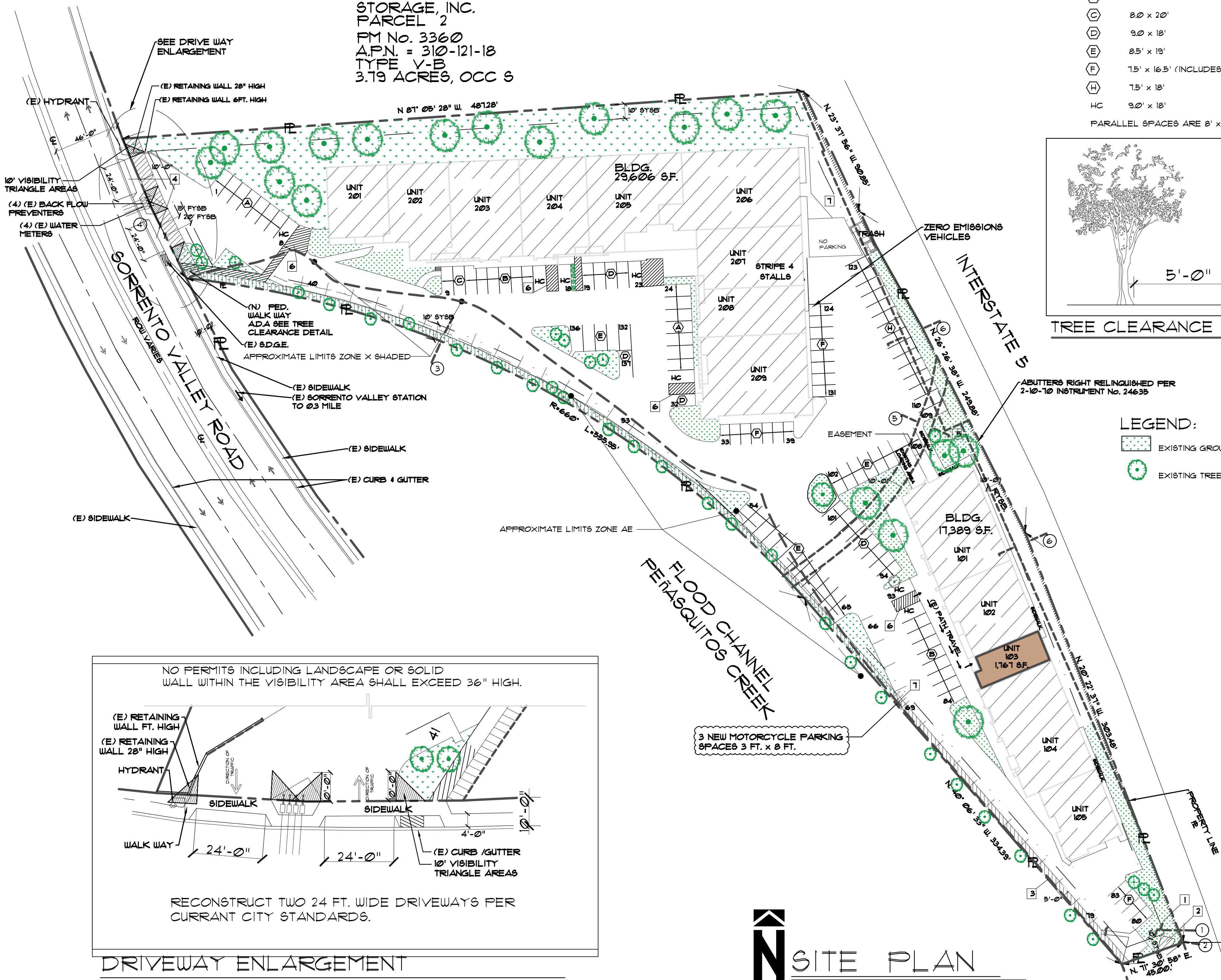
AUSTIN & ASSOCIATES  
 ALAN LLOYD AUSTIN  
 1622 PIONEER WAY  
 EL CAJON, CA 92020  
 619-440-3624

**PLAN SPECIFIC NOTES**

- 1 EXISTING FULLY ACCESSIBLE PRIMARY ENTRANCE TO REMAIN
- 2 HEAVY DASHED LINE INDICATES EXISTING FULLY ACCESSIBLE PATH OF TRAVEL TO REMAIN
- 3 EXISTING FULLY ACCESSIBLE HANDICAPPED PARKING TO REMAIN
- 4 PROPOSED FULLY ACCESSIBLE EGRESSES / INGRESSES
- 5 EXISTING FULLY ACCESSIBLE CONCRETE WALK TO REMAIN
- 6 THE WORDS 'NO PARKING' SHALL BE PAINTED ON THE GROUND WITHIN EACH 5'-0" / 8'-0" (AT VAN SPACE) LOADING AND UNLOADING ACCESS AISLE. THIS NOTE SHALL BE PAINTED IN WHITE LETTERS NO LESS THAN 12 INCHES HIGH AND LOCATED SO THAT IT IS VISIBLE TO TRAFFIC ENFORCEMENT OFFICIALS CBC SECTION 11298.4.1 11298.4.2
- 7 3 NEW MOTORCYCLE SPACES, 3 FT. X 8 FT.

**EASEMENTS:**

- 1 AN EASEMENT IN FAVOR OF SAN DIEGO GAS AND ELECTRIC GRANTED PER INSTRUMENT NO. 15-08183.
- 2 AN EASEMENT IN FAVOR OF SAN DIEGO GAS AND ELECTRIC GRANTED PER THE INSTRUMENT RECORDED MAY 1, 1984 NO. 18895.
- 3 AN EASEMENT IN FAVOR OF CITY OF SAN DIEGO FOR DRAINAGE PURPOSES GRANTED PER INSTRUMENT NO. 81-193053.
- 4 AN EASEMENT IN FAVOR OF E. RUSSELL WERDIN ET AL FOR SLOPE PURPOSES GRANTED PER INSTRUMENT NO. 88-168081.
- 5 AN EASEMENT IN FAVOR OF CITY OF SAN DIEGO FOR STORM DRAINS WITH THE RIGHT OF INGRESS AND EGRESSES GRANTED PER INSTRUMENT NO. 15-192110.
- 6 AN EASEMENT IN FAVOR OF THE STATE OF CALIFORNIA FOR AN OVERHEAD FREEWAY BRIDGE GRANTED PER INSTRUMENT NO. 2001-568196.
- 7 AN EASEMENT IN FAVOR OF SAN DIEGO GAS AND ELECTRIC GRANTED PER INSTRUMENTS 92-17019 AND 93-37429 ARE NOT FLOTTABLE FROM THE RECORD DOCUMENTS AND ARE NOT SHOW HEREON.



**SCALE: 1" = 40'-0"**

REVISIONS	BY
06-14-18	MJC
06-18-18	MJC
09-10-18	MJC
04-17-2019	OD
05-29-2019	OD
07-31-2019	OD

**S T W C**  
**SORRENTO VALLEY, LLC**  
 11189 SORRENTO VALLEY ROAD SUITE 103

**AUSTIN & ASSOCIATES**  
 ALAN LLOYD AUSTIN  
 1622 PIONEER WAY EL CAJON CA. 92020 Ph. (619)440-3624  
 RESIDENTIAL & COMMERCIAL PLANNING AND DESIGN  
 MEMBER: AMERICAN INSTITUTE OF BUILDING DESIGN

DRAWN BY:	MJC
CHECKED BY:	ALA
DATE:	11-6-17
SCALE:	AS NOTED
JOB NO.:	



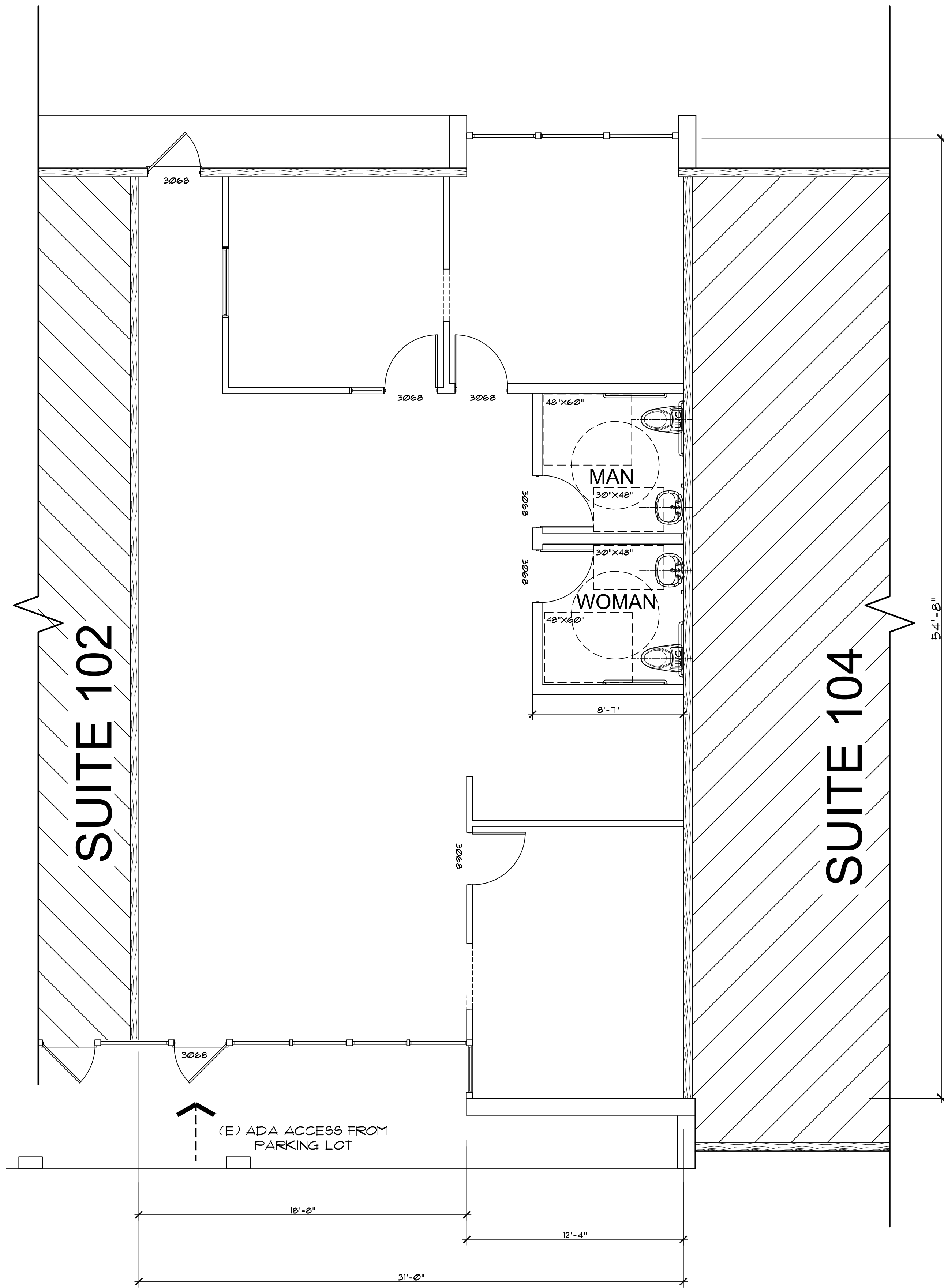
REVISIONS	BY
06-14-18	MJC
06-18-18	MJC
09-10-18	MJC
07-31-2019	OB

S T W C  
 SORRENTO VALLEY, LLC  
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 MEMBER: AMERICAN INSTITUTE OF BUILDING DESIGN

DRAWN BY:  
 MJC  
 CHECKED BY:  
 ALA  
 DATE:  
 11-6-17  
 SCALE:  
 AS NOTED  
 JOB NO.

A-1

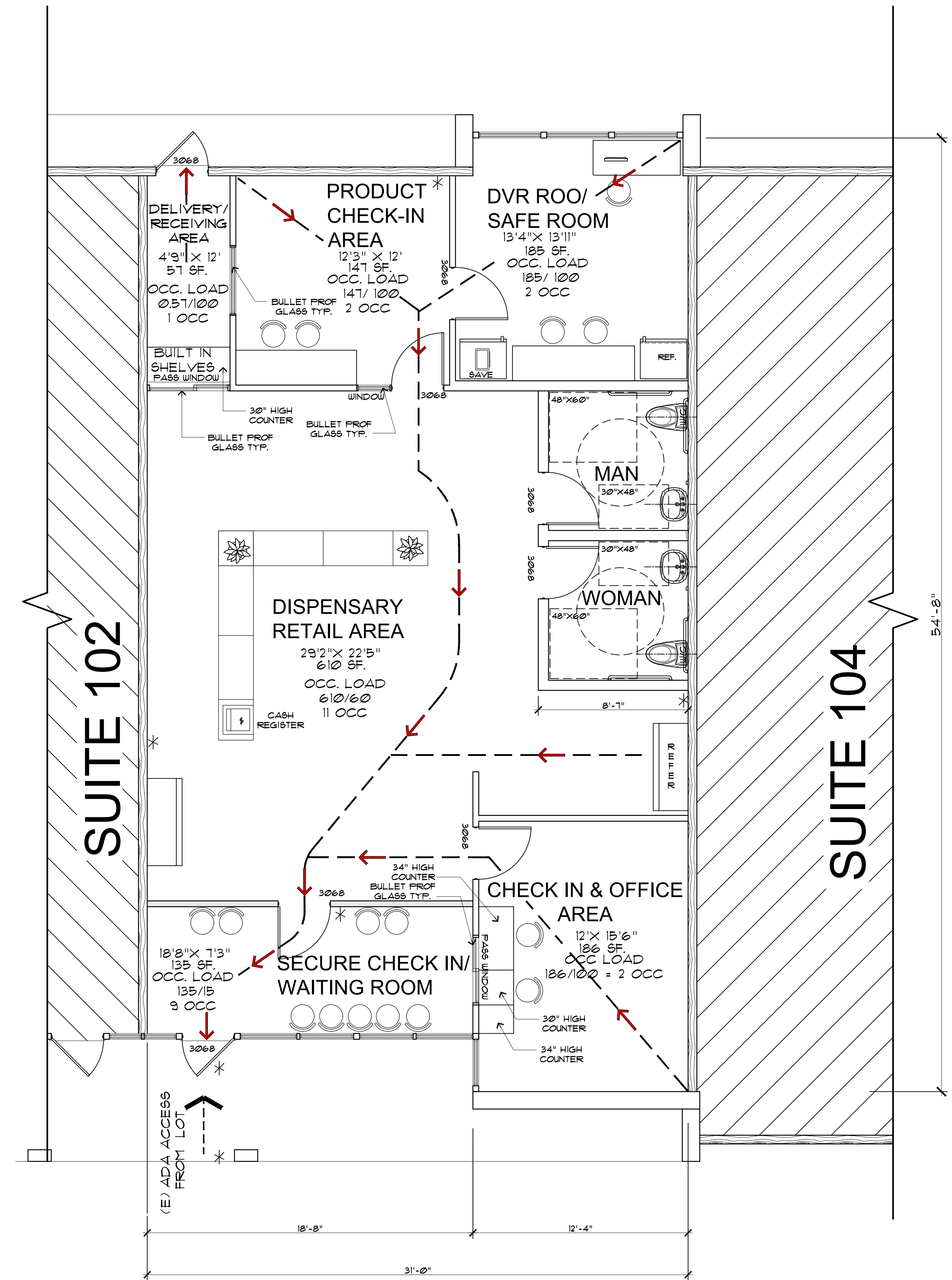


EXISTING FLOOR PLAN/ DEMOLITION

SCALE: 1/4" = 1'-0"

**WALL LEGEND:**

- = 2x4 STUDS @ 16" O/C, NEW WALLS
- = (E) 2x6 STUDS @ 16" O/C TO REMAIN
- = EXISTING 2x WALLS TO REMAIN
- = WALLS TO BE DEMO



FLOOR PLAN

SCALE: 1/4" = 1'-0"

**WALL LEGEND:**

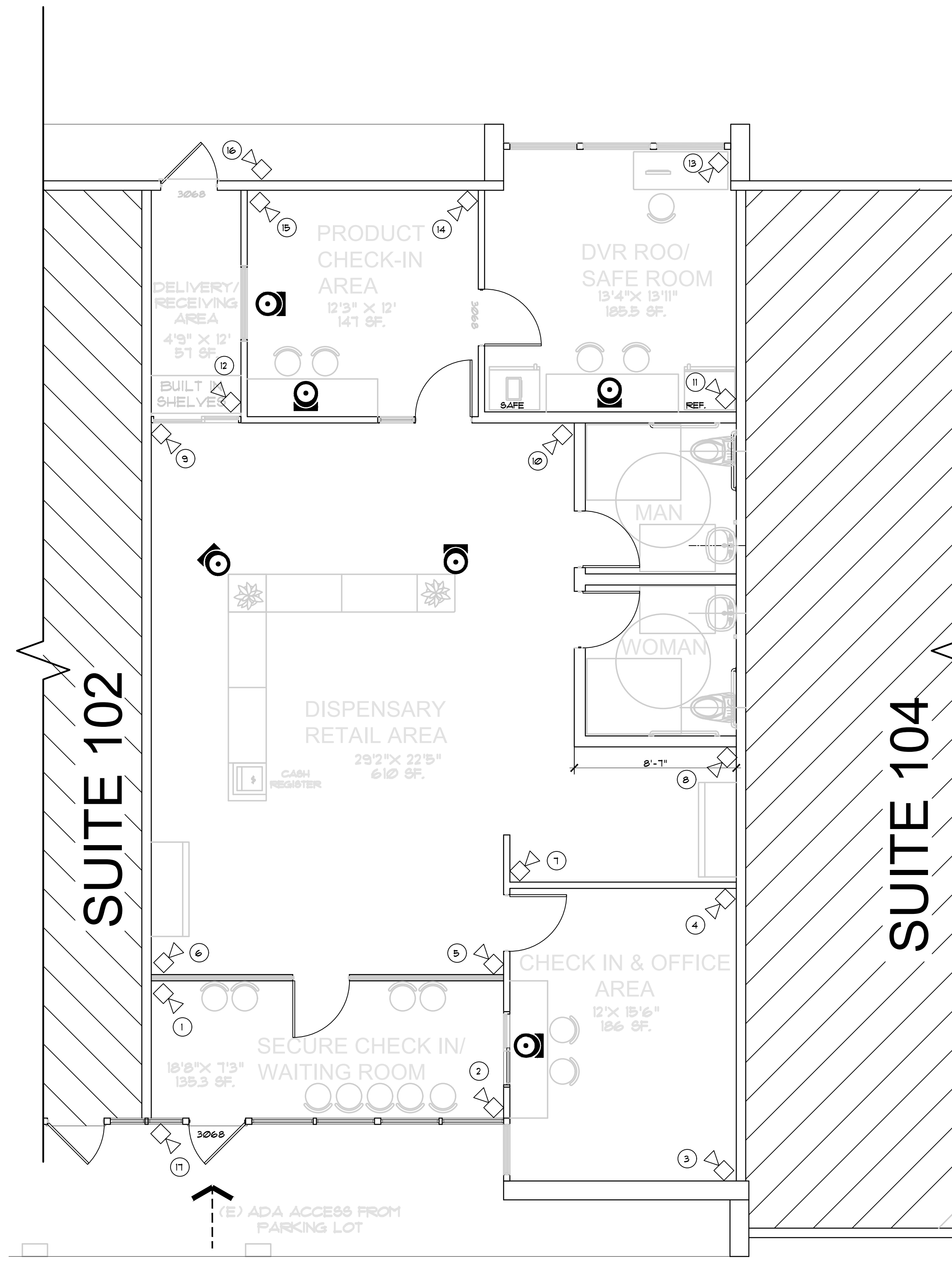
- = 2x4 STUDS @ 16" O/C, NEW WALLS
- = (E) 2x6 STUDS @ 16" O/C TO REMAIN
- = EXISTING 2x WALLS TO REMAIN
- = WALLS TO BE DEMO

REVISIONS	BY
06-14-18	MJC
06-18-18	MJC
09-10-18	MJC

**S T W C**  
**SORRENTO VALLEY, LLC**  
 11189 SORRENTO VALLEY ROAD SUITE 103

**AUSTIN & ASSOCIATES**  
 ALAN LLOYD AUSTIN  
 Ph. (619)440-3624  
**ABD**  
 1622 PIONEER WAY EL CAJON CA. 92020  
 RESIDENTIAL & COMMERCIAL PLANNING AND DESIGN  
 MEMBER AMERICAN INSTITUTE OF BUILDING DESIGN

DRAWN BY: MJC
CHECKED BY: ALA
DATE: 11-6-17
SCALE: AS NOTED
JOB NO. A-2

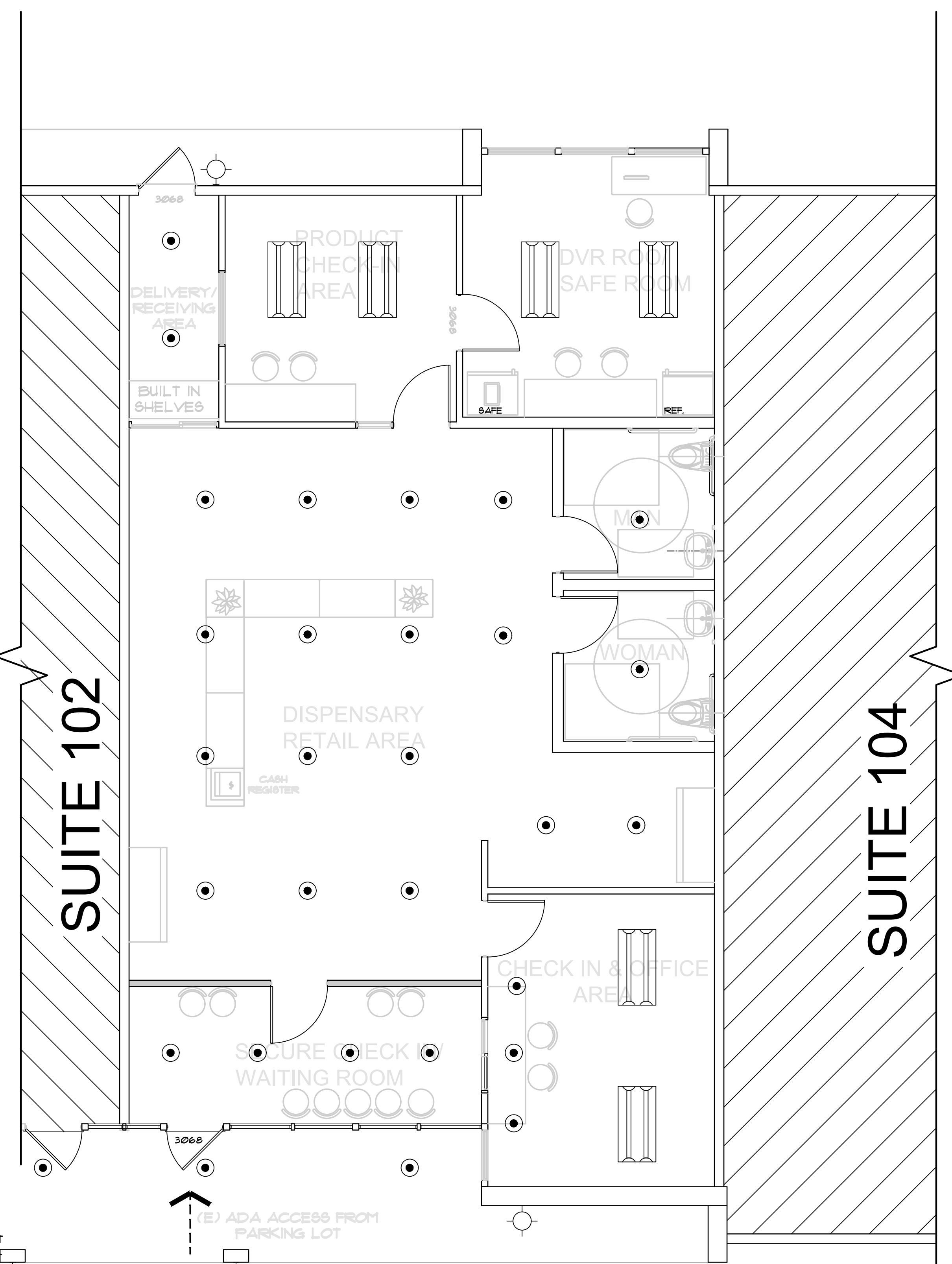


**SURVEILLANCE PLAN**

SCALE: 1/4" = 1'-0"

- LEGEND:**
- CAMERA PLACEMENT AND DIRECTION TOTAL = 17
  - OVERHEAD CAMERA PLACEMENT TOTAL = 6

- NOTES:**
- LIGHTING SHALL BE PROVIDED TO ILLUMINATE THE INTERIOR OF THE MARIJUANA OUTLET CONSUMER COOPERATIVE, FACADE, AND THE IMMEDIATE SURROUNDING AREA, INCLUDING ANY ACCESSORY USES, PARKING LOTS, AND ADJOINING SIDEWALK. LIGHTING SHALL BE HOODED OR ORIENTED SO AS TO DELECT LIGHT AWAY FROM ADJACENT PROPERTIES.
  - SECURITY SHALL INCLUDE OPERABLE CAMERAS AND METAL DETECTOR TO THE SATISFACTION OF DEVELOPMENT SERVICES DEPARTMENT. THIS FACILITY SHALL ALSO INCLUDE ALARMS AND TWO ARMED SECURITY GUARDS TO THE EXTENT THE POSSESSION OF A FIREARM IS NOT IN CONFLICT WITH 18 U.S.C. § 922(g) AND 21 C.F.R. 418.11.
  - THE SECURITY GUARDS SHALL BE LICENSED BY THE STATE OF CALIFORNIA. ONE SECURITY GUARD MUST BE ON THE PREMISES 24 HOURS A DAY, SEVEN DAYS A WEEK, THE OTHER MUST BE PRESENT DURING BUSINESS HOURS. THE SECURITY GUARDS SHOULD ONLY BE ENGAGED IN ACTIVITIES RELATED TO PROVIDING SECURITY FOR FACILITY, EXCEPT ON AN INCIDENTAL BASIS. THE CAMERAS SHALL HAVE AND USE A RECORDING DEVICE THAT MAINTAINS THE RECORD FOR MINIMUM OF 30 DAYS.
  - CARBON AIR FILTERS WILL BE INSTALLED TO LIMIT THE RELEASE OF ODORS TO ADJACENT USES.



**LIGHTING PLAN**

SCALE: 1/4" = 1'-0"

- RECESSED CAN/ SPOT LIGHT FIXTURE
- WALL MOUNTED LIGHT FIXTURE
- MOUNTED 2'X 4' FLUORESCENT FIXTURE



LANDS OF PUBLIC  
 STORAGE, INC.  
 PARCEL 2  
 PM No. 3360  
 A.P.N. = 310-121-18  
 TYPE V-B  
 3.79 ACRES, OCC S

**ATTACHMENT 9**



**SITE LIGHTING PLAN**

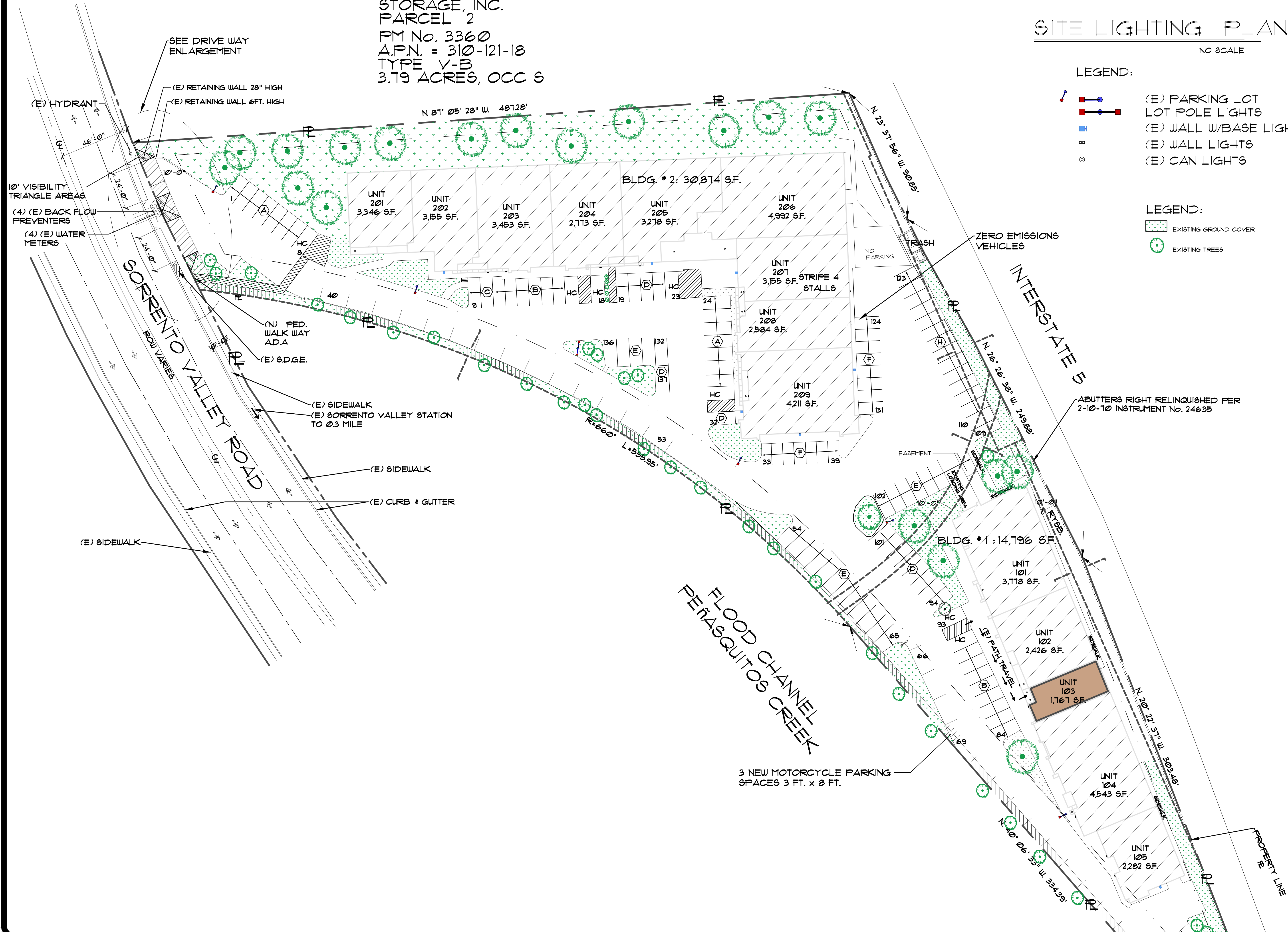
NO SCALE

LEGEND:

- (E) PARKING LOT LOT POLE LIGHTS
- (E) WALL W/BASE LIGHTS
- (E) WALL LIGHTS
- (E) CAN LIGHTS

LEGEND:

- EXISTING GROUND COVER
- EXISTING TREES



REVISIONS	BY
06-14-18	MJC
06-18-18	MJC
09-10-18	MJC

**S T W C**  
**SORRENTO VALLEY, LLC**  
 11189 SORRENTO VALLEY ROAD SUITE 103

**AUSTIN & ASSOCIATES**  
 ALAN LLOYD AUSTIN  
 1622 PIONEER WAY EL CAJON CA. 92020  
 RESIDENTIAL & COMMERCIAL PLANNING AND DESIGN  
 MEMBER: AMERICAN INSTITUTE OF BUILDING DESIGN

**ALD**  
**BD**

Ph. (619)440-3824

DRAWN BY:	MJC
CHECKED BY:	ALA
DATE:	11-6-17
SCALE:	AS NOTED
JOB NO.:	

**A-3**



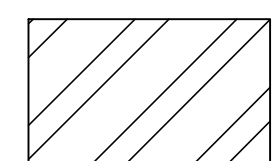
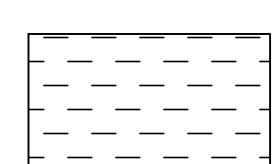
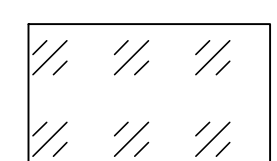
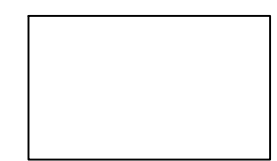
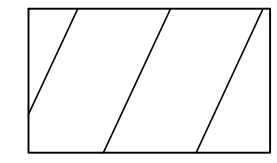
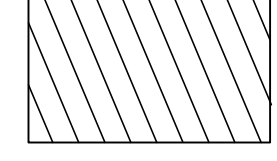
# FLOODWAY PLAN

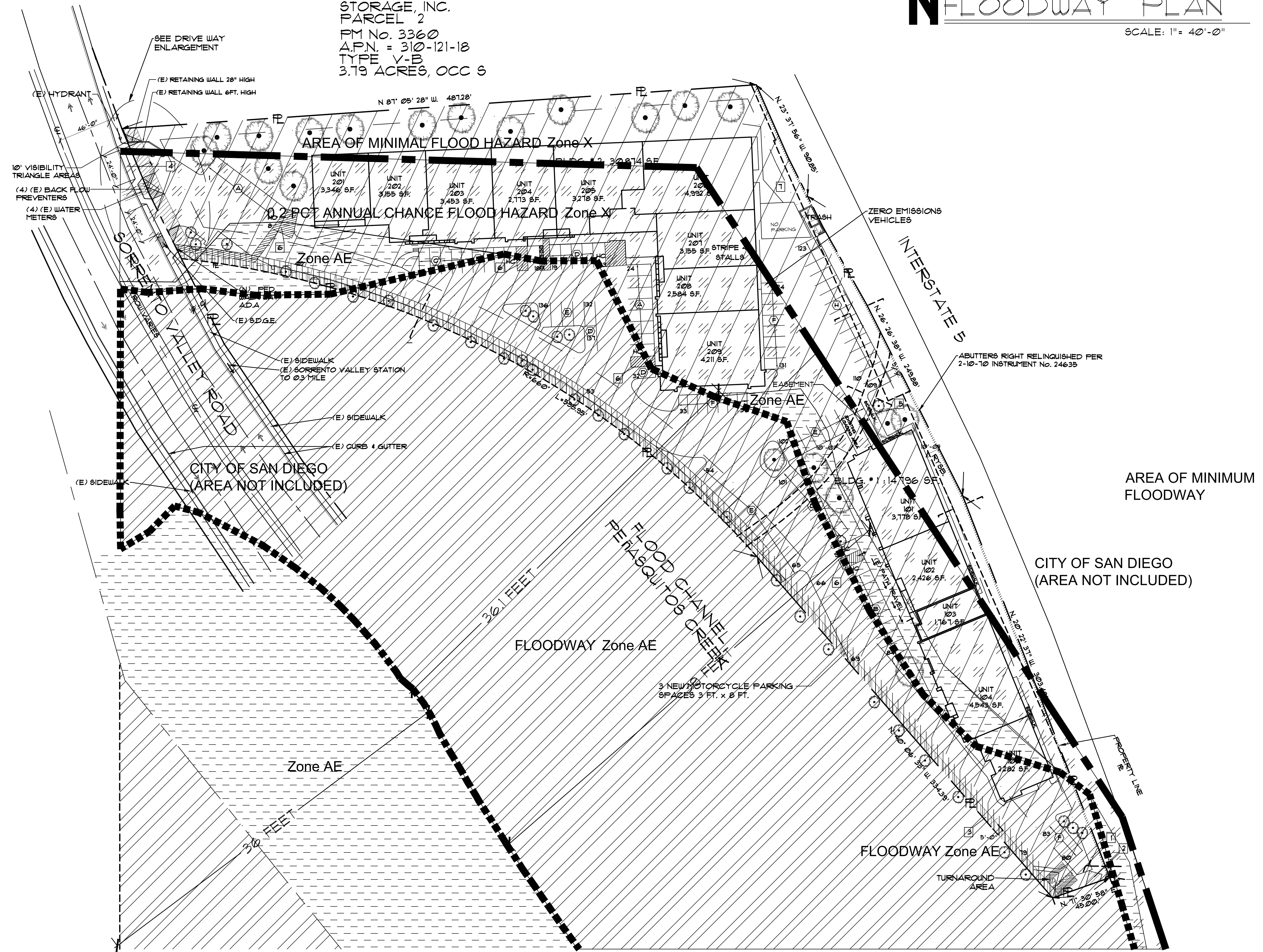
SCALE: 1" = 40'-0"

## ATTACHMENT 9

LANDS OF PUBLIC STORAGE, INC. PARCEL 2  
 PM No. 3360  
 A.P.N. = 310-121-18  
 TYPE V-B  
 3.79 ACRES, OCC 6

### LEGEND:

-  FLOODWAY
-  ZONE AE
-  0.2 PCT ANNUAL CHANCE FLOOD HAZARD
-  AREA OF MINIMAL FLOOD HAZARD
-  COASTAL ZONE
-  APPEALABLE COASTAL ZONE



REVISIONS	BY
06-14-18	MJC
06-18-18	MJC
09-10-18	MJC

**S T W C**  
**SORRENTO VALLEY, LLC**  
 11189 SORRENTO VALLEY ROAD SUITE 103

**AUSTIN & ASSOCIATES**  
 ALAN LLOYD AUSTIN  
 1622 PIONEER WAY EL CAJON CA. 92020  
 RESIDENTIAL & COMMERCIAL PLANNING AND DESIGN  
 MEMBER: AMERICAN INSTITUTE OF BUILDING DESIGN  
 Ph. (619) 440-3824  
**A B D**

DRAWN BY: MJC  
 CHECKED BY: ALA  
 DATE: 11-6-17  
 SCALE: AS NOTED  
 JOB NO.

A-4



City of San Diego  
Development Services  
1222 First Ave., MS-302  
San Diego, CA 92101

### Development Permit/ Environmental Determination Appeal Application

FORM  
DS-3031

November 2017

In order to assure your appeal application is successfully accepted and processed, you must read and understand Information Bulletin 505, "Development Permits/Environmental Determination Appeal Procedure."

1. Type of Appeal:  Appeal of the Project  
 Appeal of the Environmental Determination

2. Appellant: Please check one  Applicant  Officially recognized Planning Committee  "Interested Person" (Per M.C. Sec. 113.0103)

Name: Stefanie N. West, esq. OBO Venture Commerce Center- Sorrento Valley E-mail: Stefanie@snwestlaw.com

Address: 18377 Beach Blvd., Suite 333 City: Huntington Beach State: CA Zip Code: 92648 Telephone: 949-415-8517

3. Project Name:  
MO 11189 Sorrento Valley Road, Suite 103; Project No. 559038

4. Project Information  
Permit/Environmental Determination & Permit/Document No.: 559038- Approved 2038327-15301 Date of Decision/Determination: 11/20/2019 City Project Manager: Sammi Ma/ Duke Fernandez

Decision(Describe the permit/approval decision):  
Approval of Conditional Use Permit to operate a marijuana outlet in a 1,767 square foot tenant space in Suite #103 at property located at 11189 Sorrento Valley Road.

5. Ground for Appeal(Please check all that apply):  
 Factual Error  New Information  
 Conflict with other matters  City-wide Significance (Process Four decisions only)  
 Findings Not Supported

Description of Grounds for Appeal (Please relate your description to the allowable reasons for appeal as more fully described in Chapter 11, Article 2, Division 5 of the San Diego Municipal Code. Attach additional sheets if necessary.)

Please See attached letter from  
Stefanie N. West, Esq. and  
attached exhibits

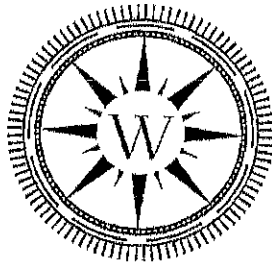
**RECEIVED**  
DEC 04 2019  
DEVELOPMENT SERVICES

6. Appellant's Signature: I certify under penalty of perjury that the foregoing, including all names and addresses, is true and correct.

Signature: Stefanie West Date: 12/2/2019

Note: Faxed appeals are not accepted.

SNWESTLAW.COM  
STEFANIE@SNWESTLAW.COM



TELEPHONE:  
(949) 415-8517  
FAX:  
(949) 299-0117

— LAW OFFICE OF —  
**STEFANIE N. WEST**  
18377 BEACH BLVD., SUITE 333  
HUNTINGTON BEACH, CA 92648

December 2, 2019

**Via Hand Delivery Only:**

City of San Diego Development Services Department  
1222 First Street, 3rd floor,  
San Diego CA, 92101

Re: Appeal of granting of CUP- Project No. 559038 – MO 11189 Sorrento  
Valley Road, San Diego, CA

To whom it may concern:

This office has been retained to represent the interest of Venture Commerce Center- Condominium Association, located at 11189 Sorrento Valley Road, (“the HOA”) regarding the above referenced matter. I did appear at the November 20, 2019 Public hearing in connection therewith, submitted a Speakers card, and addressed the matter with hearing Officer Duke Fernandez. Despite adamant evidence that the CUP should be denied, Mr. Fernandez approved the CUP, and this Appeal follows.

As discussed in great detail below, the findings on which the CUP was granted were not supported, and there are several factual errors on which the CUP was granted, thus the instant Appeal is appropriate.

First and foremost, the following exhibits are attached in connection with the contents of this appeal:

- i. Exhibit 1: A copy of my letter in opposition to the granting of the CUP on behalf of the HOA, dated November 18, 2019 along with relevant portions of attachments, which was forwarded directly to Mr. Fernandez via email on the same date;
- ii. Exhibit 2: The Del Mar Union School District letter and attachments sent to the hearing officer in opposition to the granting of the CUP;
- iii. Exhibit 3: Torrey Pines Community Planning Board Monthly Meeting Minutes from October 11, 2018 denying the MO project;
- iv. Exhibit 4: “Attachment 4” to the Hearing Officer Report released November 13, 2019 (Hearing Officer Resolution);
- v. Exhibit 5: “Attachment 5” ” to the Hearing Officer Report released November 13, 2019 (CUP).

I will not reiterate the contents of my letter, however, I had made some additional points below in support of our position that the CUP was improperly granted and thus, the appeal of the same is proper.

**The granting of the Conditional Use Permit does not serve the Community and is not appropriate at the proposed location.**

1. The Community has time and time again maintained that the granting of the CUP for purposes of operating a Retail Marijuana outlet in the Venture Commerce Center does not serve the community.

At the hearing on November 20, 2019, and in line with the hearing officer report released on November 13, 2019, Hearing Officer Fernandez determined that the proposed development would not adversely affect the applicable land use plan, nor would it be detrimental to the public health, safety and welfare. Obviously Mr. Fernandez based the same on a factual error, and even if not, the findings are not supported for the following reasons:

- a. The Torrey Pines Community Planning Board determined on October 16, 2019 that the Marijuana Outlet Project at 11189 Sorrento Valley Road, Suite 103 was **DENIED**. (The Hearing officer acknowledged the same, yet apparently did not consider it when making his ruling.) (**Exhibit 3**);
- b. The HOA for the entirety of the property located at 11189 Sorrento Valley Road, has a duly recorded Covenants, Conditions and Restrictions (“CC&Rs”), which prohibits any retail usage of any property located in 11189 Sorrento Valley Road since 2008 (The hearing officer was apparently fully apprised of the same, as Attachment 4 of the Hearing Officer Report, page 1-2 specifically identifies the CC&Rs were recorded on August 21, 2008 as instrument no 2008-0044962 of official records.) (**Exhibit 1 and 4**);
- c. No tenant or owner at the property, except the applicant, was in favor of the CUP at the November 20, 2019 hearing;
- d. There are children regularly at the facility for other owners/occupiers, including other service providers, not the least of which is the Del Mar Union School District (**Exhibit 1 and 2**);
- e. There has been no proposed resolution of the safety concern regarding deliveries to the marijuana shop, which must occur at the corner of the building, a substantial distance away from the actual MO (**Exhibits 1-5**);
- f. There is no off-street parking available nor can the parking lot be expanded as it abuts a protected green-belt. (**Exhibits 1-5**).

Additionally, **Exhibit 4** (Attachment 4 of the November 13, 2019 Hearing Board document) specifically identifies that the proposed location is within the Torrey Pines Community Plan, which “*contains a policy that states development of freestanding retail commercial uses in*



*industrially designated areas shall be restricted to those uses that serve only the immediate Sorrento Valley industrial area.*" The Hearing officer apparently is of the position that *"due to the limited amount of Marijuana Outlets permitted... and the use restricted to a few zones...the proposed outlet would serve the community."* The same is hardly a use to be considered "those uses that serve *only the immediate Sorrento Valley Industrial Area,*" especially in light of the Torrey Pines Community Planning Board's denial of the MO project on October 16, 2018, and my client's vehement opposition to any business operation that violates its longstanding CC&Rs.

If the city believes additional locations should be zoned to allow for additional locations for MO's they should so do, and not force other citizens and residents to accommodate a MO simply because the city failed to designate enough locations to serve the MO. The city has no legal standing to restrict the usage of the other property owners simply based on their new zoning laws, and thus, the granting of this CUP necessarily leaves the City of San Diego open to litigation from all property owners who this decision has impacted without consideration or just compensation.

Finally, when discussing the Del Mar Union School District's usage of their own property, rather than address the fact that children are regularly at the property and thus, necessarily causes a violation of SDMC Section 141.0504, the hearing Officer's suggested resolution was *"have the children go elsewhere to discuss what occurs at this location."* Such an opinion is absurd, and again, amounts to a government taking without just compensation. It is illogical that any elected government official would rather have children put at risk by being bussed to unknown locations and facilities to promote their education, rather than have a MO which does not even exist yet placed in an appropriate location.

2. The Proposed use is not appropriate at the proposed location.

At the hearing on November 20, 2019, the hearing officer determined that the proposed use is appropriate at the proposed location. Clearly that finding is not supported, or is based on a factual error. The reality is, the proposed location is highly inappropriate, for several reasons, not the least of which is the regular presence of children, the inability to expand the parking lots, and the unlawful restriction by the City of San Diego on land usage by the other owner/renters located in the Sorrento Commerce Center. It is clear that the Hearing officer did not consider the following in making his determination:

- a. Parking cannot be expanded at all, despite the City's requirements that the same be done. The property abuts a green belt, which Venture Commerce Center does not own, and which cannot be purchased, and there is no street parking available on Sorrento Valley Road (**Exhibits 1-5**);
- b. There Del Mar School District owns a suite at the property, and the granting of this CUP is a restriction on their usage in the future, without just compensation, and thus is a takings by the City of San Diego (**Exhibits 1 and 2**);
- c. Numerous owners/occupiers have clients who are children, and the granting of the CUP not only restricts the clientele of the same, but also impacts them

financially, and thus the granting of the same is not only a takings, but also amounts to intentional interference with prospective economic advantage (Exhibits 1-5);

- d. There are no retail facilities in the entire property, as such is a violation of the CC&Rs. (Exhibits 1, 2, 3, 4).
3. Granting of the CUP does not just leave private parties open to litigation, but also leaves the City of San Diego open to litigation for the approval of the CUP despite having full knowledge of all the facts and circumstances contained in this letter and supporting documents.

Hearing Officer Fernandez identified that the City “does not get involved in the civil litigation between private parties” but rather, “only applies the municipal code when determining whether to grant or deny a CUP.” While that may be true, Officer Fernandez fails to take into account, as discussed above, the fact that the granting of the CUP also leaves the city of San Diego open for litigation pertaining to the other owner/occupiers of the Ventura Commerce Center including but not limited to 1) land restrictions without just compensation, and 2) intentional interference with prospective economic relations.

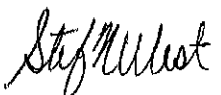
### Conclusion

The city, through the Hearing officer, has determined that the other businesses located in the Venture Commerce Center are less important than the MO because MOs are restricted to a few zones within the city. Instead of expanding the zones, the city prefers to wrongfully restrict the already existing business owners at the location, allowing businesses and children to be placed at risk. Furthermore, despite being fully aware that the parking lot cannot be expanded, that children are regularly present at the location, that the Torrey Pines Community Planning Board and HOA are against the MO, and that the MO violates the CC&Rs of which it acknowledges, the City of San Diego still granted the CUP.

For the foregoing reasons, The HOA, the Del Mar School district, and the vast majority of the owners/occupants of Ventura Commerce Center are opposed to any granting of a CUP which would allow a marijuana dispensary in Ventura Commerce Center, in violation of the CCRs, as well as against the health, safety and welfare of current owner/occupants and their clientele.

As such, the Appealing parties urge the City of San Diego to reconsider it's position, grant this Appeal, and Deny the CUP.

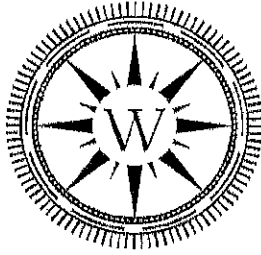
Sincerely,

  
Stefanie N. West  
Attorney at law

Enclosures

EXHIBIT 1

SNwestlaw.com  
Stefanie@snwestlaw.com



Telephone:  
(949) 415-8517  
Fax:  
(949) 299-0117

— LAW OFFICE OF —  
**STEFANIE N. WEST**  
18377 BEACH BLVD., SUITE 333  
HUNTINGTON BEACH, CA 92648

November 18, 2019

**Via email only: HearingOfficer@sanidiego.gov; Sma@sanidiego.gov**

ATTN: Duke Fernandez and/or Sammi Ma  
202 C Street  
San Diego, CA 92101

Re: Beachwalk Properties, Inc., Owner and STWC Holdings, Inc. ("Beachwalk"),  
Application for Conditional Use Permit- Project No. 559038

Mr. Fernandez:

This office has been retained to represent the interest of Venture Commerce Center-  
Condominium Association ("the HOA") regarding the above referenced matter.

I have reviewed the Hearing Officer Report posted online on November 13, 2019, and on  
behalf of my clients, object to the granting of the Conditional Use Permit to Beachwalk  
Properties. Below you will find a detailed explanation as to why the HOA is adamantly  
against any retail marijuana dispensary in Venture Commerce Center.

**The granting of the Conditional Use Permit does not serve the Community and is not  
appropriate at the proposed location.**

1. The Deed of Trust Recorded on August 11, 2017 clearly references the HOA  
Conditions, Covenants and Restrictions ("CCRs"), recorded on August 21, 2008, which  
prohibits the use of any Unit for Retail purposes. (See Article 7.1(A), pg. 24)

On or about August 21, 2008, the HOA caused to be recorded The Declaration of Covenants  
and Restrictions, recorded in the San Diego County Recorder's Office, Document No. 2008-  
0449962. A true and correct copy is attached to this email for your reference. The CCRs  
established a plan for Condominium Ownership for Venture Commerce Center- Sorrento,  
and clearly and unequivocally prohibit any retail usage throughout the entire Center. **A true  
and correct copy is attached to this email for your reference.** I have identified the  
relevant sections here for your convenience. Page 23, Article 7.1(A) of the CCRs provides:

"Notwithstanding the foregoing, whether or not permitted by zoning or use standards  
of the City, the following types of use within or about a Unit shall be prohibited:  
(4) Retail;...



(8) Any other use which will be **offensive to other Owners or occupants of Units by reason or odor, fumes, dust, smoke, noise, electro-mechanical or electro-magnetic disturbances, radiation, pollution, risk of fire, or any other nuisance within the Project or surrounding area.**” (Emphasis added.)”

On or about August 11, 2017, Beachwalk caused to be recorded a Deed of Trust with Assignments of Rent, recorded in the San Diego County Recorder’s Office, Document No. 2017-0365995. **A true and correct copy is attached to this email for your reference.** The second paragraph on page 2 of the same specifically provides:

“Excepting therefrom certain exclusive, restricted and/or non-exclusive easements for access and other purposes, over and across the common area, as said common area is further set forth and defined in that certain declaration of covenants and restrictions establishing a plan for condominium ownership for Venture Commerce Center-Sorrento, Recorded August 21, 2008 as instrument no. 2008-00449962 of official records.

There is no valid argument that Beachwalk was unaware of the CCRs and their prohibitions at the time they purchased Unit 103. They chose to ignore the same, and press on, despite full knowledge their intended usage was prohibited by several provisions of the CCRs. Then, in a most shameful fashion, they have continued to contact the HOA and demand they allow the retain usage because “the City is granting the CUP.”

With regard to the prohibition of Retail usage, there is no argument that a Marijuana Dispensary/Outlet is not retail usage. In fact, the last sentence in **paragraph 3, page 2 of the November 13, 2019 Hearing Report** specifically acknowledges the usage as a retail space: “...because there are no proposed additions or modification to the existing development, other than the interior tenant improvements **for the retail sale of marijuana and marijuana products.**” (Emphasis added.) Moreover, “**Attachment 4**” of the same also provides: “**The proposed Outlet is classified as retail sales use...**” It is clear that all parties involved are fully aware that the proposed usage of Unit 103 is retail, in violation of the CCRs. Furthermore, the smell of marijuana is offensive to other owners and occupants, as they have made clear in letter after letter, including letters directly to the City of San Diego.

The approval of the CUP in violation of the CCRs simply put, does not serve the Venture Commerce Center Community. Each and every Unit owner/occupier is a provider of services, and there are zero retail facilities. Beachwalk Properties was aware, or is at the very least, charged with actual knowledge of the exclusion of any retail properties as they were provided the CCRs at the time they purchased the property. Despite their full knowledge, they purchased the same anyway, intentionally disregarded the same, and now seek to breach the CCRs while hiding behind the City’s CUP. If Council District 1 cannot find another location wherein a Marijuana Dispensary may be located, than Beachwalk should find another Community. They should not be allowed to strong-arm current owners/occupants into allowing usage in violation of CCR which have been in place for over a decade. Furthermore, the City should desire no part in accommodating such usage, as against its long time owner/occupants.

2. THE CCRs prohibits offensive levels of noise, smoke, or any odorous matter, as well as requires adequate parking that does not materially adversely impact parking within the project. See 7.1(B) pg. 24-25.

The HOA has made clear that they have no interest in having a medical marijuana dispensary located in their property in violation of their longstanding CCRs. Not only does it violate the Retail prohibition, the increase of traffic (up to 19 additional "customers," plus a staff of at least 9) creates a drastic and dramatic increase in traffic at Ventura Commerce Center. The HOA has already evaluated the same, and has determined additional parking spots would be required. Unfortunately, such action is impossible as there is a green belt directly attached to Ventura Commerce Center and there is no street parking available. There is no argument that an increase of 30 plus people a day will not impact parking at Ventura Commerce Center, and there is nothing Beachwalk can do to alleviate the same. As such, the position contained in the Hearing Report that "***there are no proposed additions or modifications to the existing development, other than interior tenant improvements for retail sales of marijuana and marijuana products***" is incorrect. The parking is a large concern for the HOA, and reasonably so, especially in light of the fact that the parking lot cannot be increased and there is no ample street parking. As such **it is impossible for Beachwalk to comply with the requirements contained in "Attachment 5" (CUP), which requires off-street parking.**

3. Granting of the CUP amounts to a land restriction without consideration and/or a takings without just compensation.

As I am sure you are aware, the Unit directly adjacent to Unit 103 is owned and occupied by the Del Mar Union School District (Unit 102), and there are several other units including Back in Motion, Torrey Pines Micro Endodontics, and Golden Triangle Cosmetic Dentistry, which all provide services for young children.

SDMC Section 141.0504(a) requires a 1,000-foot separation from...childcare centers, minor-oriented facilities, and schools. The above owners occupy several units within Ventura Commerce Center, and the granting of the CUP effectively restricts usage of the land without consideration or just compensation for the same. This leaves not only Beachwalk Properties open to litigation in connection therewith, but the City of San Diego as well. The city cannot unilaterally encumber the usage of private property owners without paying just compensation- the same would be in violation of the Takings Clause under the 5th Amendment.

With regard to any argument that the Del Mar School District is currently being used as a maintenance hub, children are present on the property on regular occasion. For example, just recently a group of elementary school students appeared at the location on a field trip to take a tour of the facility, learn about it's operations, and discover the different types of jobs and responsibilities are part of that operation. This is well within the purview of their ownership, and the same should not be restricted because Beachwalk consciously disregarded the CCRs of Ventura Commerce Center. If the dispensary moves into the property next door, each and every business listed above will be adversely affected by the same. The CCR are in place for a reason, and one is to ensure there is no intentional interference with their businesses. To

allow such usage in violation of the CCRs does exactly that restricts the other Unit owners with regard to their business clientele, again, without the parties consent.

4. Granting of the CUP leaves the Del Mar Unified School District and the City of San Diego subject to countless lawsuits in connection with child endangerment, child neglect and negligent entrustment.

If the Del Mar School District were to continue to allow minor children to tour the facility, as is the status quo, it would leave the same at risk of countless lawsuits for child endangerment, child neglect, and negligent entrustment. The same lawsuits could name the City of San Diego, as the same approved the CUP with actual knowledge of Del Mar Union School District's ownership in the Unit directly adjacent to the proposed Marijuana Dispensary.

5. Armed security guards, bullet proof glass, lack of adequate delivery egress and ingress, and the extended hours of operation are highly inappropriate in the Community.

As discussed above, all owners and occupants of Ventura Commerce Center are professional service providers. This includes a family dentist, a Micro-Endodontist, a family chiropractor, veterinarian, an IT business, and a school district office. There is absolutely no need for any bullet-proof glass or armed security guards at this time. The mere presence of the same is highly likely to leave current clients uncomfortable and concerned about seeing such a drastic increase in security. Further, there has been no requirement that Boardwalk ensure all units have bullet proof glass, despite the fact they are putting all other Units at risk.

Furthermore, a quick glance at the site plans reveals that there is not adequate space for a delivery truck to deliver directly to Unit 103. Any delivery truck would have to park on the side of the building, and deliver by hand any and all product to Unit 103, passing two existing suites to access unit 103's drop door. Having a delivery of such a product be outside, and from one end of the building to the other puts the entire building at risk for robbery and violence, not to mention the unfortunate delivery person. I cannot imagine why the City would approve of such a CUP, knowing the drastic and dramatic risks to the health, safety, and welfare of all those occupying Ventura Commerce Center.

6. The Dispensary shall at best unreasonably increase the insurance costs of the HOA, or at worst, cause the insurance company to drop the HOA as their insured altogether.

In addition to the above, the HOA has contacted their property and flood insurance provider and was informed that if and when a dispensary goes in, the insurance company will most likely drop the HOA and refuse to insure them. At the very best, the insurance increase will be so dramatic, it is likely the HOA will be unable to afford the same. There is no circumstance where the loss of insurance coverage is not detrimental to the HOA or any of it's members.

7. The granting of the CUP will necessarily subject the HOA and Beachwalk to costly litigation.

For the numerous reasons discussed above, whether the CUP is granted shall determine if the parties must engage in costly litigation regarding the CCRs and the welfare of the minor clientele of the current owners and occupiers. The needless litigation risks substantial financial risk to all involved, and solely because Beachwalk insists on improperly forcing their dispensary in a location where the same is wholly improper. This devious behavior should not be encouraged by the City through the granting of the CUP.

### Conclusion

For the foregoing reasons, The HOA is highly opposed to any granting of a CUP which would allow a marijuana dispensary in Ventura Commerce Center, in violation of the CCRs, as well as against the health, safety and welfare of current owner/occupants and their clientele.

Sincerely,

***/s/ Stefanie N. West***

Stefanie N. West

Attorney at law

Enclosures

RECORDING REQUESTED BY:  
First American Title Company

AND WHEN RECORDED MAIL DOCUMENT TO:  
Jerry M. Perkins & Carol A. Perkins Trustees of the  
Perkins 1997 Living Trust  
14030 Judy Ann Drive  
Riverside, CA 92509

DOC# 2017-0365995



Aug 11, 2017 02:50 PM

OFFICIAL RECORDS  
Ernest J. Dronenburg, Jr.,  
SAN DIEGO COUNTY RECORDER  
FEES: \$81.00  
PCOR: N/A

PAGES: 8

Space Above This Line for Recorder's Use Only

A.P.N.: 310-121-18-03

File No.: MV-5476709 (MG)

**DEED OF TRUST WITH ASSIGNMENT OF RENTS  
(LONG FORM)**

THIS DEED OF TRUST, made this August 11, 2017, between

TRUSTOR: Beachwalk Properties, Inc., a California corporation

whose address is 11189 Sorrento Valley Rd #103, San Diego, CA 92121,

TRUSTEE: First American Title Insurance Company, a Nebraska Corporation

and BENEFIICIARY: Jerry [REDACTED] & [REDACTED] Trustees of the [REDACTED] Living Trust

WITNESSETH: That Trustor irrevocably grants to Trustee in trust, with power of sale, that property in the City of San Diego, County of San Diego, State of California, described as:

**A CONDOMINIUM COMPRISED OF:**

**FARCEL A:**

UNIT 103 AS SHOWN AND DEFINED ON THAT CERTAIN CONDOMINIUM PLAN VENTURE COMMERCE CENTER SORRENTO, RECORDED AUGUST 21, 2008 AS INSTRUMENT NO. 2008-0449961 OF OFFICIAL RECORDS, TOGETHER WITH AN APPURTENANT UNDIVIDED 3.95% PERCENTAGE INTEREST IN AND TO THE COMMON AREA, BEING A PORTION OF LOT 9 OF "TORREY KNOLLS PARK", IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 7991, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY ON JULY 31, 1974; AND AS SAID COMMON AREA IS FURTHER DEFINED AND DESCRIBED IN THAT CERTAIN DECLARATION OF COVENANTS AND RESTRICTIONS ESTABLISHING A PLAN FOR CONDOMINIUM OWNERSHIP FOR VENTURE COMMERCE CENTER - SORRENTO, RECORDED AUGUST 21, 2008 AS INSTRUMENT NO. 2008-0449962 OF OFFICIAL RECORDS.

EXCEPTING THEREFROM, THE RIGHT AND TITLE TO ONE-HALF OF ALL PETROLEUM, OIL OR GAS OR BY-PRODUCTS OF SUCH PETROLEUM, OIL OR GAS WHICH MAY BE HEREAFTER FOUND UPON SAID PROPERTY OR IN THE EARTH UNDER SAID PROPERTY, WITHOUT RIGHTS OF SURFACE ENTRY AND WITHOUT THE RIGHT TO ENTER, DRILL, EXTRACT OR REMOVE ANY MINERALS, INCLUDING OIL AND GAS ABOVE A DEPTH OF 500 FEET BELOW

(Continued on Page 2)

(Ex-1 letter)

THE PRESENT SURFACE OF SAID PROPERTY, AND TOGETHER WITH THE PROCEEDS AVAILS AND PROFITS ARISING FROM THE SALE OR DISPOSITION OF SAID ONE-HALF OF THE AFORESAID MINERAL PRODUCTS, FOR THE TERM OF 99 YEARS, AS RESERVED BY D.C. HANDLEY IN DEED RECORDED IN BOOK 650, PAGE 197 OF DEEDS.

EXCEPTING THEREFROM CERTAIN EXCLUSIVE, RESTRICTED AND/OR NON-EXCLUSIVE EASEMENTS FOR ACCESS AND OTHER PURPOSES, OVER AND ACROSS THE COMMON AREA, AS SAID COMMON AREA IS FURTHER SET FORTH AND DEFINED IN THAT CERTAIN DECLARATION OF COVENANTS AND RESTRICTIONS ESTABLISHING A PLAN FOR CONDOMINIUM OWNERSHIP FOR VENTURE COMMERCE CENTER - SORRENTO, RECORDED AUGUST 21, 2008 AS INSTRUMENT NO. 2008-0449962 OF OFFICIAL RECORDS.

**PARCEL B:**

THE EXCLUSIVE RIGHT TO USE THOSE PORTIONS OF THE EXCLUSIVE USE COMMON AREAS DESIGNATED AS P71 AND P72, BEING THOSE PARKING SPACES DESIGNATED AS APPURTENANT TO THE UNIT(S) DEFINED IN PARCEL A HEREIN ABOVE; SAID EXCLUSIVE USE COMMON AREAS ARE FURTHER DEFINED IN THAT CERTAIN DECLARATION OF COVENANTS AND RESTRICTIONS ESTABLISHING A PLAN FOR CONDOMINIUM OWNERSHIP FOR VENTURE COMMERCE CENTER - SORRENTO, RECORDED AUGUST 21, 2008 AS INSTRUMENT NO. 2008-0449962 OF OFFICIAL RECORDS.

**PARCEL C:**

CERTAIN NON-EXCLUSIVE EASEMENTS FOR INGRESS AND EGRESS AND OTHER PURPOSES, WHICH EASEMENTS SHALL BE APPURTENANT TO THE CONDOMINIUM UNIT(S) DESCRIBED IN PARCEL A HEREIN ABOVE, OVER AND ACROSS THE COMMON AREA, AS SET FORTH AND DEFINED IN THAT CERTAIN DECLARATION OF COVENANTS AND RESTRICTIONS ESTABLISHING A PLAN FOR CONDOMINIUM OWNERSHIP FOR VENTURE COMMERCE CENTER - SORRENTO, RECORDED AUGUST 21, 2008 AS INSTRUMENT NO. 2008-0449962 OF OFFICIAL RECORDS.

together with rents, issues and profits thereof, subject, however, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits for the purpose of securing (1) payment of the sum of ~~100,000.00~~ with interest thereon according to the terms of a promissory note or notes of even date herewith made by Trustor, payable to order of Beneficiary, and extensions or renewals thereof, (2) the performance of each agreement of Trustor incorporated by reference or contained herein and (3) payment of additional sums and interest thereon which may hereafter be loaned to Trustor, or his successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust.

A. To protect the security of this Deed of Trust, Trustor agrees:

- 1) To keep said property in good condition and repair, not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefore, to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon, not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.
- 2) To provide, maintain and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such

(Continued on Page 3)

application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

- 3) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed.
- 4) To pay, at least ten days before delinquency all taxes and assessments affecting said property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all cost, fees and expenses of this Trust.

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees.

- 5) To pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at the amount allowed by law in effect at the date hereof, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded.

B. It is mutually agreed:

- 1) That any award in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys received by him in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.
- 2) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require payment when due of all other sums so secured or to declare default for failure so to pay.
- 3) That at any time or from time to time, without liability therefore and without notice, upon written request of Beneficiary and presentation of this Deed and said note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of said property; consent to the making of any map or plat thereof; join in granting any easements thereon, or join in any extension agreement or any agreement subordinating the lien or charge hereof.
- 4) That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed and said note to Trustee for cancellation and retention or other disposition as Trustee in its sole discretion may choose and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The Grantee in such reconveyance may be described as "the person or persons legally entitled thereto".

(Continued on Page 4)

- 5) That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collecting of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.
- 6) That upon default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold said property, which notice shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed, said note and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of said having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of trustee and of this Trust, including costs of evidence of title in connection with sale, Trustee shall apply to proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

- 7) Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where said property is situated shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustor, predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed is recorded and the name and address of the new Trustee.
- 8) That this Deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including pledgees, of the note secured hereby, whether or not named as Beneficiary herein. In this Deed, wherever the context so requires the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

(Continued on Page 5)



- 9) That Trustee accepts this Trust when this Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.
- 10) Trustor requests that copies of the notice of default and notice of sale be sent to Trustor's address as shown above.

Beneficiary requests that copies of notices of foreclosure from the holder of any lien which has priority over this Deed of Trust be sent to Beneficiary's address, as set forth on page one of this Deed of Trust, as provided by Section 2924(b) of the California Civil Code.

If payment of any portion of the installment is delinquent more than 15 days, the Holder may, at his sole option, assess a late charge of 6% of the amount of the installment for each installment so delinquent.

If the Trustor shall sell, convey or alienate said property, or any part thereof, or any interest therein, or shall be divested of his title or any interest therein in any manner or way, whether voluntarily or involuntarily, without the written consent of the Beneficiary being first had and obtained, Beneficiary shall have the right, at its option, except as prohibited by law, to declare any indebtedness or obligations secured hereby, irrespective of the maturity date specified in any Note evidencing the same, immediately due and payable.

Beachwalk Properties, Inc., a California corporation

By: John Kraemer  
Name: John Kraemer  
Title: Authorized Signer

(Continued on Page 6)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF California )SS

COUNTY OF San Diego )

On Aug 10, 2017 before me, Allen W. Lacerre, Notary Public, personally appeared John Kramer

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Handwritten Signature]

*This area for official notarial seal.*



(Continued on Page 7)

DOC # 2008-0449962



RECORDING REQUESTED BY  
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National Commercial Services

AUG 21, 2008 12:34 PM

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Hanna & Van Atta  
525 University Avenue, Suite 600  
Palo Alto, California 94301

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SAN DIEGO COUNTY RECORDER'S OFFICE  
GREGORY J. SMITH, COUNTY RECORDER  
FEES: 193.00 WAYS: 2

PAGES: 59



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**DECLARATION OF COVENANTS AND RESTRICTIONS  
ESTABLISHING A PLAN FOR CONDOMINIUM OWNERSHIP  
FOR VENTURE COMMERCE CENTER - SORRENTO  
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8/7/2008	

Law Offices of  
Hanna & Van Atta  
525 University Avenue, Suite 600  
Palo Alto, CA 94301  
Telephone (415) 321-6700

*(Ex 2 better)*

**6.5. Access Easements:** The Association and its Members, subject to the Rules, shall have nonexclusive easements for ingress and egress over the portions of the Common Area containing open space, and parking and driveway areas for the purposes of installation, maintenance and replacement of Utility Facilities.

## ARTICLE 7. USE AND OPERATING RESTRICTIONS

In addition to all of the covenants contained herein, the use of the Property and each Condominium therein is subject to the following:

**7.1. Condominium Use:** The Units shall be used solely for commercial, office, industrial and warehouse purposes which are permitted under the zoning and conditional use permits of the City as are applicable to the Project at a particular time and as permitted under this Declaration. No Unit may be used for residential purposes. In addition, no Unit shall be used for any purpose which would, as of the date of commencement of such use, cause the total number of vehicle parking spaces within the Project to be less than that required by the Ordinances or Resolutions of the City. Each Owner shall be responsible for obtaining all permits and licenses required by law or local ordinance to establish and operate its business. It shall be the responsibility of each Owner to ascertain and comply in all material respects with the zoning, conditional use permits, Project plans and specifications and other restrictions approved or imposed by the City for the Unit and the Project, including any requirements that the City approve any change in the use of the Unit or the physical layout of the Unit, including the availability of adequate parking for such change in the use of the Unit or the physical layout of the Unit.

If required by the City, each Owner, or any tenant or other occupant of a Unit, shall provide an emergency access key to the front door of the Unit, which emergency access key shall be kept in a Knox box on the site controlled by the City Fire Department.

A. Notwithstanding the foregoing, whether or not permitted by zoning or use standards of the City, the following types of uses within or about a Unit shall be prohibited:

- (1) Food service or preparation, except as permitted under this Section;
- (2) Junk or salvage operations;
- (3) Auto, truck, marine or other vehicle repairs, painting or sales;
- (4) Retail;
- (5) Slaughterhouses, tanneries, rendering operations, barns, stables or dairy operations;
- (6) Paper manufacturing, foundries, metal machining shops or heavy industrial;
- (7) Oil drilling, mining, or quarrying operations;
- (8) Any other use which will be offensive to other Owners or occupants of Units by reason of odor, fumes, dust, smoke, noise, electro-mechanical or electro-magnetic disturbances, radiation, pollution, risk of fire or explosion or any other nuisance within the Project or to surrounding property.

**B. Restrictions on Conduct of Business.** The permitted uses described in this Section 7.1 shall be conducted under the following conditions:

(1) **Noise.** No facility shall produce noise at such levels as will be offensive to Owners or occupants of adjoining Units or portions of the Property or to any Owner of a Unit or portion of the Property.

(2) **Vibration.** Equipment creating earthshaking or other vibrations shall be so located and mounted within the Unit as to eliminate vibration hazard or nuisance beyond the boundary lines of the Unit on which such equipment is situated.

(3) **Smoke.** No facility within any Unit shall discharge into the atmosphere any air contaminant producing a public nuisance or hazard.

(4) **Toxic or Noxious Matter.** No facility within any Unit shall discharge into the sewer system, storm drain or across the boundary lines of the Unit any toxic or noxious matter in such concentration as to be detrimental to or endanger the public health, safety or welfare or cause injury to or damage to surrounding property or business.

(5) **Odorous Matter.** No facility within any Unit shall emit offensive odorous matter or fumes in such quantity as to be readily detectable at any point exterior of the boundary lines of the Unit.

(6) **Fire and Explosive Hazards.** Storage or utilization of combustible materials within any Unit shall be undertaken in a manner acceptable to the City and County and any other agency or body having jurisdiction of such matter. Use or storage of materials which produce flammable or explosive vapors or gases under ordinary weather conditions and temperatures shall not be permitted on any Unit except where required for emergency equipment or except where incidental to a principal operation of a permitted use hereunder, such as paint spraying, which use or storage of such materials shall be approved in writing by the City Building Inspector, Fire Department and any other agency or body having jurisdiction of such matter. The Owner of any such Unit where such materials are used or stored shall, at its cost, maintain insurance of a nature and in an amount and with insurance carriers acceptable to the Association, and shall annually deliver evidence thereof to the Association. Such Owner shall, in writing, indemnify and hold harmless the Association, the Property, the other Owners and the other Units from and against any and all losses, damages, claims, expenses, causes of action and liabilities arising out of or in connection with the storage or use of such combustible materials on any such Unit.

(7) **Glare or Heat.** Any operation conducted from a Unit producing intense glare or heat shall be performed within the enclosures of the improvements within the Unit so as not to allow such glare or heat to emanate beyond the boundary lines of the Unit and so as not to create a public or private nuisance or hazard.

(8) **Air and Water Pollution.** No facility or operation on any Unit shall discharge into the air or water pollutants or contaminants sufficient to create or that might create a nuisance, and no operation on any Unit which by its nature is likely to cause air or water pollution shall be undertaken or permitted on any Unit unless there is available an adequate method of controlling the emission of pollutants and contaminants and such controls are installed and applied at the cost of the Owner of such Unit prior to the operation of the business on the Unit. The Owner of such Unit equipped with such pollution and contaminant controls shall, at its cost, maintain insurance of a nature and in an amount and with insurance carriers acceptable to the Association, and shall annually, at least ten (10) days prior to the expiration of such insurance, deliver evidence

thereof to the Association. Such Owner shall, in writing, indemnify and hold harmless the Association, the Property, the other Owners and the other Units from and against any and all losses, damages, claims, expenses, causes of action and liabilities arising out of or in connection with the operation of a business equipped with such pollution and contaminant controls.

(9) **Storage.** No merchandise, supplies, equipment, or other items of personal property, or any garbage, waste or trash [except in approved dumpsters or facilities] shall be stored on any portion of the Common Area.

(10) **Medical Offices and Related Uses.** Medical offices and related uses ("Medical Use") may be permitted within a Unit based upon the following criteria and conditions:

(a) The Medical Use must be permitted by zoning or use standards of the City;

(b) The Unit having such Medical Use shall have adequate parking and shall not materially adversely impact parking within the Project.

(c) No medical waste from a Medical Use shall be disposed of in the Common Area facilities, including any waste disposal facilities or the drains or sewers of the Project.

(11) **Food service or food preparation.** Food service or food preparation may be permitted within a Unit based upon the following criteria and conditions:

(a) The use for food service or preparation must be permitted by zoning or use standards of the City;

(b) The food service or food preparation use or activities must be approved in writing by the Declarant as long as the Declarant owns one or more Units in the Project;

(c) After such time as Declarant does not hold title to any Units in the Project, then any proposed food service, or food preparation uses, in a Unit proposed after such time must be approved in writing by the Board. Notwithstanding the foregoing provisions of subparagraph (c), if the Declarant has previously approved the use of a Unit for food service, or food preparation for a particular Unit, then the Unit may be used for such food service or food preparation use on the conditions imposed by the Declarant for such use, unless such use for food service or food preparation is in violation of the conditions imposed by Declarant for such use, or of any terms and provisions of this Declaration, or in violation of the zoning or use standards of the City;

(d) Any use of a Unit for food service, or food preparation, which has been approved by the Declarant, or by the Association as above provided, shall be operated in a manner which is not detrimental to the health and safety of the occupants of any other units in the Project, and in accordance with local health standards. The Unit Owner of any Unit which is undertaking food service, or food preparation, shall be responsible for any health problems which emanate from such use, including, but not limited to, rodents, pests, insects, or other health and safety problems. The Unit Owner who is granted the right of use for food service or food preparation shall be required to indemnify the Declarant, the Association, the Board and the other Unit Owners for any claims arising from such use.

If either the Declarant, while the Declarant owns a Unit, or the Association determines that a Unit Owner or Unit occupant who has been given permission for food service, or food preparation, is

violating the requirements herein stated, then the Declarant and/or the Association shall be entitled to give written notice to the Unit Owner, or the Unit occupant, with respect to such claims. The Board shall conduct a hearing, providing the Unit Owner with appropriate notice, and an opportunity to be heard, with respect to any such claims of violation. If the Unit Owner is found to be in violation, then the Unit Owner shall rectify the violation within thirty (30) days of the findings of the Board. If the Unit Owner fails to rectify the violation within said thirty (30) day period of time, after such hearing has been conducted, then the Board shall be entitled to issue a notice of discontinuation of use of the Unit for food service, or food preparation. If the Unit Owner does not rectify the violation within thirty (30) days after such subsequent notice, then the Unit Owner shall cease and desist all use of the Unit for food service, or food preparation. If the Unit Owner fails to so cease and desist in such food service, or food preparation, after such thirty (30) days, then the Declarant or the Association shall be entitled to seek injunctive relief. In any action brought by the Association, or by the Declarant with respect to the foregoing, the Association and/or the Declarant shall be entitled to reimbursement for any and all legal fees and costs, as well as a judgment with respect to the discontinuation of such food service, or food preparation use.

The approval of food service or food preparation use in one Unit by the Declarant or by the Board of the Association shall not mean or be deemed to mean that such food service or food preparation use is permitted in any other Unit in the Project. Any such use in any other Unit in the Project must be approved specifically for such other Unit by the Declarant, or the Association as herein provided.

**7.2. Nuisances:** No noxious, illegal, or seriously offensive activities shall be carried on upon any Condominium, or in any part of the Property, nor shall anything be done thereon which may be or may become a serious annoyance or a nuisance to or which may in any way interfere with the quiet enjoyment of the Owner's Condominium, or which shall in any way increase the rate of insurance for the Project, or cause any insurance policy to be cancelled or to cause a refusal to renew the same, or which will impair the structural integrity of any Building, or which will endanger the lives or health of occupants.

**7.3. Hazardous Materials:** Subject to the remaining provisions of this paragraph, an Owner shall be entitled to use and store only those Hazardous Materials that are necessary for such Owner's business, provided that such usage and storage is in full compliance with all applicable local, state and federal statutes, orders, ordinances, rules and regulations (as interpreted by judicial and administrative decisions), and is used and handled exercising all due care in such activities. Each Owner shall give to the Association written notice of any spills, releases or discharges of Hazardous Materials within its Unit or in any Common Area of which said Owner has knowledge, regardless of whether or not such spill, release or discharge was caused by such Owner. Each Owner covenants to investigate, clean up and otherwise remediate any spill, release or discharge of Hazardous Materials caused by the acts or omissions of such Owner, or its agents, employees, representatives, invitees, licensees, tenants, customers or contractors at such Owner's sole cost and expense. Such investigation, clean up and remediation, if regarding the Common Area, shall be performed after such Owner has obtained the Association's written consent, which shall not be unreasonably withheld, provided, however, that such Owner shall be entitled to respond immediately to an emergency without first obtaining the Association's written consent. Each Owner shall indemnify, defend and hold the Association, the Declarant, and all other Owners harmless from and against any and all claims, judgments, damages, penalties, fines, liabilities, losses, suits, administrative proceedings and costs (including, but not limited to, attorneys' and consultants' fees) arising from or related to the use, presence, transportation, storage, disposal, spill, release or discharge of hazardous materials within such Owner's Unit or in the Common Area if caused by the acts or omissions of such Owner, its agents, employees, representatives, invitees, licensees, tenants, customers or contractors. The foregoing is intended to constitute an indemnity agreement within the meaning of section 9607(e)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 USC 9607(e)(1)), but nothing in such section or the Act

shall be deemed to violate or limit the obligations of each Owner hereunder. Each Owner shall obtain, maintain in force, and comply with any requirements for a permit required in connection with discharge of waste water or its placement into the sewer systems of the Project or the handling of Hazardous Materials requiring any such permit.

**7.4. Owner's Right and Obligation to Maintain and Repair:** Except for those portions of the Project which the Association is required to maintain and repair, each Owner shall, at his sole cost and expense, maintain and repair the Unit, keeping the same in good condition and in accordance with any maintenance guidelines for the Project.

Each Owner shall be responsible for and bear the cost of maintenance, repair and replacement of the following items within such Owner's Unit: interior surfaces of all perimeter walls, ceilings and floors (including carpeting, tile, wall paper, paint or other covering); the sheet rock and any other surfaces or finishes that are located within the Unit attached to a Dividing Wall; garbage disposals, ranges, refrigerators, dishwashers, washing machines, dryers, light fixtures, smoke detectors, and any and all other appliances of any nature whatsoever; heating, equipment servicing such Unit; interior doors, including all hardware on the doors; light bulbs; plumbing and other fixtures of any nature whatsoever; "built-in" features; and decorative features, and any furniture and furnishings. Owners shall maintain, repair and replace exterior entry doors, roll-up doors and windows that are part of their Unit or which serve their Unit.

Each Owner shall keep the Exclusive Use Common Area appurtenant to the Owner's Condominium in a clean and neat condition at all times.

Each Owner shall have the exclusive right to paint, plaster, panel, tile, wax, paper or otherwise refinish and decorate the inner surfaces of the walls, ceilings, floors, and doors bounding his Unit. Each Owner shall own and shall be responsible for the maintenance, repair and replacement of the heating, air conditioning and ventilating systems that service the Unit, including the condensers and other apparatus servicing such systems, whether located within the Unit or on the roof. The Owner shall have the right of limited access to the roof for undertaking any maintenance, repair or replacement of such systems or the components that service such systems, with the understanding that the Owner shall be responsible for any harm or damage that occurs to the roof or the Building occasioned by the use, maintenance, repair or replacement of such systems or the components that service such systems. Each Owner hereby agrees to indemnify and hold harmless the Association and all other Owners for any and all claims arising from such Owner or its agents and contractors accessing the roof or providing maintenance, repair or replacement of such systems. Although the roof structure, roof membrane and floor slab are included within the boundaries of the Unit, the Owner shall not maintain or repair such improvements, which are to be maintained and repaired by the Association. An Owner shall not penetrate or otherwise drill into the roof, roof membrane or floor slab without prior written permission of the Association.

An Owner shall be permitted to attach sheet rock, paneling or other finishes to interior side of perimeter walls and Dividing Walls of a Unit and to attach or install equipment or other items to the interior side of such perimeter walls or Dividing Walls, and make reasonable penetrations into such walls for such purposes, provided that such attachment, installation or penetrations do not cause harm to the structural components of the Building.

Each Owner shall maintain the improvements within his Unit in accordance with any Maintenance Guidelines established by the Declarant. Each Owner shall retain any Maintenance Guidelines and take all appropriate actions to comply with and implement the Maintenance Guidelines. When an Owner transfers a Unit, the Owner shall deliver a complete copy of the Maintenance Guidelines to the transferee of the Unit on or before the date the Unit is transferred.



**7.5. Parking Allocation Procedures:** The Parking Spaces within the Project are designated on the Condominium Plan. The Declarant, at the time of the initial conveyance of a Unit to a purchaser from Declarant, shall convey and assign certain Parking Spaces as exclusive easements appurtenant to the Unit being conveyed as Exclusive Use Common Area. With respect to the amount of parking available, or which is to be made available, within the Project, the Association and the Owners shall comply with the following procedures:

A. As long as Declarant owns one Unit in the Project, Declarant shall have the right to assign any Parking Spaces that are not assigned by Declarant to any particular Unit for the exclusive use of any Unit.

B. The Association shall maintain on a regular on-going basis a Parking Plan with the computation of the Parking Spaces within the Project that are available for tenant or Owner use which Parking Plan indicates the allocation of those spaces to Owners or tenants and those remaining unallocated.

C. Prior to any Owner or tenant of an Owner undertaking any construction within a Unit which would require a building permit from the City, the Owner or tenant shall submit a copy of the building permit or other City approval to the Association which provides evidence that the proposed work will not cause adverse parking usage impact with respect to occupants of the Unit relative to square footage of the Unit as required by the requirements of the City for the Project.

D. If the applicant is unable to effect its proposed work because the results of such work would require parking in excess of that allocated to the particular Unit, the applicant, with the prior written consent of the Board, shall be entitled to acquire additional parking from excess parking capacity from another Owner in the Project by license or easement running for the duration of the applicant's use provided that such acquisition will not be inconsistent with the City parking ordinances or other requirements. Such additional spaces shall not include those spaces designated on the Condominium Plan as handicapped or visitor parking unless the City consents thereto. An applicant shall also be entitled to request that the Board consider as acceptable additional parking arrangements situated off the site of the Project provided that the City agrees to such offsite parking arrangements being acceptable.

E. The layout, number, and location of Parking Spaces shown on the Condominium Plan, and the allocation and assignment of Parking Spaces to particular Units, shall be subject to modifications and revisions by the Declarant, effected by the recordation of a modification of the Condominium Plan signed by the Declarant, to provide for corrections and revisions necessary for the Project, and its operations, as long as Declarant owns at least one Unit in the Project; provided however, that after the assignment of particular Parking Spaces to a Unit, any modification or revision of the Condominium Plan for Parking Spaces by Declarant may not reduce the number of Parking Spaces allocated and assigned to a Unit. After the time that Declarant does not own any Units in the Project, the Board, by a majority vote of the Board members, shall have the right to modify and amend the Condominium Plan in the manner herein stated for Parking Spaces, accomplished by the recordation of a modification of Condominium Plan signed by the President of the Association certifying that a majority of the members of the Board have approved such modified or amended Condominium Plan.

F. The allocation and use of Parking Spaces shall be subject to the provisions of Section 2.2.E above.

**7.6. Parking and Vehicle Restrictions:** No vehicles shall be parked in the fire lanes or drive aisles of the Project. Vehicles of an Owner or its tenants, or the employees, customers or invitees of such an Owner or its tenants, shall be parked only within the designated Parking Spaces

in the Project. Owners shall have the exclusive use of Parking Spaces granted or assigned to that Owner for use the Owner, or its tenants, or the employees, customers or invitees of such an Owner or its tenants. No Owner shall park or permit its tenants, or the employees, customers or invitees of the Owner or its tenants to park in Parking Spaces the exclusive use of which has been assigned or granted to another Owner. All Parking Spaces shall be used solely for the parking and storage of motor vehicles operated for personal or business transportation. No boat, trailer, camper, motorcycle, golf cart, mobile home, other recreational vehicle nor any dilapidated vehicle shall be parked or stored in any Parking Space. The Association may designate specific areas for the parking, loading and unloading of trucks. No vehicles that are excessively noisy, or exhaust polluting, as determined by the Board, shall be operated on the Property. No part of the Common Area shall be used for repair, construction or reconstruction of any vehicle, boat or any other item or thing except in an emergency. As long as applicable ordinances and laws are observed, the Board may cause the removal of any vehicle that is in violation of this Declaration. No vehicle loading or unloading shall occur which infringes upon or interferes with the rights of access or use of Units or parking spaces by Owners, tenants or customers of the Owners of such Units. The Parking Spaces may not conform exactly to the drawings on the Condominium Plan due to re-stripping of the spaces by the Board and any construction, reconstruction, repair, shifting, movement or natural settling of the improvements. The existing physical boundaries of any Parking Space, so long as such space is substantially of the same size and in substantially the same location as shown on the Condominium Plan shall be presumed to be such boundaries, rather than specific site and location as described in such drawings.

A. Owners shall be entitled to exchange Parking Spaces granted or assigned to their respective Units, provided that (1) a reciprocal deed of assignment identifying the exchanged Parking Spaces, the exchanging Owners and the first Mortgagees of such exchanging Owners, and recorded; and (2), no such deed of assignment of Parking Spaces shall be effective if exchange would result in a reduction of the number of Parking Spaces to which such Owners were originally entitled. A copy of the recorded reciprocal assignment shall be delivered to the Board as soon as possible after recordation. The Association shall update the Parking Plan to reflect such changes. After the conveyance of all Units by Declarant to other Owners, any Parking Spaces which have not been granted as Exclusive Use Common Area appurtenant to a particular Unit after Declarant has sold and conveyed all Units in the Project to other Owners shall be held as unrestricted Common Area by the Association. The Association may permit such Parking Spaces to be used by the Owners as unassigned parking or the Association may assign such Parking Spaces on an exclusive or partially exclusive basis to particular Owners in such manner and for such terms and consideration as the Board deems reasonable.

B. Owners shall use their assigned Parking Spaces for parking of their vehicles so that unassigned Common Area parking will be available for guest parking. The Board may establish Rules from time to time for the parking of vehicles in the Common Areas.

**7.7. Vehicle Restrictions and Towing:** The Association shall install a sign at each vehicular entrance to the Project containing a statement that public parking is prohibited and that all vehicles not authorized to park on the Project will be removed at the owner's expense. The sign shall be not be less than 17 x 22 inches in size with lettering not less than one (1) inch in height and shall contain such information as is required by law, including the telephone number of the local traffic law enforcement agency and the name and telephone number of each towing company that is a party to a written general towing authorization agreement with the Association. The sign may also indicate that a citation may also be issued for the violation. The Association shall enter into a written general towing authorization agreement with one or more towing companies as required by Vehicle Code section 22658.

The Association may cause the removal of any vehicle wrongfully parked on the Property, including a vehicle owned by an occupant in accordance with the then applicable laws. The

Association may cause the removal, without notice, of any vehicle parked in a marked fire lane, within fifteen (15) feet of a fire hydrant, in a parking space designated for handicapped without proper authority or in a manner which interferes with any entrance to, or exit from, the project or any condominium, parking space or garage located thereon. The Association shall not be liable for any damages incurred by the vehicle owner because of the removal in compliance with this Section or for any damage to the vehicle caused by the removal, unless such damage resulted from the intentional or negligent act of the Association or any Person causing the removal of or removing the vehicle. If requested by the owner of the vehicle, the Association shall state the grounds for the removal of the vehicle. The provisions of this Section 7.7 are intended to comply with Vehicle Code section 22658 in effect as of January 1, 2008. If this Vehicle Code section is amended, revised or replaced, this provision automatically shall be amended to reflect such amendment, revision or replacement section. If Vehicle Code section 22658 is repealed and no successor section is enacted, then this provision shall remain in full force and effect to the extent legally permitted. Vehicle Code section 22658 may have been amended by the State Legislature since this Declaration was recorded, and the Board should confirm the current statutory requirements.

**7.8. Signs:** No signs shall be displayed to the public view on any Condominiums or any portion of the Property, except:

A. Except as provided otherwise in Exhibit C, one (1) sign that identifies the occupant of the Unit that complies with the Venture Commerce Center Standard Sign Program attached to this Declaration as Exhibit "C". More than one sign is allowed for a Unit in certain cases as described in Exhibit C.

B. In addition, during the time a Unit is being offered for sale or lease, the Owner of a Unit may display one (1) "For Sale" or "For Rent" or "For Exchange" sign on the Unit, or in the Common Area adjacent to the Unit, that complies with guidelines established by the Board for the design, dimensions and location of such signs, and may also display within the Common Area one (1) sign advertising directions to the Owners' Condominium that is for sale, rent, or exchange, provided that the design, dimensions and location of such directional sign comply with guidelines established by the Board;

C. The Board may establish additional signage criteria in the Project Rules provided that such additional signage criteria may not be less restrictive than, or inconsistent with, the Venture Commerce Center Standard Sign Program attached to this Declaration as Exhibit "C".

**7.9. Animals:** Except as provided in this Declaration and permitted by the Rules, no animals of any kind shall be raised, bred, or kept in any Unit of the Project. Trained dogs used for assistance by visually impaired, hearing impaired or physically handicapped persons may be kept by an occupant or invitee of an Owner, when accompanied by the person that the trained dog assists. Owners, their tenants or other occupants of Units may keep no more than one (1) dog or one (1) cat within a Unit, and may keep a reasonable number of fish that are kept in aquariums, provided that no such dog, cat or fish, or any other animals, are kept, bred, or maintained for any commercial purposes. All such permitted animals shall be kept under reasonable control at all times. No animals shall be allowed in the Common Area except as may be permitted by Rules. No Owner shall allow its dog to enter the Common Area except on a leash. No dog may be kept in a Unit unless a responsible person is present in the Unit. After making a reasonable attempt to notify the Owner, the Association or any Owner may cause any animal found within the Common Area in violation of the Rules of the Board or this Declaration to be removed by the Association (or any Owner) to a pound or animal shelter under the jurisdiction of the City or the County by calling the appropriate authorities, whereupon the Owner may, upon payment of all expenses connected therewith, repossess the animal. Owners shall prevent their dogs from soiling any portion of the Common Area and shall promptly clean up any waste left by their dog. Owners shall be fully responsible for any damage caused by their animals. An Owner or other occupant of a Unit shall

use reasonable efforts to prevent any animal within its Unit from making disturbing noises that can be heard from any other Unit. An Owner in violation of this section may be deemed to be permitting, or causing a serious annoyance or nuisance to any other Owner. The Board, after notice and a hearing, may require the permanent removal of any animal that the Board determines to be a danger to the health and safety of any Owner, occupant of a Unit or invitees thereof, or otherwise to be a nuisance within the Project. The Board may find that an animal is a nuisance if the animal or its owner continues to violate the Rules regulating animals after receipt by the Owner of a written demand from the Board to comply with the Rules.

**7.10. Garbage and Waste Disposal:** Until removal to the dumpsters located within the Common Area, all rubbish, trash, recycling, garbage and other waste shall be stored within the Individual Units in a sanitary and neat manner. Rubbish, trash, recycling, garbage and other waste shall be regularly removed from the Unit to the dumpsters located in the Common Area, and shall not be allowed to unreasonably accumulate within the Unit. All equipment for the storage or disposal of such waste materials shall be kept in a clean and sanitary condition. No equipment, garbage cans, or storage piles shall be kept on the outside of any Unit. No toxic or Hazardous Materials shall be disposed of within the Project by dumping in the dumpsters, in waste containers or down the drains, or otherwise. If, in the judgment of the Board, any Unit Owner or other occupant of a Unit is excessively using the trash and garbage facilities in the Common Area when compared to the average use all other Units in the Project, after notice to the Unit Owner, the Board may levy a Cost Reimbursement Assessment upon the Unit involved for the costs of such excess use. All use of Project dumpsters or other waste disposal devices shall be subject to the Rules. No carpeting, sheet metal or liquid waste shall be deposited in Project dumpsters or other waste disposal devices, and shall be removed from the Project by the Owner or occupant of a Unit independently of Project trash or garbage removal services. Owners whose business pertains to or generates any Hazardous Materials shall be responsible for the storage and disposal of such Hazardous Materials in accordance with all applicable laws, and compliance with the provisions of Section 7.3. The Association shall conduct regular monitoring of the Common Areas in order to control and eliminate accumulations of trash, excess waste materials and debris.

**7.11. Radio and Television Antennas:** Except as permitted under applicable laws, no Owner shall construct and/or use and operate its own external radio and/or television antenna or satellite dish, without the written consent of the Board. In considering whether to approve applications, the Board shall consider and give great weight, to the extent permitted under applicable laws, to considerations of safety of the installation, potential structural damage and potential for water leaks in the Project, aesthetics and uniformity of appearance, and use criteria similar to treatment for other devices in the same general area such as air conditioners, heat pumps, etc., that do not prevent or unreasonably delay installation or use of such antennas, unreasonably increase the cost of installation maintenance or use of such antennas, or preclude an acceptable quality of signal for such antenna.

**7.12. Roof:** Access to roofs shall be restricted to Persons authorized by the Board.

**7.13. Architectural Control:**

A. No alterations, renovations, additions, installations, or other changes to the exterior of the Project, or any portion thereof, nor any fence, wall, obstruction, outside or exterior wiring, balcony, screen, awning, improvement, addition, or structure of any kind to the exterior of the Project, shall be commenced, installed, erected, painted, repainted or maintained upon the Property by any Owner, nor shall there be any modification, alteration or removal of any such exterior improvements, until the same has been approved in writing by the Board, or by an Architectural Control Committee appointed by the Board, and as required by the City.

B. Improvements or alterations made to the interior of a Unit are not subject to review or control by the Board or the Architectural Control Committee, provided that such interior improvements or alterations do not alter the exterior appearance of the Building, do not materially impair the structural integrity of the Building, do not alter, damage or interfere with utility lines, the built-in fire protection devices, sprinkler systems, or equipment or other Utility Facilities which serve the Common Area or other Condominiums and comply with all applicable laws, codes and ordinances. Subject to the foregoing, Owners may install interior partitions to separate portions of a Unit without prior approval; provided, however that, any alterations which are intended to create additional office space in a Unit shall require the prior review and approval of the Board or Architectural Control Committee, so that impacts on parking within the Project can be evaluated by the Board or Architectural Control Committee, and additional parking assigned to the Unit, if necessary and available. Such partitions placed wholly within the boundaries of a Unit shall be part of the Unit. No changes shall be made to the structural elements of the Unit without approval by the Board or Architectural Control Committee. Improvements or alterations that involve the structural integrity of the Building, the utility lines, the built-in fire protection devices, sprinkler systems, or equipment or other Utility Facilities which serve the Common Area or other Condominiums shall be subject to review by the Board or the Architectural Control Committee as set forth in this Declaration. Installation of fire protection devices, sprinkler systems, or equipment in the Unit shall be subject to review by the Board or the Architectural Control Committee as set forth in this Declaration for evaluation of the consistency such devices, systems or equipment with the existing fire protection devices, sprinkler systems, or equipment that serve the Project.

C. Plans and specifications showing the nature, kind, shape, color, size, materials and location of any proposed improvements, or alterations requiring review hereunder shall be submitted to the Board or Architectural Control Committee in accordance with the Rules adopted by the Board or the Architectural Control Committee for approval as to quality of workmanship and design and harmony of external design with existing structures.

D. The Board may establish an Architectural Control Committee. If the Board establishes an Architectural Control Committee, the Architectural Control Committee shall consist of three (3) members. Declarant may appoint all of the original members of the Committee and all replacements until ninety percent (90%) of all the Condominiums in the Project have been sold. Members appointed to the Architectural Control Committee by the Declarant need not be Members of the Association. A majority of the Architectural Control Committee may designate a representative to act for it. In the event of death or resignation of any member of the Committee, the successor shall be appointed by the Person which appointed such member until Declarant no longer has the right to appoint any members to the Architectural Control Committee, and thereafter the Board shall appoint such a successor. Neither the members of the Architectural Control Committee nor its designated representatives shall be entitled to any compensation for services performed pursuant hereto. In the event the Architectural Control Committee fails to approve or disapprove plans and specifications in writing within thirty (30) days after the same have been submitted to it, approval will not be required and the related covenants shall be deemed to have been fully complied with. Approval of plans by the Architectural Control Committee or the Board, shall in no way make the Architectural Control Committee or its members or the Board or its members responsible for or liable for the improvements built after approval of the plans and the Owner whose plans are approved shall defend, indemnify and hold the Architectural Control Committee and the Board, and the members thereof, harmless from any and all liability arising out of such approval.

E. Before commencement of any alteration or improvements approved by the Board or Architectural Control Committee, the Owner shall comply with all applicable permit and review procedures of the City and all appropriate governmental laws and regulations. Approval by the Board or Architectural Control Committee does not satisfy the appropriate approvals that may be required by any governmental entity with appropriate jurisdiction.

F. Before an Owner commences or causes to be commenced any alteration or improvements within a Unit, whether or not such alteration or improvements requires approval by the Board or Architectural Control Committee, the Owner shall provide proof of insurance to the Association and name the Association as an additional insured on such insurance.

**7.14. Window Treatments:** All drapes, curtains, shutters, blinds or other window coverings that are visible from the street or Common Areas shall be white, off-white or colors, materials and patterns which are approved by the Board or the Architectural Control Committee.

**7.15. Wall Penetrations/ Installation of Equipment:** To avoid impairment of the sound attenuation and structural integrity of perimeter walls, there shall be no penetration of any of the perimeter walls of any Unit, including walls that divide Units without the prior written consent of the Board and the adjacent Unit Owner affected by any such penetration. All data processing, computer, graphic arts and printing facilities, business machines and equipment, kitchen equipment and all other mechanical equipment installed in any Unit shall be designed, installed, maintained and used by the Owner as to reduce insofar as possible the transmission level of noise, vibration, odors and other objectionable transmissions from such Unit to any other portion of the Project.

**7.16. Right to Lease:**

A. Any Owner who wishes to lease its Condominium must meet each and every one of the following requirements, and the lease will be subject to these requirements whether they are included within the lease or not:

- (1) all leases must be in writing;
- (2) no lease shall be for a period of less than thirty (30) days;
- (3) all leases shall be subject in all respects to provisions of the Declaration, the Bylaws, and all Rules;
- (4) all Owners who lease their Condominiums shall promptly notify the secretary of the Association or the Association Manager in writing of the names of the tenant or tenants occupying such Condominium and shall provide the secretary of the Association or the Association Manager with a complete copy of the lease; all Owners leasing their Condominium shall promptly notify the secretary of the Association or the Association Manager with the address and telephone number where such Owner can be reached;
- (5) any failure of the tenant to comply with the foregoing shall be a default under the lease, regardless of whether the lease so provides. In the event of any such default, the Owner immediately shall take all actions to cure the default including, if necessary, eviction of the tenant;
- (6) if any tenant of an Owner is in violation of the provisions of the Declaration, Bylaws, or Rules, the Association, may in the alternative, bring legal action against the Owner and the tenant to enforce this Declaration and shall be entitled to recover all its costs, including court costs and reasonable attorneys' fees, and such costs shall be a continuing lien upon the Unit which shall bind the Unit.

B. The Association will give the tenant and the Owner notice in writing of the nature of the violation of the Rules, and twenty (20) days from the mailing of the notice in which to cure the violation before the Association may file an action under this Section.

C. By becoming a tenant, each tenant agrees to be bound by the Declaration, the Bylaws and the Rules, and recognizes and accepts the rights and power of the Association to enforce such Declaration, the Bylaws and the Rules as to the tenant for any violation by the tenant of the Declaration, the Bylaws, and the Rules.

**7.17. Liability of Owners for Damage to Common Area:** The Owner of each Condominium shall be liable to the Association for all damage to the Common Area or improvements to the extent described in Section 5.1.A.

**7.18. Deliveries, Loading and Storage:** Loading and unloading of trucks and trailers shall be done in a manner so as to cause as little inconvenience as possible to users of other Units. The Association may establish reasonable Rules for such loading and unloading of vehicles. Deliveries shall be limited to the hours of 7:00 AM - 7:00 PM. No Owner or occupant of a Unit shall store, park, or otherwise keep anything on areas that are exterior to a Unit, including, but not limited to, boxes, pallets or other such items, except for motor vehicles parked in appropriate designated Parking Spaces in accordance with this Declaration and the Rules. When not being used for loading and unloading purposes, roll-up doors to Units shall be kept closed.

**7.19. Use of Electricity:** Use of electricity in each Unit shall not at any time exceed the capacity of any of the electrical conductors and equipment in or otherwise serving the Unit.

**7.20. Overloading:** No machinery, apparatus, appliance, equipment or other items or materials shall be located in any Unit or in the Common Area which will in any manner structurally overload a Building or in any manner vibrate, shake or otherwise damage any portion of any Building.

**7.21. Flags, Pennants, Banners, Etc.:** Except as permitted by law, or as permitted under the Rules, there shall be no exhibiting, flying or hanging of any flags, pennants, banners, or any other such items from any area of the Project that would be visible from the Common Area, other Units or the perimeter streets that abut the Project.

**7.22. Dividing Walls:** Each interior Dividing Wall constructed or installed upon the boundary line dividing two (2) Units, each of which is designated on the Condominium Plan as separate Units, shall constitute a "party wall" and to the extent not inconsistent with this Declaration, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply to such Dividing Walls.

A. The costs of repair and maintenance of a Dividing Wall shall be shared equally by the adjacent Owners. If a Dividing Wall is destroyed or damaged by fire or other casualty, either adjacent Owner may restore it, and the other Unit Owner shall contribute to the cost of the restoration thereof, subject however, to the right of any such Owner to call for a larger contribution from the other Owner under any rule of law regarding liability for negligent or willful acts or omissions.

B. The right of any Owner to contribution from another Owner under this Section 7.22 shall be covenant running with the land appurtenant to the Unit and shall pass to Owner's successor in title.

C. In the event of any dispute arising concerning a Dividing Wall, or under the provisions of this Section 7.22, such dispute shall be submitted in writing to the Board for its review, and the written decision of the Board shall be final and binding on the parties.



**ARTICLE 8.  
INSURANCE; DAMAGE OR DESTRUCTION; CONDEMNATION**

**8.1. Insurance:** The Association shall obtain and continue in effect the following policies of insurance:

**A. Property Insurance.** A policy of property insurance covering all of the real property and structural components of the Buildings and Improvements located in the Common Area, all fixtures and building service equipment in the Common Area, other than Unit Owner heating and air conditioning systems, together with all of the personal property of the Association, which master policy of property insurance shall provide for "multi-peril" or "all-risk" coverage, including, as minimum protection, protection from loss or damage by fire or other hazards covered by the standard extended coverage endorsement, and by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, wind, storm, water damage and other risks as are customarily covered with respect to projects similar in construction, location and use to the Project. Such policy shall include an "agreed amount endorsement" or "inflation guard endorsement", or an equivalent thereof, a "demolition endorsement", or equivalent thereof; and, if such is commercially reasonable to obtain, an "increased cost of construction endorsement" and a "contingent liability from operation of building laws endorsement", or its equivalent. Such policy shall be in such form and in amounts and from an insurance carrier satisfactory to the Board. In any event, the amount of such insurance shall be equal to the full replacement value, based upon contemporary replacement cost, of the property covered by the such insurance policy and written by an insurance company rated by Best's Key Rating Guide as "A" and "Class VI", or better, or an equivalent thereof, and licensed to provide such insurance in the State of California. The master policy shall be issued in the name of the Association for the use and benefit of the Owners, and all Mortgagees of Units as additional insured parties. All insurance shall contain waiver of subrogation as to the Association, officers, directors, and Members, and if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured.

**B. Public Liability Insurance.** Commercial general liability insurance insuring the Association for liability for occurrences within the Common Areas, in an amount not less than two million dollars (\$2,000,000) per occurrence. The minimum limits on the liability insurance policy shall be two million dollars (\$2,000,000) combined single limit and shall include personal injury, bodily injury, property damage and liability for non-owned and hired automobiles. In addition the Association shall obtain and continue in effect additional umbrella coverage of two million dollars (\$2,000,000), or as an alternative may carry a four million dollar (\$4,000,000) combined single limit primary policy. Such insurance shall include a "severability of interests" endorsement, which shall preclude insurance carriers from denying claims of an Owner because of the negligent acts of other Owners or the Association.

**C. Fidelity Bond or Insurance.** A fidelity bond or policy of insurance in the name of the Association as named beneficiary or insured, against dishonest acts covering officers, directors, agents and employees entrusted with, or permitted to, handle funds belonging to or to be administered by the Association, in an amount to be determined by the Board, but in no event less than a sum equal to one year's aggregate Assessments on all Units, plus reserve funds. An appropriate endorsement shall be added to such policy if necessary to cover persons who serve without compensation, if the bond or policy does not otherwise cover the acts of volunteers.

**D. Workers' Compensation Insurance.** Such policies of workers' compensation insurance as may be required from time to time under state law. The Association shall obtain a Certificate of Insurance naming it as an additional insured in regard to workers' compensation claims from any independent contractor who performs any service for the Association, if the receipt of such a certificate is practicable prior to commencement of work.



EXHIBIT 2

11232 El Camino Real  
San Diego, CA 92130-2657  
(858) 755-9301  
(858) 723-6114 Fax  
[www.dmusd.org](http://www.dmusd.org)



Superintendent  
Holly McClurg, Ph.D.

Board of Trustees  
Erica Halpern, President  
Scott Wooden, Ph.D., Clerk  
Stephen Cochran, Ph.D., Member  
Katherine Fitzpatrick, Member  
Doug Rafner, Esq., Member

Sent Via Email and US Mail  
[hearingofficer@sandiego.gov](mailto:hearingofficer@sandiego.gov)

Hearing Officer  
Development Services Department  
1222 First Avenue, MS 501  
San Diego, CA 92101-4154

RE: **PROPOSED MARIJUANA OUTLET LOCATED AT 11189 SORRENTO VALLEY #103, PROJECT NO. 559038**

The Del Mar Union School District ("District") provides the following information regarding the proposed Marijuana Outlet located at 11189 Sorrento Valley, Suite 103. The District strongly opposes the application for the Conditional Use Permit (CUP) for the Marijuana Outlet located directly adjacent to the District's Maintenance, Operations & Facilities office/warehouse at 11189 Sorrento Valley Road, Suite 102, San Diego, CA.

#### **Dispensary Adjacent to School Activity**

The District, an interested party, has been monitoring the review process since the inception. Though the District is sympathetic to the needs of the medical marijuana patients, the extreme close proximity to District offices is a major concern for the District's students, staff and the community. The customers and vendors traveling daily to and from the proposed Marijuana Outlet being limited to three parking spaces, will undoubtedly create safety, traffic and parking concerns for District employees and vendors conducting business at the District's offices. The District further opposes the issuance of the CUP for the Marijuana Outlet because it creates an impression it is next to a school because of signage and there is always potential for students and the school community to visit the District's facility. In the end, it is inappropriate for a Marijuana Outlet to be located directly next to an elementary school district's offices. The District cannot find a single example where a Marijuana Outlet has been allowed to operate next to a school district facility. A photo of the entrance to Unit 102, the District's offices, and Unit 103, the proposed Marijuana Outlet is provided at the end of this document.

#### **Ownership of Common Area**

Commercial associations for both planned developments and condominium projects in California are considered "common interest developments." (Cal. Civ. Code § 6534.) Under Section 6542, each condominium consists of "an undivided interest in common in a portion of real property coupled with a separate interest in space called a unit." Per Cal. Civ. Code § Section 6650, in a condominium project, the common area is owned by the owners of the separate interests as tenants in common in equal shares.

The Venture Commerce Center-Sorrento Condominium Association (Association) is a financially interested entity of the above referenced property with the common area owned and operated by the owners

as provided in the association's Covenants, Conditions and Restrictions (CC&Rs) duly recorded on August 21, 2008.

California law establishes a relationship between the various units in a condominium project, including common ownership and easement rights in the common area. When a marijuana outlet is established in a common interest development, that approval affects the development's common area (i.e., parking, driveways, hallways, lobbies, walkways) collectively owned by the other owners. In accordance with the City's application process, an association's approval (like a landlord's approval) must be obtained where a marijuana use is proposed to be established in a common interest development. Commercial associations are considered property owner landlords for purposes of the City's DS-318 application form and their written consent must be obtained before an application for a marijuana use is processed.

SDMC Section 126.0305 states that the City cannot approve a CUP unless it finds that "the proposed use is appropriate at the proposed location and will not adversely affect the applicable land use plan." In cases where a proposed marijuana use is located in a common interest development such as a condominium project, the City cannot legitimately make this finding unless it has considered the specifics of that location, including (1) whether marijuana use would be allowed by the subject commercial association under its governing documents, and (2) the financial and other impacts the use would have on the association as well its other members. For instance, if the City were to allow a marijuana use in a common interest development whose recorded restrictions outright prohibit it, the City's approval would generate an immediate lawsuit.

#### **CCR Prohibit Marijuana Dispensary**

On August 7, 2018, the Association amended their CCR prohibiting the following retail businesses: Marijuana Dispensary, medical or recreational, including, but not limited to, the distribution, manufacturing, processing, cultivation or selling of marijuana, including edibles. (See attached.) This Section clearly prohibits any marijuana production facility or marijuana outlet from operating in the commercial condominium complex.

Prior to the amendment the CCR restricted the use of the units to commercial, office, industrial, and warehouse purposes. Retail businesses were prohibited due to the concerns of traffic, parking limitations and close proximity to the Los Penasquitos Canyon Preserve, that stretches approximately seven miles from the Interstates 5 and 805 merge to just east of Interstate 15 and encompasses some 4,000 acres of both Peñasquitos and Lopez Canyons, jointly owned and administered by the City and County of San Diego. The proposed Marijuana Outlet is adjacent to the Los Penasquitos Canyon Creek Reserve, the last remaining Wildlife Corridor within Sorrento Valley, connecting Carroll Canyon Creek, Los Penasquitos Creek and Los Penasquitos Lagoon, emptying into the ocean and the Torrey Pines Reserve. Considerable wildlife lives here, including two endangered species.

#### **Torrey Pines Community Planning Board Denied The Application**

Torrey Pines Community Planning Board ("Board") on October 11, 2018 voted (9-3) to deny the application for the Marijuana Outlet to be located within the commercial condominium complex at 11189 Sorrento Valley Road. The Marijuana Outlet "team" at the meeting included their attorney, owner of the premises, architect and others.

The Board, was informed of the vote by the HOA, consisting of several businesses, to deny the opening of marijuana establishments at the commercial complex. Furthermore, with the parking and traffic problems, it

is easy to conclude the proposed location is not a suitable choice. The basis for the denial of the application include quasi-legal issues, lack of proper notification, public safety concerns, parking concerns, and environmental issues. Additionally, there are other Marijuana Outlets in the two-mile corridor adjacent to the District office that will serve the community.

### **Safety Concerns**

The District has been informed by the applicant for the CUP that bulletproof glass must be installed in their offices. Should the Marijuana Outlet be approved, the District would have to consider installing bulletproof windows and doors, similar to the Marijuana Outlet. This comes at a cost as well as a heightened security concern for District staff.

The general safety of the public is a concern for this location as well. The entrance to the Association's property is a right turn in, right turn out on Sorrento Valley Road where the speed limit is 45 MPH (picture included at the end of this document). This entrance is on a curve that is overgrown by native plants and consistently has poor visibility. District staff have nearly been hit when exiting, and District staff have witnessed cars turn the wrong way causing extreme safety concerns. There will be a dramatic increase in traffic into and out of this entrance caused by the 60 or more visitors that the Marijuana Outlet anticipates. This will dramatically increase the likelihood of accidents.

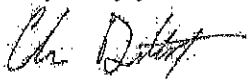
### **Conclusion**

It is inappropriate for a Marijuana Outlet to operate next to any offices run by an elementary school district that serves students 0-13 years of age. There are currently two dispensaries in the vicinity with a third to open soon. This location is unsafe for a retail operation due to the entrance, traffic, and parking; the association has outlawed retail business and Marijuana specifically through their CCR's; and the Torrey Pines Community Planning Board has denied the application. It is clear that this is not the location for a Marijuana Outlet, and this Conditional Use Permit should be denied.

From a legal perspective, both a commercial association and its owners have similar legal and financial stake concerns to a landlord. The City has acknowledged such concerns, by requiring landlord approval to any application for a marijuana use. The City must specifically require that an application for a proposed marijuana use in a common interest development provide proof of the association's written consent. With the Association legally prohibiting marijuana retail business, the City simply cannot make the finding required under SDMC Section 126.0305 that the proposed location is appropriate for the proposed use.

The District has and will continue to strongly oppose the proposed location of this Marijuana Outlet.

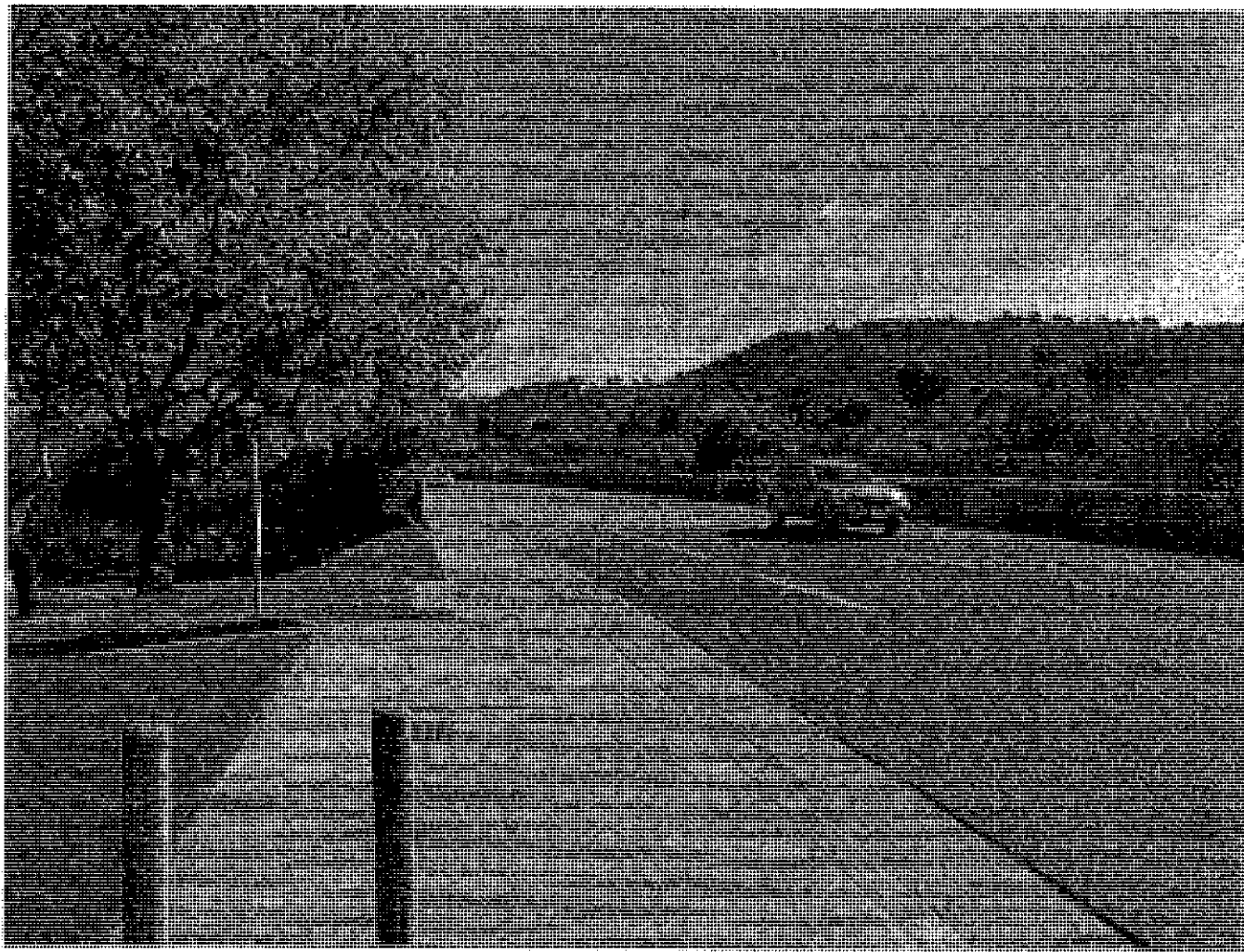
Very truly yours,



Chris Delehanty, Executive Director of Capital Programs and Technology  
cdelehanty@dmusd.org  
(858) 523-6040



Entrance to DMUSD Offices, Unit 102. Entrance to proposed Marijuana Outlet, Unit 103



Entrance at Serrano Valley Road. View from point at which vehicles exit onto Serrano Valley Road.

EXHIBIT 3



Torrey Pines Community Planning Board  
www.torreypinescommunity.org

BOARD MEMBERS: Dennis Ridz, Chair; Dee Rich, Vice Chair; Patti Ashton, Treasurer; Wayne Cox, Secretary; Jake Mumma; Susan Lyon; Barbara Cerny; Pat Whitt; Troy Van Horst; Mike Hastings; Samson Gavranian; Brad Remy; Sheryl Adams:

To: Tim P. Daly, Project Manager, DSD October 16, 2018

Torrey Pines Committee Planning Board MONTHLY MEETING

THURSDAY October 11, 2018 at 7:00 PM– 9:00 PM

**ACTION Items:**

1. Retail Marijuana Operation (MO) #559038 at 11189 Sorrento Valley Rd. suite 103 –Gina Austin STWC 1,767 sq ft. Note: Del Mar Union School District Maintenance and Operation office located Suite 101-102. Existing five unit condominium complex.

**Results** of TPCPB vote on project #559038 – This MO project was DENIED by a 9-3 vote. The following describes some of the issues raised and reasons for rejection of this application for a marijuana retail outlet at 11189 Sorrento Valley Rd., Suite 103.

**Quasi Legal Issues**

The Del Mar Union School District's attorney, presented to the TPCPB , "Second Amendment to the Declaration of Covenants, Conditions and Restrictions establishing a plan for Condominium ownership for **Venture Commerce Center** – Sorrento". Under Article 7, Section 7.1 A line (9) Marijuana dispensary are not allowed. Strainwise marijuana Outlet, along with DSD were aware of this prohibition against allowing a marijuana outlet within Venture Commerce Center. The Board is not involved in what will clearly be a future legal action which may take years to adjudicate. This lengthy delay will mean that NO 4<sup>th</sup> Marijuana retail shop will be viable at this site for years. Therefore, the City should move on to the next application and reject this site as being suitable for a MO.



### **Lack of Proper Notification**

DSD only sent notices to businesses within 300 feet of suite 103 and the applicant posted notice on their suite's front door. Venture Commerce Center and other firms within the complex were not aware of redesign of driveway entrance or American's with Disabilities Act (ADA) creation of a pathway into the complex. This improper notification is alone reason to deny the project until all firms within the Commerce Center have a chance to weigh-in on this issue.

The legal precedent regarding "Grandfathering" established city guidelines for Marijuana Outlets was clearly provided in the approval of Torrey Holistics on Roselle Street. DSD should review it's own rulings on ADA requirements which Grandfathered that project from needing to meet current standards. The same holds true for Driveway Enlargement which was handled after the fact as a Ministerial permit.

### **Security Plan –Public Safety**

Two Armed Security guards are present 24/7. Suite 103 is 'bullet-proofed' but **zero protection** is afforded to suites adjacent to Suite 103. DMUSD office at Suite 101-102 has a very large glass frontage with a reception area, offices and conference room within a few feet of 'armed guards'. Again the precedent was establish by DSD regarding Torrey Holistic facility that all adjacent commercial uses within the building to be provide with 'bullet-proofing measures'. This lack of concern for the public's safety is direct grounds to deny this application.

### **Parking Concerns**

The applicant claims that the complex provides approximately 143 spaces. This ignores the fact that Suite 103 via the Venture Commerce Center – Sorrento Condominium Association, allows a **total of 3 spaces for this suite**. Applicant stated that they plan to hire 8 to 10 employees and contract for 2 armed guards. No plans were provided to indicate that staff could park offsite. The applicant indicated that at peak hours of operation that 19 marijuana customers could be expect to access the site. The applicant claims that there is adequate parking at the far end of the complex. IT is worth noting that there is no street parking due to bicycle lanes Posted No Parking. This does not account for the fact that the two end units are currently unoccupied. This lack of parking for a retail unit within a commercial venture is **clear grounds** for denial.

### Environmental Issues

Some of the following commentary was provided by the Executive Director of the Los Penasquitos Lagoon Foundation, a member of the TPCPB. Working beyond the parcel boundary (ADA patch), are major concerns about encroachment and potential modification to the designated floodway. Has this been cleared with City departments of Transportation and Storm Water? In fact the City has been sued for allowing construction within the floodplain when construction occurred in Sorrento Valley prior to issuance of FEMA 100-year floodplain designation and mapping. BioMed Reality has sued the City for flooding of their properties. Altering the floodway could trigger lawsuits from property owners or tenants at this location.

Will this ADA walkway comply with Standard Urban Storm Water Mitigation Plan (SUSMP)? This is a county and city-wide document that looks to reduce impacts related to **hydromodification** (e.g. increased volume of storm water entering the system and/or increase peak flow velocities at the intake/discharge point or downstream that can occur through new development or improvements to existing developments. Typically both volume and velocity of storm water discharge off the property cannot be increased due to improvements of existing facilities or new construction such as building new ADA walkways within the 'Green Belt' next to the Los Penasquitos Creek.

Addition construction concerns over discharges into the Los Penasquitos Creek which is a tributary to Los Penasquitos Lagoon (State Preserve and 303(d) listed waterbody for sediment/siltation and light/noise along a **primary wildlife corridor**. San Diego Waterboard requires a stricter level of monitoring for SWAPP compliance when discharges enter a 303(d) waterbody or tributary. Furthermore, there is a potential conflict with CIP projects identified by the City for floodway improvements that will be part of a 84 acre habitat restoration project. Simply stated the ADA walkway removes at least 5 feet of grass and plants from a slope leading directly in the Los Penasquitos Creek and replace the slope with a level concrete walkway that increases runoff and decreases ground absorption.

#### Direct impact on **circadian rhythm within a wildlife corridor**

The project creates both **noise and security lighting** within a major wildlife corridor due to hours of operation (i.e., open until (9:00 PM). Additional time for clean-up, trash disposal and getting both workers and marijuana clients with vehicle lights on

## ATTACHMENT 7

will extend past 9:00 PM for all practical purposes. This parcel is adjacent to the major and the only wildlife corridor that connects Los Penaquitos Canyon to Los Penaquitos Lagoon and other sub watersheds within Carroll Canyon and Carmel Valley. Los Penaquitos Canyon is the largest of the three sub watersheds with over 20,000 acres. Wildlife corridors are vital for species survival in both short term (foraging, refuge from predators, access to prey) and long term genetic diversity.

### **Clapper Rail –listed as an Endangered subspecies**

The Clapper Rail (*Rallus Longirostris obsoletus*) has been identified as living within this wildlife corridor and uses this area as a nesting ground.

### **Conclusion**

Board members even questioned the applicant as to why they would even consider this site to be viable, knowing both the legal challenges and the ultra-sensitive environmental issues. The final result was that the TPCPB **denied this application for numerous issues.**

Dennis E. Ridz, Chair Torrey Pines Community Planning Board

EXHIBIT 4

HEARING OFFICER  
RESOLUTION NO. \_\_\_\_\_  
CONDITIONAL USE PERMIT NO. 2038237  
**MO 11189 SORRENTO VALLEY ROAD, SUITE #103 - PROJECT NO. 559038**

WHEREAS, BEACHWALK PROPERTIES, INC., a California Corporation, Owner and STWC HOLDINGS, INC., a California Corporation, Permittee, filed an application with the City of San Diego for a Conditional Use Permit to operate a Marijuana Outlet in a 1,767-square-foot tenant space in Suite #103, within an existing five-unit commercial condominium complex at 11189 Sorrento Valley Road, (as described in and by reference to the approved Exhibits "A" and corresponding conditions of approval for the associated Permit No. 2038237) on portions of a 3.2-acre site;

WHEREAS, the project site is located at 11189 Sorrento Valley Road in the IL-3-1 Zone, Coastal Overlay Zone (Non-Appealable), Coastal Height Limitation Overlay Zone, Coastal Parking Impact Overlay Zone, Special Flood Hazard Area (100 Year Floodway and 100 Year Floodplain), Transit Priority Area, and MCAS Miramar Land Use Compatibility Overlay Zone (Airport Influence Area – Review Area 1 and Accident Potential Zone 2), and Prime Industrial Lands of the Torrey Pines Community Plan;

WHEREAS, the project site is legally described as Unit 103 as shown and defined on that certain condominium plan Venture Commerce Center Sorrento, recorded August 21, 2008 as Instrument No. 2008-0449961 of official records, together with an appurtenant undivided 23.95% percentage interest in and to the common area, being a portion of lot 3 of "Torrey Knolls Park", in the City of San Diego, County of San Diego, State of California, according to map thereof no. 7991, filed in the Office of the County Recorder of San Diego County on July 31, 1974; and said common area is further defined and described in that certain Declaration of Covenants and Restrictions

establishing plan for condominium ownership for Venture Commerce Center – Sorrento, recorded August 21, 2008 as instrument no. 2008-0449962 of official records;

WHEREAS, on June 12, 2019, the City of San Diego, as Lead Agency, through the Development Services Department, made and issued an Environmental Determination that the project is exempt from the California Environmental Quality Act (CEQA) (Public Resources Code Section 21000 et seq.) under CEQA Guideline Section 15301 (Existing Facilities), and the Environmental Determination was appealed to City Council, which heard and denied the appeal on September 16, 2019, pursuant to Resolution No. 312659;

WHEREAS, on November 20, 2019, the Hearing Officer of the City of San Diego considered Conditional Use Permit No. 2038237 pursuant to the Land Development Code of the City of San Diego;

BE IT RESOLVED by the Hearing Officer of the City of San Diego, that it adopts the following findings with respect to Conditional Use Permit No. 2038237:

**A. CONDITIONAL USE PERMIT [SDMC Section 126.0305]**

**1. Findings for all Conditional Use Permits:**

- a. The proposed development will not adversely affect the applicable land use plan.**

The project is a request for a Conditional Use Permit (CUP) to allow the operation of a Marijuana Outlet (Outlet) in a 1,767-square-foot tenant space in Suite 103 within an existing five-unit commercial condominium complex located at 11189 Sorrento Valley Road. The developed 3.2-acre project site is located in the IL-3-1 zone of the Torrey Pines Community Plan (TPCP).

The TPCP designates the site as Industrial Element. The industrial land use allows light industrial, retail, and commercial uses. Industrial development in Sorrento Valley includes manufacturing firms, research and development, laboratories, offices, industrial services, incubator industry and business uses, and supports commercial and retail uses. Pursuant to San Diego Municipal Code (SDMC) §131.0622, retail sales and commercial services are permitted uses in the IL-3-1 Zone. The proposed Outlet is an allowed use in the IL-3-1 Zone with a CUP pursuant to SDMC Sections §131.0622 and §141.0504. The Sorrento Valley industrial area, including this site, is identified as Prime Industrial Lands

(PIL) by the General Plan, which encourages the protection of valuable employment land for base sector industries important to the region's economy. An Outlet is not considered a base sector employment. The General Plan allows development or redevelopment of individual properties pursuant to the development regulations and permitted uses of the existing zone and community plan designation, provided a site is not critical to base sector employment. The project site is not critical to achieving the City's base sector employment goal. The General Plan policies also specifically restrict sensitive receptor land use such as residential and public assembly in PIL. An Outlet is not a sensitive receptor land use.

The TPCP contains a policy that states development of freestanding retail commercial uses in industrially designated areas shall be restricted to those uses that serve only the immediate Sorrento Valley Industrial area. Due to the limited amount of Marijuana Outlets permitted in each Council District, and the use restricted to a few zones with a CUP, the proposed Outlet would serve the community. The proposed Outlet is a compatible use at this location with a Conditional Use Permit, and is consistent with the community plan. Therefore, the proposed Outlet will not adversely affect the applicable land use plan.

**b. The proposed development will not be detrimental to the public health, safety, and welfare.**

The project proposes the operation of an Outlet in a 1,767 square-foot tenant space in Suite 103, within an existing five-unit, 46,995 square-foot building located at 11189 Sorrento Valley Road. The project proposes interior improvements to an existing tenant space, including walls and bulletproof glasses for secure check-in/waiting room, office area, dispensary retail area, restrooms, product check-in area, product receiving area, and safe room.

The proposed development will not be detrimental to the public health, safety and welfare because the discretionary permit controlling the development and continued use of the site contains specific regulatory conditions of approval. These regulations, which are implemented and enforced through the permit, are specifically intended to reduce, mitigate and/or prevent all adverse impacts to the public and community at large.

Approval of the CUP includes required conditions to allow the sale of marijuana and marijuana products in order to prevent potential adverse impacts on the community. The conditions include the following: prohibiting consultation by medical professionals on-site, prohibiting the use of specified vending machines, interior and exterior lighting, alarms, restriction of hours of operation to between 7:00 a.m. to 9:00 p.m. daily, maintenance of area and adjacent public sidewalks free of litter and graffiti, removal of graffiti within 24 hours, and restriction of signage to business name, two-color signs, and alphabetic characters.

In addition to the above, the CUP includes additional security conditions to improve the safety of the building and surrounding neighborhood, including the provision of operable surveillance cameras and a metal detector, use of cameras with a recording

device that maintains records for a minimum of 30 days, two security guards during business hours with one security guard present on the premises 24 hours a day, seven days a week. Outlets must also operate in compliance with the SDMC Chapter 4, Article 2, Division 14, which provides requirements for lawful operation. Furthermore, construction of the project authorized through this permit will be subject to all adopted building, electrical, mechanical, fire and plumbing codes, which will be enforced through construction review and building inspections.

Outlets must comply with SDMC §141.0504(a), which require a 1,000-foot separation, measured between property lines from resource and population-based City parks, churches, child care centers, playgrounds, City libraries, minor-oriented facilities, residential care facilities, and schools. Outlets must also be a minimum distance of 100 feet from a residential zone. The proposed Outlet complies with the separation requirements between sensitive uses set forth in SDMC §141.0504(a).

The proposed project will be required to comply with development conditions as described in CUP No. 2038237 which is valid for five years and may be revoked if the Owner or Permittee violates the terms, conditions, lawful requirements, or provisions of the Permit.

The referenced regulations and conditions have been determined as necessary to avoid adverse impact upon the health, safety, and welfare. Therefore, the proposed Outlet will not be detrimental to the public health, safety and welfare.

**c. The proposed development will comply with the regulations of the Land Development Code including any allowable deviations pursuant to the Land Development Code.**

The project proposes a CUP to operate an Outlet in a 1,767-square-foot tenant space in Suite 103 within an existing five-unit commercial condominium complex located at 11189 Sorrento Valley Road. The site was developed in 1982.

The developed 3.2-acre site is located in the IL-3-1 zone and an Outlet is allowed with a CUP pursuant to SDMC Sections 131.0622 and 141.0504. The project has been determined to be exempt from the Environmentally Sensitive Lands (ESL) regulations of the Special Flood Hazard Area (100 Year Floodplain and 100 Year Floodway) pursuant to SDMC Sections 143.0110 (b)(4) and (c)(1), because there is no addition or modification to the existing development. Only interior tenant improvements are proposed. Furthermore, the proposed Outlet is exempt from the Airport Land Use Compatibility Overlay Zone regulations set forth in Chapter 13, Article 2, and Division 15 of the SDMC pursuant to Section 132.1505 (c)(1) as the project is limited to interior modifications and will not increase the density, floor area ratio or height of the existing structure.

Outlets must comply with SDMC §141.0504(a), which require a 1,000-foot separation, measured between property lines from resource and population-based City parks, churches, child care centers, playgrounds, City libraries, minor-oriented facilities, residential care facilities, and schools. Outlets must also be a minimum distance of 100 feet from a residential zone. The proposed Outlet complies with the separation



requirements between sensitive uses set forth in SDMC §141.0504(a). Outlet must also operate in compliance with the SDMC Chapter 4, Article 2, Division 14, which provides requirements for lawful operation.

The CUP for the project includes various conditions and corresponding exhibits of approval relevant to achieving compliance with all relevant regulations of the SDMC for an Outlet. No variance or deviations are requested as part of this application, nor are any required to approve the CUP. Therefore, the proposed development will comply with the regulations of the Land Development Code.

**d. The proposed use is appropriate at the proposed location.**

The project proposes a CUP to allow the operation of an Outlet in a 1,767-square-foot tenant space in Suite 103 within an existing five-unit, 17,389-square-foot commercial condominium complex located at 11189 Sorrento Valley Road. The 3.2-acre site is in the IL-3-1 Zone of the Torrey Pines Community Plan (TPCP).

Outlets must comply with SDMC §141.0504(a), which require a 1,000-foot separation, measured between property lines from resource and population-based City parks, churches, child care centers, playgrounds, City libraries, minor-oriented facilities, residential care facilities, and schools. Outlets must also be a minimum distance of 100 feet from a residential zone. The proposed Outlet complies with the separation requirements between sensitive uses set forth in SDMC §141.0504(a). Outlet must also operate in compliance with the SDMC Chapter 4, Article 2, Division 14, which provides requirements for lawful operation.

The proposed Outlet is consistent with all land development regulations relevant for the site and the use. No variance or deviations are requested as part of this application, nor are any required to approve the CUP. The proposed Outlet is classified as retail sales use and marijuana retail sales are allowed at this location with a CUP. Therefore, based on all the facts cited above and conditions of approval, the proposed Outlet is an appropriate use at the proposed location.

The above findings are supported by the minutes, maps and exhibits, all of which are incorporated herein by this reference.

BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the Hearing Officer, Conditional Use Permit No. 2038237 is hereby GRANTED by the HEARING OFFICER to the referenced Owner/Permittee, in the form, exhibits, terms and conditions as set forth in Conditional Use Permit No. 2038237, a copy of which is attached hereto and made a part hereof.

---

Sammi Ma  
Development Project Manager  
Development Services

Adopted on: November 20, 2019

IO#: 24007352

DRAFT

EXHIBIT 5

**RECORDING REQUESTED BY**  
 CITY OF SAN DIEGO  
 DEVELOPMENT SERVICES  
 PERMIT INTAKE, MAIL STATION  
 501

**WHEN RECORDED MAIL TO**  
**PROJECT MANAGEMENT**  
**PERMIT CLERK**  
**MAIL STATION 501**

INTERNAL ORDER NUMBER: 24007352

SPACE ABOVE THIS LINE FOR RECORDER'S USE

CONDITIONAL USE PERMIT NO. 2038237  
**MO 11189 SORRENTO VALLEY ROAD, SUITE 103 - PROJECT NO. 559038**  
 HEARING OFFICER

This Conditional Use Permit No. 2038237 ("Permit") is granted by the Hearing Officer of the City of San Diego to Beachwalk Properties, Inc., a California Corporation, Owner and STWC Holdings, Inc., a California Corporation, Permittee, pursuant to San Diego Municipal Code [SDMC] section and 126.0305. The 3.2-acre site is located at 11189 Sorrento Valley Road, Suite 103, in the IL-3-1 Zone, Coastal Overlay Zone (Non-Appealable), Coastal Height Limitation Overlay Zone, Coastal Parking Impact Overlay Zone, Special Flood Hazard Area (100-Year Floodway and 100 Year Floodplain), Transit Priority Area, and MCAS Miramar Land Use Compatibility Overlay Zone (Airport Influence Area - Review Area 1 and Accident Potential Zone 2), and Prime Industrial Lands, within the Torrey Pines Community Plan area. The project site is legally described as Unit 103 as shown and defined on that certain condominium plan Venture Commerce Center Sorrento, recorded August 21, 2008 as instrument No. 2008-0449961 of official records, together with an appurtenant undivided 23.95% percentage interest in and to the common area, being a portion of lot 3 of "Torrey Knolls Park", in the City of San Diego, County of San Diego, State of California, according to map thereof no. 7991, filed in the Office of the County Recorder of San Diego County on July 31, 1974; and said common area is further defined and described in that certain Declaration of Covenants and Restrictions establishing plan for condominium ownership for Venture Commerce Center - Sorrento, recorded August 21, 2008 as instrument no. 2008-0449962 of official records.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner and Permittee to operate a Marijuana Outlet in a 1,767-square-foot tenant space within an existing five-unit commercial condominium complex, described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated November 20, 2019, on file in the Development Services Department.

The project shall include:

- a. Operation of a Marijuana Outlet in a 1,767-square-foot tenant space in Suite 103 within an existing five-unit commercial condominium complex. The operation shall include the requirements consistent with the State of California statutes and California Departments of Food and Agriculture, Consumer Affairs and Public Health regulations;

- b. Landscaping (planting, irrigation and landscape related improvements);
- c. Off-street parking; and
- d. Public and private accessory improvements determined by the Development Services Department to be consistent with the land use and development standards for this site in accordance with the adopted community plan, the California Environmental Quality Act [CEQA] and the CEQA Guidelines, the City Engineer's requirements, zoning regulations, conditions of this Permit, and any other applicable regulations of the SDMC.

**STANDARD REQUIREMENTS:**

1. This permit must be utilized within thirty-six (36) months after the date on which all rights of appeal have expired. If this permit is not utilized in accordance with Chapter 12, Article 6, Division 1 of the SDMC within the 36 month period, this permit shall be void unless an Extension of Time has been granted. Any such Extension of Time must meet all SDMC requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker. This permit must be utilized by December 5, 2022.
2. This Conditional Use Permit [CUP] and corresponding use of this site shall expire on December 5, 2023. The Owner/Permittee may request that the expiration date be extended in accordance with SDMC Section 141.0504(n).
3. No permit for the construction, occupancy, or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until:
  - a. The Owner/Permittee signs and returns the Permit to the Development Services Department; and
  - b. The Permit is recorded in the Office of the San Diego County Recorder.
  - c. An Annual Operational Permit issued by the Development Services Department is approved in accordance with SDMC Section 42.1504.
4. While this Permit is in effect, the subject property shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the appropriate City decision maker.
5. This Permit is a covenant running with the subject property and all of the requirements and conditions of this Permit and related documents shall be binding upon the Owner/Permittee and any successor(s) in interest.
6. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.

7. The Owner/Permittee shall secure all necessary building permits. The Owner/Permittee is informed that to secure these permits, substantial building modifications and site improvements may be required to comply with applicable building, fire, mechanical, and plumbing codes, and State and Federal disability access laws.

8. Construction plans shall be in substantial conformity to Exhibit "A." Changes, modifications, or alterations to the construction plans are prohibited unless appropriate application(s) or amendment(s) to this Permit have been granted.

9. All of the conditions contained in this Permit have been considered and were determined necessary to make the findings required for approval of this Permit. The Permit holder is required to comply with each and every condition in order to maintain the entitlements that are granted by this Permit.

If any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo, and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.

10. The Owner/Permittee shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, relating to the issuance of this permit including, but not limited to, any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. The City will promptly notify Owner/Permittee of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the Owner/Permittee shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, Owner/Permittee shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between the City and Owner/Permittee regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the Owner/Permittee shall not be required to pay or perform any settlement unless such settlement is approved by Owner/Permittee.

**PLANNING/DESIGN REQUIREMENTS:**

11. The sale of marijuana and marijuana products shall be prohibited without a valid license from the State authorizing such activity.

## ATTACHMENT 5

12. Consultations by medical professional shall not be a permitted accessory use at the Marijuana Outlet.
13. Lighting shall be provided to illuminate the interior of the Marijuana Outlet, façade, and the immediate surrounding area, including any accessory uses, parking lots, and adjoining sidewalks. Lighting shall be hooded or oriented so as to deflect light away from adjacent properties.
14. Security shall include operable cameras and a metal detector to the satisfaction of Development Services Department. This Marijuana Outlet shall also include alarms and two security guards. The security guards shall be licensed by the State of California. Two security guards must be on the premises during business hours. At least one security guard must be on the premises 24 hours a day, seven days a week. The security guards should only be engaged in activities related to providing security for the Marijuana Outlet, except on an incidental basis. The cameras shall have and use a recording device that maintains the recordings for a minimum of 30 days.
15. All signs associated with this development shall be consistent with sign criteria established by City-wide sign regulations and shall further be restricted by this permit. Ground signs shall not be pole signs. A primary sign shall be posted on the outside of the Marijuana Outlet and shall only contain the name of the business, which shall contain only alphabetic characters, and shall be limited to two colors.
16. The Owner/Permittee shall post and maintain a sign showing the name and emergency contact phone number of an operator or manager in a location visible from outside the Marijuana Outlet in character size at least two inches in height.
17. The Marijuana Outlet shall operate only between the hours of 7:00 a.m. and 9:00 p.m., seven days a week.
18. The use of vending machines which allow access to marijuana and marijuana products except by a responsible person, as defined in the San Diego Municipal Code Section 42.1502, is prohibited. For purposes of this Section, a vending machine is any device which allows access to marijuana and marijuana products without a human intermediary.
19. The Owner/Permittee shall maintain the Marijuana Outlet, adjacent public sidewalks, and areas under the control of the Owner/Permittee, free of litter and graffiti at all times.
20. The Owner/Permittee shall provide for daily removal of trash, litter, and debris. Graffiti shall be removed from the premises within 24 hours.
21. The Owner/Permittee shall provide a sufficient odor absorbing ventilation and exhaust system capable of minimizing excessive or offensive odors emanating outside of the permitted Marijuana Outlet to the satisfaction of the Development Services Department.

**LANDSCAPE REQUIREMENTS:**

22. Prior to issuance of any construction permits, the Owner/Permittee shall submit to the Development Services Department for approval a Site Plan that documents existing landscape to remain, consistent with Exhibit 'A,' on file in the Office of the Development Services Department. The site plan shall include reconstruction of existing driveways at Sorrento Valley Road per current City Standard and demonstrate a minimum 5-ft clearance from the trunks of adjacent, existing trees to remain protected in place.

23. The Owner/Permittee shall be responsible for the maintenance of all previously required landscape improvements as shown on the approved plans. All required landscape shall be maintained in a disease, weed and litter free condition at all times consistent with the City of San Diego Landscape Regulations and Standards.

24. If any required landscape (including existing or new plantings, hardscape, landscape features, etc.) indicated on the approved construction document plans is damaged or removed during demolition or construction, the Owner/Permittee shall repair and/or replace in-kind and equivalent size per the approved documents to the satisfaction of the Development Services Department within 30 days of damage or Certificate of Occupancy.

**ENGINEERING REQUIREMENTS:**

25. Prior to the issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, to reconstruct the existing driveways, per current City Standard, adjacent to the site on Sorrento Valley Road, satisfactory to the City Engineer.

26. Prior to the issuance of any construction permit the Owner/Permittee shall submit a Water Pollution Control Plan (WPCP). The WPCP shall be prepared in accordance with the guidelines in Part 2 Construction BMP Standards Chapter 4 of the City's Storm Water Standards.

**TRANSPORTATION REQUIREMENTS**

27. All automobile, motorcycle and bicycle parking spaces must be constructed in accordance with the requirements of the SDMC. All on-site parking stalls and aisle widths shall be in compliance with requirements of the City's Land Development Code and shall not be converted and/or utilized for any other purpose, unless otherwise authorized in writing by the appropriate City decision maker in accordance with the SDMC.

**INFORMATION ONLY:**

- The issuance of this discretionary permit alone does not allow the immediate commencement or continued operation of the proposed use on site. Any operation allowed by this discretionary permit may only begin or recommence after all conditions listed on this permit are fully completed and all required ministerial permits have been issued and received final inspection.



## ATTACHMENT 5

- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this Permit, may protest the imposition within ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code-section 66020.
- This development may be subject to impact fees at the time of construction permit issuance.
- =Marijuana businesses that operate or provide services within the City of San Diego are liable for a monthly gross receipts tax. As referenced in San Diego Municipal Code Section 34.0103(b), taxable activities include but are not limited to, transporting, manufacturing, cultivating, packaging, or retail sales of marijuana and any ancillary products in the City. For additional information, contact the Office of the City Treasurer at (619) 615-1580.

APPROVED by the Hearing Officer of the City of San Diego on November 20, 2019 and [Approved Resolution Number].

DRAFT

**ATTACHMENT 5**

Permit Type/PTS Approval No.: Conditional Use Permit No. 2038237  
Date of Approval: November 20, 2019

AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES DEPARTMENT

\_\_\_\_\_  
Sammi Ma  
Development Project Manager

**NOTE: Notary acknowledgment  
must be attached per Civil Code  
section 1189 et seq.**

\_\_\_\_\_  
**The undersigned Owner/Permittee, by execution hereof, agrees to each and every condition of  
this Permit and promises to perform each and every obligation of Owner/Permittee hereunder.**

**Beachwalk Properties, Inc.**  
Owner

By \_\_\_\_\_  
*NAME: John Kraemer*  
*TITLE:*

**STWC Holdings, Inc.**  
Permittee

By \_\_\_\_\_  
*NAME: Erin Phillips*  
*TITLE:*

**NOTE: Notary acknowledgments  
must be attached per Civil Code  
section 1189 et seq.**

PLANNING COMMISSION  
RESOLUTION NO. \_\_\_\_\_  
CONDITIONAL USE PERMIT NO. 2038237  
**MARIJUANA OUTLET 11189 SORRENTO VALLEY ROAD, UNIT 103 - PROJECT NO. 559038**

WHEREAS, BEACHWALK PROPERTIES, INC., a California Corporation, Owner, and STWC HOLDINGS, INC., a California Corporation, Permittee, filed an application with the City of San Diego for a Conditional Use Permit to operate a Marijuana Outlet in a 1,767-square-foot tenant space in Unit 103, within an existing five-unit commercial condominium complex at 11189 Sorrento Valley Road, (as described in and by reference to the approved Exhibits "A" and corresponding conditions of approval for the associated Permit No. 2038237), on portions of a 3.2-acre site;

WHEREAS, the project site is located at 11189 Sorrento Valley Road in the IL-3-1 Zone, Airport Influence Area (Miramar – Review Area 1), Airport Land Use Compatibility Overlay Zone (Marine Corps Air Station (MCAS) – Miramar), Accident Potential Zone 2 (Miramar), Special Flood Hazard Area (100 Year Floodway and 100 Year Floodplain), Transit Priority Area, Parking Impact Overlay Zone (Coastal), Coastal Height Limitation Overlay Zone, Coastal Overlay (Non-Appealable) Zone, and Prime Industrial Lands within the Torrey Pines Community Plan;

WHEREAS, the project site is legally described as Unit 103 as shown and defined on that certain condominium plan Venture Commerce Center Sorrento, recorded August 21, 2008 as instrument No. 2008-0449961 of official records, together with an appurtenant undivided 23.95% percentage interest in and to the common area, being a portion of lot 3 of "Torrey Knolls Park", in the City of San Diego, County of San Diego, State of California, according to map thereof no. 7991, filed in the Office of the County Recorder of San Diego County on July 31, 1974; and said common area is further defined and described in that certain Declaration of Covenants and Restrictions

establishing plan for condominium ownership for Venture Commerce Center – Sorrento, recorded August 21, 2008 as instrument no. 2008-0449962 of official records;

WHEREAS, on June 12, 2019, the City of San Diego, as Lead Agency, through the Development Services Department, made and issued an Environmental Determination that the project is exempt from the California Environmental Quality Act (CEQA) (Public Resources Code Section 21000 et seq.) under CEQA Guideline Section 15301 (Existing Facilities), and the Environmental Determination was appealed to City Council, which heard and denied the appeal on September 16, 2019, pursuant to Resolution No. 312655;

WEREAS, on November 20, 2019, the Hearing Officer of the City of San Diego considered and approved Conditional Use Permit No. 2038237 pursuant to the Land Development Code of the City of San Diego; and

WHEREAS, on December 4, 2019, Stefanie N. West, on behalf of the Venture Commerce Center – Sorrento Valley, filed a Development Permit Appeal Application (Appeal) on the project; and

WHEREAS, on February 13, 2020, the Planning Commission of the City of San Diego considered the Appeal and Conditional Use Permit No. 2038237 pursuant to the Land Development Code of the City of San Diego, received for its consideration written and oral presentations, evidence having been submitted, and testimony having been heard from all interested parties at the public hearing, and the Planning Commission having fully considered the matter and being fully advised concerning the same;

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the City of San Diego, that it denies the Appeal, affirms the Hearing Officer decision of approval on November 20, 2019, and adopts the following findings with respect to Conditional Use Permit No. 2038237:

**A. CONDITIONAL USE PERMIT [SDMC Section 126.0305]****1. Findings for all Conditional Use Permits:****a. The proposed development will not adversely affect the applicable land use plan.**

The project (Project) is a request for a Conditional Use Permit (CUP) to allow the operation of a Marijuana Outlet (Outlet) in a 1,767-square-foot tenant space in Unit 103 within an existing five-unit commercial condominium complex located at 11189 Sorrento Valley Road. The developed 3.2-acre project site is located in the IL-3-1 zone of the Torrey Pines Community Plan (TPCP).

The TPCP designates the site as Industrial Element. The industrial land use allows light industrial, retail, and commercial uses. Industrial development in Sorrento Valley includes manufacturing firms, research and development, laboratories, offices, industrial services, incubator industry and business uses, and supports commercial and retail uses. Pursuant to San Diego Municipal Code (SDMC) §131.0622, retail sales and commercial services are permitted uses in the IL-3-1 Zone. The proposed Outlet is an allowed use in the IL-3-1 Zone with a CUP pursuant to SDMC Sections §131.0622 and §141.0504. The Sorrento Valley industrial area, including this site, is identified as Prime Industrial Lands (PIL) by the General Plan, which encourages the protection of valuable employment land for base sector industries important to the region's economy. An Outlet is not considered a base sector employment. The General Plan allows development or redevelopment of individual properties pursuant to the development regulations and permitted uses of the existing zone and community plan designation, provided a site is not critical to base sector employment. The project site is not critical to achieving the City's base sector employment goal. The General Plan policies also specifically restrict sensitive receptor land use such as residential and public assembly in PIL. An Outlet is not a sensitive receptor land use.

The TPCP contains a policy that states development of freestanding retail commercial uses in industrially designated areas shall be restricted to those uses that serve only the immediate Sorrento Valley industrial area. Due to the limited amount of Marijuana Outlets permitted in each Council District, and the use restricted to a few zones with a CUP, the proposed Outlet would serve the community. The proposed Outlet is a compatible use at this location with a CUP and is consistent with the community plan. Therefore, the proposed Outlet will not adversely affect the applicable land use plan.

**b. The proposed development will not be detrimental to the public health, safety, and welfare.**

The Project proposes the operation of an Outlet in a 1,767 square-foot tenant space in Unit 103, within an existing five-unit, 46,995 square-foot building located at 11189 Sorrento Valley Road. The Project proposes interior improvements to an existing tenant space, including walls and bulletproof glasses for secure check-in/waiting room, office area, dispensary retail area, restrooms, product check-in area, product receiving area, and safe room.

The proposed Project will not be detrimental to the public health, safety and welfare because the discretionary permit controlling the development and continued use of the site contains specific regulatory conditions of approval. These regulations, which are implemented and enforced through the permit, are specifically intended to reduce, mitigate and/or prevent all adverse impacts to the public and community at large.

Approval of the CUP includes required conditions to allow the sale of marijuana and marijuana products in order to prevent potential adverse impacts on the community. The conditions include the following: prohibiting consultation by medical professionals on-site, prohibiting the use of specified vending machines, interior and exterior lighting, alarms, restriction of hours of operation to between 7:00 a.m. to 9:00 p.m. daily, maintenance of area and adjacent public sidewalks free of litter and graffiti, removal of graffiti within 24 hours, and restriction of signage to business name, two-color signs, and alphabetic characters.

In addition to the above, the CUP includes additional security conditions to improve the safety of the building and surrounding neighborhood, including the provision of operable surveillance cameras and a metal detector, use of cameras with a recording device that maintains records for a minimum of 30 days, two security guards during business hours with one security guard present on the premises 24 hours a day, seven days a week. Outlets must also operate in compliance with the SDMC Chapter 4, Article 2, Division 14, which provides requirements for lawful operation. Furthermore, construction of the Project authorized through this permit will be subject to all adopted building, electrical, mechanical, fire and plumbing codes, which will be enforced through construction review and building inspections.

Outlets must comply with SDMC §141.0504(a), which require a 1,000-foot separation, measured between property lines from resource and population-based City parks, churches, child care centers, playgrounds, City libraries, minor-oriented facilities, residential care facilities, and schools. Outlets must also be a minimum distance of 100 feet from a residential zone. The proposed Outlet complies with the separation requirements between sensitive uses set forth in SDMC §141.0504(a).

The proposed Project will be required to comply with development conditions as described in CUP No. 2038237 which is valid for five years and may be revoked if the Owner or Permittee violates the terms, conditions, lawful requirements, or provisions of the Permit.

The referenced regulations and conditions have been determined as necessary to avoid adverse impact upon the health, safety, and welfare. Therefore, the proposed Outlet will not be detrimental to the public health, safety and welfare.

- c. The proposed development will comply with the regulations of the Land Development Code including any allowable deviations pursuant to the Land Development Code.**

The Project proposes a CUP to operate an Outlet in a 1,767-square-foot tenant space in Unit 103 within an existing five-unit commercial condominium complex located at 11189 Sorrento Valley Road. The site was developed in 1982.

The developed 3.2-acre site is located in the IL-3-1 zone and an Outlet is allowed with a CUP pursuant to SDMC Sections 131.0622 and 141.0504. The Project has been determined to be exempt from the Environmentally Sensitive Lands (ESL) regulations of the Special Flood Hazard Area (100 Year Floodplain and 100 Year Floodway) pursuant to SDMC Sections 143.0110 (b)(4) and (c)(1), because there is no addition or modification to the existing development. Only interior tenant improvements are proposed. Furthermore, the proposed Outlet is exempt from the Airport Land Use Compatibility Overlay Zone regulations set forth in Chapter 13, Article 2, and Division 15 of the SDMC pursuant to Section 132.1505 (c)(1) as the Project is limited to interior modifications and will not increase the density, floor area ratio, or height of the existing structure.

Outlets must comply with SDMC §141.0504(a), which requires a 1,000-foot separation, measured between property lines from resource and population-based City parks, churches, child care centers, playgrounds, City libraries, minor-oriented facilities, residential care facilities, and schools. Outlets must also be a minimum distance of 100 feet from a residential zone. The proposed Outlet complies with the separation requirements between sensitive uses set forth in SDMC §141.0504(a). Outlets must also operate in compliance with the SDMC Chapter 4, Article 2, Division 14, which provides requirements for lawful operation.

The CUP for the Project includes various conditions and corresponding exhibits of approval relevant to achieving compliance with all relevant regulations of the SDMC for an Outlet. No variance or deviations are requested as part of this application, nor are any required to approve the CUP. Therefore, the proposed development will comply with the regulations of the Land Development Code.

**d. The proposed use is appropriate at the proposed location.**

The Project proposes a CUP to allow the operation of an Outlet in a 1,767-square-foot tenant space in Unit 103 within an existing five-unit, 17,389-square-foot commercial condominium complex located at 11189 Sorrento Valley Road. The 3.2-acre site is in the IL-3-1 Zone of the TPCP.

Outlets must comply with SDMC §141.0504(a), which require a 1,000-foot separation, measured between property lines from resource and population-based City parks, churches, child care centers, playgrounds, City libraries, minor-oriented facilities, residential care facilities, and schools. Outlets must also be a minimum distance of 100 feet from a residential zone. The proposed Outlet complies with the separation requirements between sensitive uses set forth in SDMC §141.0504(a). Outlets must also operate in compliance with the SDMC Chapter 4, Article 2, Division 14, which provides requirements for lawful operation.

The proposed Outlet is consistent with all land development regulations relevant for the site and the use. No variance or deviations are requested as part of this application, nor

## ATTACHMENT 3

are any required to approve the CUP. The proposed Outlet is classified as retail sales use and marijuana retail sales are allowed at this location with a CUP. Therefore, based on all the facts cited above and conditions of approval, the proposed Outlet is an appropriate use at the proposed location.

The above findings are supported by the minutes, maps and exhibits, all of which are incorporated herein by this reference.

BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the Planning Commission, Conditional Use Permit No. 2038237 is hereby GRANTED by the Planning Commission to the referenced Owner/Permittee, in the form, exhibits, terms and conditions as set forth in Conditional Use Permit No. 2038237, a copy of which is attached hereto and made a part hereof.

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Sammi Ma  
Development Project Manager  
Development Services

Adopted on: February 13, 2020

IO#: 24007352



**RECORDING REQUESTED BY**  
CITY OF SAN DIEGO  
DEVELOPMENT SERVICES  
PERMIT INTAKE, MAIL STATION  
501

**WHEN RECORDED MAIL TO**  
**PROJECT MANAGEMENT**  
**PERMIT CLERK**  
**MAIL STATION 501**

INTERNAL ORDER NUMBER: 24007352

SPACE ABOVE THIS LINE FOR RECORDER'S USE

CONDITIONAL USE PERMIT NO. 2038237  
**MARIJUANA OUTLET 11189 SORRENTO VALLEY ROAD, UNIT 103 - PROJECT NO. 559038**  
PLANNING COMMISSION

This Conditional Use Permit No. 2038237 ("Permit") is granted by the Planning Commission of the City of San Diego to Beachwalk Properties, Inc., a California Corporation, Owner, and STWC Holdings, Inc., a California Corporation, Permittee, pursuant to San Diego Municipal Code [SDMC] Section 126.0305. The 3.2-acre site is located at 11189 Sorrento Valley Road, Unit 103, in the IL-3-1 Zone, Airport Influence Area (Miramar – Review Area 1), Airport Land Use Compatibility Overlay Zone (Marine Corps Air Station (MCAS) – Miramar), Accident Potential Zone 2 (Miramar), Special Flood Hazard Area (100 Year Floodway and 100 Year Floodplain), Transit Priority Area, Parking Impact Overlay Zone (Coastal), Coastal Height Limitation Overlay Zone, Coastal Overlay (Non-Appealable) Zone, and Prime Industrial Lands within the Torrey Pines Community Plan area. The project site is legally described as Unit 103 as shown and defined on that certain condominium plan Venture Commerce Center Sorrento, recorded August 21, 2008 as instrument No. 2008-0449961 of official records, together with an appurtenant undivided 23.95%, percentage interest in and to the common area, being a portion of lot 3 of "Torrey Knolls Park", in the City of San Diego, County of San Diego, State of California, according to map thereof no. 7991, filed in the Office of the County Recorder of San Diego County on July 31, 1974; and said common area is further defined and described in that certain Declaration of Covenants and Restrictions establishing plan for condominium ownership for Venture Commerce Center – Sorrento, recorded August 21, 2008 as instrument no. 2008-0449962 of official records.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner and Permittee to operate a Marijuana Outlet in a 1,767-square-foot tenant space within an existing five-unit commercial condominium complex, described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated February 13, 2020, on file in the Development Services Department.

The project shall include:

- a. Operation of a Marijuana Outlet in a 1,767-square-foot tenant space in Unit 103 within an existing five-unit commercial condominium complex. The operation shall include the

requirements consistent with the State of California statutes and California Departments of Food and Agriculture, Consumer Affairs and Public Health regulations;

- b. Landscaping (planting, irrigation and landscape related improvements);
- c. Off-street parking; and
- d. Public and private accessory improvements determined by the Development Services Department to be consistent with the land use and development standards for this site in accordance with the adopted community plan, the California Environmental Quality Act [CEQA] and the CEQA Guidelines, the City Engineer's requirements, zoning regulations, conditions of this Permit, and any other applicable regulations of the SDMC.

**STANDARD REQUIREMENTS:**

1. This permit must be utilized within thirty-six (36) months after the date on which all rights of appeal have expired. If this permit is not utilized in accordance with Chapter 12, Article 6, Division 1 of the SDMC within the 36 month period, this permit shall be void unless an Extension of Time has been granted. Any such Extension of Time must meet all SDMC requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker. This permit must be utilized by February 13, 2023.
2. This Conditional Use Permit [CUP] and corresponding use of this site shall expire on February 13, 2025.
3. No permit for the construction, occupancy, or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until:
  - a. The Owner/Permittee signs and returns the Permit to the Development Services Department; and
  - b. The Permit is recorded in the Office of the San Diego County Recorder.
  - c. An annual Operational Permit issued by the Development Services Department is approved in accordance with SDMC Section 42.1504.
4. While this Permit is in effect, the subject property shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the appropriate City decision maker.
5. This Permit is a covenant running with the subject property and all of the requirements and conditions of this Permit and related documents shall be binding upon the Owner/Permittee and any successor(s) in interest.

6. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.
7. The Owner/Permittee shall secure all necessary building permits. The Owner/Permittee is informed that to secure these permits, substantial building modifications and site improvements may be required to comply with applicable building, fire, mechanical, and plumbing codes, and State and Federal disability access laws.
8. Construction plans shall be in substantial conformity to Exhibit "A." Changes, modifications, or alterations to the construction plans are prohibited unless appropriate application(s) or amendment(s) to this Permit have been granted.
9. All of the conditions contained in this Permit have been considered and were determined necessary to make the findings required for approval of this Permit. The Permit holder is required to comply with each and every condition in order to maintain the entitlements that are granted by this Permit.

If any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo, and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.

10. The Owner/Permittee shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, relating to the issuance of this permit including, but not limited to, any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. The City will promptly notify Owner/Permittee of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the Owner/Permittee shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, Owner/Permittee shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between the City and Owner/Permittee regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the Owner/Permittee shall not be required to pay or perform any settlement unless such settlement is approved by Owner/Permittee.

**PLANNING/DESIGN REQUIREMENTS:**

11. The sale of marijuana and marijuana products shall be prohibited without a valid license from the State authorizing such activity.
12. Consultations by medical professional shall not be a permitted accessory use at the Marijuana Outlet.
13. Lighting shall be provided to illuminate the interior of the Marijuana Outlet, façade, and the immediate surrounding area, including any accessory uses, parking lots, and adjoining sidewalks. Lighting shall be hooded or oriented so as to deflect light away from adjacent properties.
14. Security shall include operable cameras and a metal detector to the satisfaction of Development Services Department. This Marijuana Outlet shall also include alarms and two security guards. The security guards shall be licensed by the State of California. Two security guards must be on the premises during business hours. At least one security guard must be on the premises 24 hours a day, seven days a week. The security guards should only be engaged in activities related to providing security for the Marijuana Outlet, except on an incidental basis. The cameras shall have and use a recording device that maintains the recordings for a minimum of 30 days.
15. All signs associated with this development shall be consistent with sign criteria established by City-wide sign regulations and shall further be restricted by this permit. Ground signs shall not be pole signs. A primary sign shall be posted on the outside of the Marijuana Outlet and shall only contain the name of the business, which shall contain only alphabetic characters, and shall be limited to two colors.
16. The Owner/Permittee shall post and maintain a sign showing the name and emergency contact phone number of an operator or manager in a location visible from outside the Marijuana Outlet in character size at least two inches in height.
17. The Marijuana Outlet shall operate only between the hours of 7:00 a.m. and 9:00 p.m., seven days a week.
18. The use of vending machines which allow access to marijuana and marijuana products except by a responsible person, as defined in the San Diego Municipal Code Section 42.1502, is prohibited. A vending machine is any device which allows access to marijuana and marijuana products without a human intermediary.
19. The Owner/Permittee shall maintain the Marijuana Outlet, adjacent public sidewalks, and areas under the control of the Owner/Permittee, free of litter and graffiti at all times.
20. The Owner/Permittee shall provide for daily removal of trash, litter, and debris. Graffiti shall be removed from the premises within 24 hours.

21. The Owner/Permittee shall provide a sufficient odor absorbing ventilation and exhaust system capable of minimizing excessive or offensive odors emanating outside of the permitted Marijuana Outlet to the satisfaction of the Development Services Department.
22. The Owner/Permittee shall comply with Coastal Development Permit No. 471795, as shown on the approved Exhibit "A" for Coastal Development Permit No. 471795.

**LANDSCAPE REQUIREMENTS:**

23. Prior to issuance of any construction permits, the Owner/Permittee shall submit to the Development Services Department for approval a Site Plan that documents existing landscape to remain, consistent with Exhibit 'A,' on file in the Office of the Development Services Department. The site plan shall include reconstruction of existing driveways at Sorrento Valley Road per current City Standard and demonstrate a minimum 5 foot clearance from the trunks of adjacent, existing trees to remain protected in place.
24. The Owner/Permittee shall be responsible for the maintenance of all previously required landscape improvements as shown on the approved plans. All required landscape shall be maintained in a disease, weed and litter free condition at all times consistent with the City of San Diego Landscape Regulations and Standards.
25. If any required landscape (including existing or new plantings, hardscape, landscape features, etc.) indicated on the approved construction document plans is damaged or removed during demolition or construction, the Owner/Permittee shall repair and/or replace in kind and equivalent size per the approved documents to the satisfaction of the Development Services Department within 30 days of damage or Certificate of Occupancy.

**ENGINEERING REQUIREMENTS:**

26. Prior to the issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, to reconstruct the existing driveways, per current City Standard, adjacent to the site on Sorrento Valley Road, satisfactory to the City Engineer.
27. Prior to the issuance of any construction permit the Owner/Permittee shall submit a Water Pollution Control Plan (WPCP). The WPCP shall be prepared in accordance with the guidelines in Part 2 Construction BMP Standards Chapter 4 of the City's Storm Water Standards.

**TRANSPORTATION REQUIREMENTS**

28. All automobile, motorcycle and bicycle parking spaces must be constructed in accordance with the requirements of the SDMC. All on-site parking stalls and aisle widths shall be in compliance with requirements of the City's Land Development Code and shall not be converted and/or utilized for any other purpose, unless otherwise authorized in writing by the appropriate City decision maker in accordance with the SDMC.

**INFORMATION ONLY:**

- The issuance of this discretionary permit alone does not allow the immediate commencement or continued operation of the proposed use on site. Any operation allowed by this discretionary permit may only begin or recommence after all conditions listed on this permit are fully completed and all required ministerial permits have been issued and received final inspection.
- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this Permit, may protest the imposition within ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code-section 66020.
- This development may be subject to impact fees at the time of construction permit issuance.
- Marijuana businesses that operate or provide services within the City of San Diego are liable for a monthly gross receipts tax. As referenced in San Diego Municipal Code Section 34.0103(b), taxable activities include but are not limited to, transporting, manufacturing, cultivating, packaging, or retail sales of marijuana and any ancillary products in the City. For additional information, contact the Office of the City Treasurer at (619) 615-1580.

APPROVED by the Planning Commission of the City of San Diego on February 13, 2020 and [Approved Resolution Number].

Permit Type/PTS Approval No.: Conditional Use Permit No. 2038237  
Date of Approval: February 13, 2020

AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES DEPARTMENT

\_\_\_\_\_  
Sammi Ma  
Development Project Manager

**NOTE: Notary acknowledgment  
must be attached per Civil Code  
section 1189 et seq.**

\_\_\_\_\_  
**The undersigned Owner/Permittee**, by execution hereof, agrees to each and every condition of this Permit and promises to perform each and every obligation of Owner/Permittee hereunder.

**Beachwalk Properties, Inc.**  
Owner

By \_\_\_\_\_  
*NAME: John Kraemer*  
*TITLE:*

**STWC Holdings, Inc.**  
Permittee

By \_\_\_\_\_  
*NAME: Erin Phillips*  
*TITLE:*

**NOTE: Notary acknowledgments  
must be attached per Civil Code  
section 1189 et seq.**