



THE CITY OF SAN DIEGO

Report to the Planning Commission

DATE ISSUED: February 17, 2022 REPORT NO. PC-22-009

HEARING DATE: February 24, 2022

SUBJECT: 701 Fifth Avenue CUP/NUP, Process Three Decision Appeal

PROJECT NUMBER: [656544](#)

REFERENCES: Report to Hearing Officer [HO-21-063](#)

OWNER/APPLICANT: Oliver McMillan Gaslamp Theatres, LLC – Owner
701 5th Ave. LLC – Permittee

SUMMARY

Issue: Should the Planning Commission uphold or deny an appeal of the Hearing Officer's decision to approve a Conditional Use Permit that includes a prohibition of outdoor amplified live entertainment at the rooftop deck and allows for indoor amplified live entertainment only and Neighborhood Use Permit for sidewalk café and street-level outdoor dining areas ("Project") at an existing commercial building located at 701 Fifth Avenue within the Gaslamp neighborhood of the Downtown Community Plan area?

Staff Recommendation: Deny the appeal and affirm the Hearing Officer's decision to approve Conditional Use Permit No. 2412192 that includes a prohibition of outdoor amplified live entertainment and Neighborhood Use Permit No. 2412193.

Community Planning Group Recommendation: On October 20, 2021, the Downtown Community Planning Council voted 10-1-1 to recommend that the City of San Diego Hearing Officer approve the request, including outdoor amplified live entertainment on the rooftop deck no later than 12:00 a.m. Friday, Saturday, and Sundays followed by an officially recognized Monday holiday and no later than 10:00 p.m. Sunday through Thursday.

Environmental Review: The Development Services Department completed a California Environmental Quality Act (CEQA) review for the Project. The Environmental Analysis Section (ESA) has determined that the Project is consistent with the previously certified City of San Diego Downtown Environmental Impact Report (SCH# 2003041001). Development within the Downtown Community Planning area is covered under the following documents, all referred to as the "Downtown FEIR": Final Environmental Impact Report (FEIR) for the San Diego Downtown Community Plan, Centre City Planned District Ordinance, and 10th Amendment to the Centre City Redevelopment Plan, certified by the former Redevelopment Agency

("Former Agency") and the City Council on March 14, 2006 (Resolutions R-04001 and R-301265, respectively); subsequent addenda to the FEIR certified by the Former Agency on August 3, 2007 (Former Agency Resolution R-04193), April 21, 2010 (Former Agency Resolution R-04510), and August 3, 2010 (Former Agency Resolution R-04544), and certified by the City Council on February 12, 2014 (City Council Resolution R-308724) and July 14, 2014 (City Council Resolution R-309115); and, the Final Supplemental Environmental Impact Report for the Downtown San Diego Mobility Plan certified by the City Council on June 21, 2016 (Resolution R-310561). Development within the DCP area is also covered under the following documents, all referred to as the "CAP FEIR": FEIR for the City of San Diego Climate Action Plan (CAP), certified by the City Council on December 15, 2015 (City Council Resolution R310176), and the Addendum to the CAP, certified by the City Council on July 12, 2016 (City Council Resolution R-310595). Development within the DCP area is also consistent with the FEIR for Complete Communities: Housing Solutions and Mobility Choices (SCH No. 2019060003) certified by the San Diego City Council on November 9, 2020 (Resolution R313279). The Downtown FEIR, CAP FEIR, and Complete Communities FEIR are "Program EIRs" prepared in compliance with California Environmental Quality Act (CEQA) Guidelines Section 15168. The information contained in the Downtown FEIR, CAP FEIR, and Complete Communities FEIR reflects the independent judgement of the City of San Diego as the Lead Agency. The environmental impacts of the Project were adequately addressed in the Downtown FEIR, CAP FEIR, and Complete Communities FEIR; the Project is within the scope of the development program described in the Downtown FEIR, CAP FEIR, and Complete Communities FEIR and are adequately described within each document for the purposes of CEQA; and, none of the conditions listed in CEQA Guidelines Section 15162 exist. Therefore, no further environmental documentation is required under CEQA. All environmental documents for the DCP area are available here: <https://www.sandiego.gov/developmentservices/news-programs/downtown-development/eirs>; the CAP FEIR is available here: <https://www.sandiego.gov/ceqa/final>; and the Complete Communities FEIR is available here: <https://www.sandiego.gov/complete-communities>.

Fiscal Impact Statement: None. All staff costs associated with the processing of this Project are recovered from a deposit account funded by the project applicant.

Code Enforcement Impact: None associated with this application.

Housing Impact Statement: The Project site is in the Gaslamp Quarter Planned District and currently occupied by commercial uses; therefore, the Project would not impact housing supply within the City of San Diego.

BACKGROUND

This item is an appeal of the Hearing Officer's decision on December 15, 2021, to approve a Conditional Use Permit (CUP) that includes a prohibition of outdoor amplified live entertainment and allows indoor live entertainment only and Neighborhood Use Permit (NUP) to allow sidewalk café and street-level outdoor dining areas on G Street and Sixth Avenue for restaurant and nightclub tenants at an existing two-story, 66,180-square-foot commercial building. The decision included

denial of the request for a CUP to allow amplified outdoor live entertainment at the existing 3,000 SF rooftop deck and bar. The appeal is specifically to appeal the decision of the prohibition of outdoor amplified live entertainment. The appellant who is the Permittee of this Project agrees with the Hearing Officer approval of the CUP and NUP with the exception of the CUP's live entertainment prohibition on the roof deck. The appellant requests the Planning Commission to approve the live entertainment use on the roof deck and appeal the Hearing Officer decision to deny this use.

The Report to the Hearing Officer [HO-21-063](#) (Attachment 1) contains the Project background, analysis, and necessary draft findings with a staff recommendation of approval.

Please note, letters of support were submitted to City staff by the Applicant twenty minutes before the commencement of the Hearing Officer meeting; therefore, the letters were not included in the original staff report. The letters are included as Attachment 2 for your consideration.

Legal Standard for Appeal of Hearing Officer Decision

Pursuant to [SDMC Section 112.0506\(c\)](#), an appeal of a Hearing Officer decision may only be granted with evidence supporting one of the following findings:

- (1) Factual Error. The statements or evidence relied upon by the decision maker when approving, conditionally approving, or denying a permit, map, or other matter were inaccurate; or
- (2) New Information. New information is available to the applicant or the interested person that was not available through that person's reasonable efforts or due diligence at the time of the decision; or
- (3) Findings Not Supported. The decision maker's stated findings to approve, conditionally approve, or deny the permit, map, or other matter are not supported by the information provided to the decision maker; or
- (4) Conflicts. The decision to approve, conditionally approve, or deny the permit, map, or other matter is in conflict with a land use plan, a City Council policy, or the Municipal Code.

Pursuant to SDMC [section 112.0506\(c\)](#), the Planning Commission can only deny the appeal and uphold approval of the project if none of the above findings are supported by sufficient evidence or grant the appeal and deny approval of the project if it finds one of the above findings is supported by sufficient evidence. The below analysis demonstrates how the appellants do not provide facts to support one of the above findings.

PROJECT APPEAL DISCUSSION

On December 29, 2021, 701 5th Ave., LLC ("Appellant") filed an Appeal Application (Attachment 2) of the Hearing Officer's December 15, 2021 approval decision, citing Factual Error as grounds for the appeal. The Appeal issues and staff responses are as follows:

Appeal Issue No. 1: *"Staff mistook / misrepresented Applicants interest in building mitigation measures as required by acoustical study."*

Staff Response: The plans as submitted to the City do not include any noise mitigation measures identified in the Acoustical Study. This issue was raised during Development Services Department's review of the Project.

Appeal Issue No. 2: *"The San Diego Police Department (SDPD) inaccurately stated that they were not present at the Downtown Community Planning Group (DCPG) meeting on October 20, 2021, when they were in fact present & spoke at the meeting. DCPG eventually voted 10-1-1 to support Applicant's request for rooftop live entertainment until 12:00am."*

Staff Response: Staff reached out to SDPD for a response, and SDPD responded that they may have misspoken about their attendance at the DCPC meeting. SDPD will be available at the Planning Commission hearing to answer any questions. This fact does not change the analysis in the Hearing Office report or this report that the findings cannot be made to support live music on the roof deck.

One clarification to DCPC's recommendation as stated in Appeal Issue No. 2, above. The DCPC voted 10-1-1 to recommend approval of the project conditional upon rooftop live entertainment being limited to no later than 12:00 a.m. (midnight) Friday, Saturday, and Sunday (before an officially recognized Monday holiday) and no later than 10:00 p.m. Sunday through Thursday.

Appeal Issue No. 3: *"Lastly, members of the public who made adverse allegations against the Applicant's request did not accurately identify themselves and their addresses as required. Furthermore, they did not demonstrate definitive evidence to support their claims other than opinion."*

Staff Response: There is no requirement for members of the public providing comments at public hearings to provide personal address information, nor are there any requirements for members of the public to provide supporting evidence or materials. Staff reviewed the Hearing Officer meeting [recording](#), and there was one member of the public who spoke in opposition of the request for outdoor amplified live entertainment and the individual identified themselves as a resident of the Alta condominium building.

Conclusion:

City staff has reviewed the proposed Project, analyzed the appeal issues raised, and determined that the Project is in conformance with adopted City Council policies, regulations of the Land Development Code, and the Downtown Community Plan. The Project as approved by the Hearing Officer is consistent with the recommended land use and development standards in effect for this site and the proposed deviation for sidewalk café dining use and occupancy until 12:00 a.m., seven days a week, and the Hearing Officer made the required findings for the Project. Therefore, City staff recommends the Planning Commission deny the appeal and uphold the Hearing Officer's decision to approve CUP No. 2412192 and NUP No. 2412193.

ALTERNATIVES

1. Deny the appeal and uphold the Hearing Officer's decision to approve CUP No. 2412192 and NUP No. 2412193, with modifications.
2. Approve the appeal, reverse the Hearing Officer's decision, and deny CUP No. 2412192 and NUP No. 2412193, if the findings to approve the Project cannot be affirmed.

Respectfully submitted,



Nicole Pare
Associate Planner, Urban Division
Development Services Department



Brian Schoenfisch
Deputy Director, Urban Division
Development Services Department

Attachments:

1. Report to the Hearing Officer [HO-21-063](#)
2. Appeal Application
3. Draft Resolution with Findings
4. Draft Permit with Conditions
5. Letters of Support submitted by Applicant



THE CITY OF SAN DIEGO

Report to the Hearing Officer

DATE ISSUED: December 8, 2021 REPORT NO. HO-21-063

HEARING DATE: December 15, 2021

SUBJECT: 701 Fifth Avenue CUP/NUP, Process Three Decision

PROJECT NUMBER: [656544](#)

REFERENCE: [2006 Downtown FEIR](#)

OWNER/APPLICANT: Oliver McMillan Gaslamp Theatres, LLC – Owner
701 5th Ave. LLC, LLC – Permittee

SUMMARY

Issue: Should the Hearing Officer approve a Conditional Use Permit and Neighborhood Use Permit for indoor and outdoor live entertainment and sidewalk café and street-level outdoor dining areas ("Project") at an existing two-story, 32,000 square foot (SF), commercial building located at 701 Fifth Avenue in the Gaslamp neighborhood of the Downtown Community Plan area?

Staff Recommendation:

1. APPROVE Conditional Use Permit (CUP) No. 2412192 to allow indoor live entertainment only, subject to conditions, and prohibit outdoor live entertainment.
2. APPROVE Neighborhood Use Permit (NUP) No. 2412193 to allow sidewalk café dining areas within the public right-of-way on Sixth Avenue and street-level outdoor dining areas on private property on G Street.

Community Planning Group Recommendation: On October 20, 2021, the Downtown Community Planning Council voted 10-1-1 to recommend that the City of San Diego Hearing Officer approve the Project, including outdoor live entertainment on the rooftop with limited hours (no later than 12:00 a.m. Friday, Saturday, and Sundays followed by an officially recognized Monday holiday and no later than 10:00 p.m. Sunday through Thursday).

Environmental Review: The Development Services Department completed a California Environmental Quality Act (CEQA) review for the Project. The Environmental Analysis Section (ESA) has determined that the Project is consistent with the previously certified City of San Diego

Downtown Environmental Impact Report (SCH# 2003041001). Development within the Downtown Community Planning area is covered under the following documents, all referred to as the "Downtown FEIR": Final Environmental Impact Report (FEIR) for the San Diego Downtown Community Plan, Centre City Planned District Ordinance, and 10th Amendment to the Centre City Redevelopment Plan, certified by the former Redevelopment Agency ("Former Agency") and the City Council on March 14, 2006 (Resolutions R-04001 and R-301265, respectively); subsequent addenda to the FEIR certified by the Former Agency on August 3, 2007 (Former Agency Resolution R-04193), April 21, 2010 (Former Agency Resolution R-04510), and August 3, 2010 (Former Agency Resolution R-04544), and certified by the City Council on February 12, 2014 (City Council Resolution R-308724) and July 14, 2014 (City Council Resolution R-309115); and, the Final Supplemental Environmental Impact Report for the Downtown San Diego Mobility Plan certified by the City Council on June 21, 2016 (Resolution R-310561). Development within the DCP area is also covered under the following documents, all referred to as the "CAP FEIR": FEIR for the City of San Diego Climate Action Plan (CAP), certified by the City Council on December 15, 2015 (City Council Resolution R310176), and the Addendum to the CAP, certified by the City Council on July 12, 2016 (City Council Resolution R-310595). Development within the DCP area is also consistent with the FEIR for Complete Communities: Housing Solutions and Mobility Choices (SCH No. 2019060003) certified by the San Diego City Council on November 9, 2020 (Resolution R313279). The Downtown FEIR, CAP FEIR, and Complete Communities FEIR are "Program EIRs" prepared in compliance with California Environmental Quality Act (CEQA) Guidelines Section 15168. The information contained in the Downtown FEIR, CAP FEIR, and Complete Communities FEIR reflects the independent judgement of the City of San Diego as the Lead Agency. The environmental impacts of the Project were adequately addressed in the Downtown FEIR, CAP FEIR, and Complete Communities FEIR; the Project is within the scope of the development program described in the Downtown FEIR, CAP FEIR, and Complete Communities FEIR and are adequately described within each document for the purposes of CEQA; and, none of the conditions listed in CEQA Guidelines Section 15162 exist. Therefore, no further environmental documentation is required under CEQA. All environmental documents for the DCP area are available here: <https://www.sandiego.gov/developmentservices/news-programs/downtown-development/eirs>; the CAP FEIR is available here: <https://www.sandiego.gov/ceqa/final>; and the Complete Communities FEIR is available here: <https://www.sandiego.gov/complete-communities>.

BACKGROUND

The 28,619 SF Project site is located at 701 Fifth Avenue on the north side of G Street between Fifth and Sixth avenues in the Gaslamp Quarter Planned District (GQPD) and Transit Priority Area within the Gaslamp neighborhood Downtown Community Plan (DCP) area ("Downtown"). The Gaslamp Quarter Planned District is also a nationally and locally designated historic district (Historical Resources Board (HRB) #127). The Project site contains a two-level building known as Theater Box. The building was originally constructed in 1997 as a 15-screen movie theater and was remodeled in 2018 to include the Sugar Factory restaurant and two commercial tenant lease spaces on the ground floor and eight luxury movie theaters on level 2. Although the building is located in a nationally and locally designated historic district, the site is not listed as a contributing resource to the district and has been cleared by Historic staff for any historic significance. The Applicant intends to operate the two vacant commercial tenant spaces on the ground level of the building as restaurant, nightclub, and arcade space.

The Project site is surrounded by the following land uses:

- North: 7-story commercial hotel
- South: Low-rise and mid-rise commercial restaurant/retail
- East: 5-story condominium and 4-story apartment
- West: Low-rise and mid-rise commercial restaurant/retail

On June 7, 2018, NUP No. 2017-42 was granted by Civic San Diego to allow 562 SF of sidewalk café dining area on Fifth Avenue, a 3,000 SF rooftop outdoor use area, and a comprehensive sign plan. NUP No. 2017-42 was conditioned with restricted hours for the use and occupancy of the rooftop outdoor use area, including limiting the occupancy to no later than 1:30 a.m. seven days a week. Music on the rooftop was restricted to ambient recorded music only, no live entertainment.

PROJECT DESCRIPTION

The Applicant is requesting a Conditional Use Permit (CUP) to allow live entertainment indoors on the ground floor and second floor, and outdoors at the rooftop deck. The application also includes a request for a Neighborhood Use Permit (NUP) for sidewalk café dining areas in the public rights-of-way on G Street and an outdoor use area on private property at the street-level along Sixth Avenue.

Proposed live entertainment including disc jockey, karaoke, and live music performances is requested on the ground floor of the two-story Theater Box building in the two currently vacant tenant spaces: (1) a 3,968 SF restaurant/nightclub on Fifth Avenue; (2) a 3,462 SF restaurant/arcade on Sixth Avenue. It is also requested on the second floor within the luxury movie theater auditoriums totaling approximately 16,860 SF and at the 3,000 SF rooftop bar. The Applicant is requesting live entertainment until 2:00 a.m., seven days a week for both the indoor and outdoor areas. There is a 300 SF disc jockey mezzanine within the 3,462 SF tenant space for a new arcade/restaurant (Sixth Avenue), otherwise, the Project does not propose any dedicated dance floors or performance staging areas.

Under the Gaslamp Quarter Planned District Ordinance (GQPDO), San Diego Municipal Code (SDMC) sections [157.0201\(b\)\(3\)\(A\)\(i\)](#) and [157.0305\(c\)](#), establishments providing amplified live music, entertainment and/or dancing are required to obtain a Process Three CUP. The CUP procedure establishes a review process for the development of uses that may be desirable under appropriate circumstances but are not permitted by right. The intent of these procedures is to review these uses on a case-by-case basis to determine whether and under what conditions such a use may be approved at a given site.

Per the GQPDO, SDMC sections [157.0201\(b\)\(2\)\(A\)\(ii\)](#) and [157.0305\(d\)](#), a Process Two NUP is required for all sidewalk cafes dining areas within the public right-of-way and for outdoor dining areas on private property.

These two actions are consolidated for processing under Process Three per SDMC Section [112.0103](#), with the Hearing Officer as the decision maker pursuant to [SDMC Section 112.0505](#).

Community Plan Analysis

The Gaslamp neighborhood offers a blend of specialty retail, movie theatres, performance venues and hotels which draws local residents and tourists. The Gaslamp Quarter is San Diego's prime entertainment and celebration destination. Conventioneers, baseball fans, and weekend diners congregate here for its lively mix of restaurants, cafes, nightclubs, and bars. The entertainment uses are served well by the neighborhood's historic buildings, which provide a fine-grained, pedestrian-scaled environment and recall the district's colorful past. The Gaslamp Quarter is a nationally and locally recognized historic district (Secretary of Interior Standards National Register of Historic Places and Historical Resources Board #127).

Applicable Downtown Community Plan Goals and Policies include:

- 3.1-G-2: Provide overall balance of uses -employment, residential, cultural, government destination with full compendium of amenities and services.
- 3.5-G-2: Foster a rich mix of uses in all neighborhoods, while allowing differences in emphasis on uses to distinguish between them.
- 6.4-G-1: Maintain the Gaslamp Quarter as an entertainment and shopping district, with broad mix of uses, high activity, and wide-ranging appeal.
- 13.4-G-1: Careful consideration must be made to ensure all existing and potential housing opportunities will provide current/future residents with a pleasant and livable sound environment.
- 13.4-P-4: Provide discretionary review process for night clubs, music halls, live-music performance venues, and other sources of noise to ensure compatibility with surrounding uses.

DISCUSSION

Project Analysis

CUP Standard

An application for a CUP may be approved or conditionally approved only if the decision maker makes the following finding: (a) the proposed development will not adversely affect the applicable land use plan; (b) the proposed development 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; and (d) the proposed use is appropriate at the proposed location.

CUP for Indoor Live Entertainment

There are several commercial establishments within the vicinity of the Project site which have been granted CUPs for indoor live entertainment, as shown on the table below.

CUP No.	Business Name	Address	Indoor Live Entertainment Hours
PTS No. 653653	AC Hotel	753 Fifth Ave.	11:00 a.m. to 1:30 a.m. seven days per week
CUP No. 2018-10	5 th & J Restaurant	437 J St.	11:00 a.m. to 1:30 a.m. seven days per week
CUP No. 2017-13	Pendry	550 J St.	11:00 a.m. to 1:30 a.m. seven days per week
CUP No. 2015-72	Blue Moon	818 Sixth Ave.	11:00 a.m. to 1:30 a.m. seven days per week

CUP No. 2015-27	Blush	555 Market	11:00 a.m. to 1:30 a.m. seven days per week
CUP No. 2002-30A	Andaz	600 F St.	None (previously conforming).
CUP No. 2012-12	Barley Mash	600 Fifth Ave.	Until 2:00 a.m. seven days per week
CUP No. 2010-07	Enzo	836 Fifth Ave.	Until 1:30 a.m. seven days per week

Generally, the venues were conditioned to allow indoor live entertainment consistent with the establishment's hours of operation typically until 2:00 a.m. or consistent with the hours granted for alcohol service per an establishment's liquor license and per California Department of Alcoholic Beverage Control requirements, typically until 1:30 a.m.

The Applicant's requested hours for indoor live entertainment are until 2:00 a.m., seven days a week. Staff supports the Applicant's request to allow indoor live entertainment within the building on the ground floor and second floor as shown on the Project plans (Attachment 12) and recommends that the hours be limited to no later than 1:30 a.m., which is consistent with the hours granted for AC Hotel (immediately adjacent to the project at the northern property line) and other recently approved CUPs for live entertainment in Gaslamp. The recommended hours for indoor live entertainment are also consistent with the establishments California Department of Alcoholic Beverage Control Type 47 liquor license (On-Sale General – Eating Place).

The Draft Permit, included as Attachment 5, is also conditioned to require an updated acoustical study demonstrating compliance with the City's Noise and Abatement Ordinance ("Noise Ordinance") prior to the commencement of live entertainment, require security at a ratio of one security officer for every 50 patrons, prohibit loitering and queuing in the right-of-way, and require all doors and windows to remain closed at all times during live entertainment. With these conditions, and considering the land uses in the vicinity, staff believes the findings to grant a CUP for indoor live entertainment can be met for the project.

CUP for Outdoor Live Entertainment

The Applicant is also proposing outdoor live entertainment on the rooftop at an existing 3,000 SF rooftop bar and lounge venue known as 5th & Sky Rooftop Gardens & Lounge. The 5th & Sky outdoor rooftop deck was permitted by NUP No. 2017-42 for occupancy and use of the rooftop deck no later than 1:30 a.m., seven days a week. The permit allows ambient recorded music on the rooftop deck during permitted hours of operation, but no live entertainment. The Applicant is now requesting a CUP to allow outdoor live entertainment at the rooftop deck.

Staff typically has not been in support of requests for outdoor live entertainment for nightclub venues for multiple reasons and has only recommended approval of outdoor live entertainment on a very limited basis. Staff has only recommended approval of a CUP for outdoor live entertainment for nightclub venues when the Applicant is able to demonstrate that the proposed outdoor live entertainment will be in compliance with the Noise Ordinance and when operations in compliance with the conditions of approval would not pose a public nuisance or create excessive noise and vibration.

Enforcement of violations of the Noise Ordinance has been difficult and inconsistent, as the City's Code Enforcement personnel typically do not work late in the evenings when the entertainment occurs, and the San Diego Police Department (SDPD) does not have the capacity to respond to

complaints when other priorities are occurring. This makes it difficult to track and follow-up on all after-hours noise complaints.

For background information, over the last 15 years, only six CUPS for outdoor live entertainment venues have been approved, as shown in the table below.

CUP No.	Business Name	Address	Outdoor Live Entertainment Hours
2002-30A	Andaz	600 F St.	No later than 10:00 p.m. Sun.-Thurs. No later than 12:00 a.m. Fri.-Sat.
2005-47A	Omnia (Stingaree)	454 Sixth Ave.	No later than 1:00 a.m. Thurs. & Sun. when Mon. is holiday No later than 1:30 a.m. Fri.-Sat.
2017-09	Quartyard II	1301 Market	No later than 10:00 p.m. Sun.-Thurs. No later than 11:00 p.m. Fri.-Sat. & Sun. when Mon. is holiday
2017-13	Pendry Hotel Pool Deck	550 J St.	No later than 10:00 p.m. Sun.-Thurs. No later than 11:00 p.m. Fri.-Sat. & Sun. when Mon. is holiday
2018-10	Fifth & J Restaurant	437 J St.	11:00 a.m. to 10:00 p.m. Sun.-Thurs. 11:00 a.m. to 11:00 p.m. Fri.-Sat & Sun. when Mon. is holiday
653653	AC Hotel	743 Fifth Ave.	11:00 a.m. to 10:00 p.m. Sun.-Thurs. 11:00 a.m. to 12:00 a.m. Fri.-Sat & Sun. when Mon. is holiday

The above CUPs were conditioned with strict requirements on the establishment's sound system levels, prohibiting outside sound and amplification equipment from being brought in during events, requiring a noise study prior to commencement of live entertainment, as well as conditions which establish a process for revocation in the event the establishment is not operating in compliance with the conditions of the land use approval and/or after documented accounts of public nuisances related to the live entertainment use.

While staff does not recommend approval of the CUP for outdoor live entertainment as staff does not believe the findings can be made, if a CUP were to be granted, staff would request and recommend similar strict conditions be placed on the live entertainment use, and that the applicant structurally retrofit the outdoor rooftop structure and install a 5-foot tall sound wall per the recommendations of the acoustically study as discussed below.

Acoustical Study for Outdoor Live Entertainment

The GQPDO requires an Acoustical Study by a certified acoustical engineer for live entertainment when proposed outside of an enclosed building. Since the Applicant is proposing outdoor live entertainment at the existing rooftop bar, an acoustical study by Dr. Leslie E. Penzes dated July 23, 2021 (Attachment 7) ("Study") was submitted as part of the application to analyze potentially significant noise impacts of the proposed outdoor rooftop live entertainment.

The Study analyzed disc jockey music and live music (bands, live performances) on the rooftop deck separately and measured sound levels at the street level near residential areas of G Street and Sixth

Avenue. The Study found that: 1) outdoor live entertainment with a maximum sound system level of 85 dBA produced sound levels at G Street and Sixth Avenue property boundary equal to 45 dBA, which is less than the Noise Ordinance limit of 50 dBA; and 2) outdoor live entertainment with a maximum sound system level of 95 dBA produced sound level at G Street and Sixth Avenue property line equal to 58 dBA, which exceeds the Noise Ordinance Limit of 50 dBA. The Study recommended noise treatment measures including structural modifications to the roof structure and installation of a five-foot-tall sound-proofed acoustical wall around the periphery of the roof.

The Applicant has indicated that they do not intend to construct the recommended noise mitigation measures from the Study, citing the presence of an existing plexiglass barrier around the 3,000 SF rooftop bar area. This existing plexiglass barrier does not appear to be sound-proofed and consists of individual plexiglass panels at varying heights installed around the rooftop bar area only, not around the entire perimeter of the rooftop, as is recommended in the Study. In addition, this existing plexiglass barrier was already in place at the time the Study was performed, the Study found that existing structure and structural elements did not adequately reduce sound levels to within the Noise Ordinance limit when live entertainment including bands or any live performances other than recorded DJ music was introduced.

Additionally, the Study concluded the rooftop bar would require a structural retrofit in order to reduce the noise levels at the property line boundary to be within the noise limits set by the Noise Ordinance. The Applicant has not agreed to make these improvements as recommended in the Study to reduce noise impacts.

Public Correspondence

Staff has received public correspondence (Attachment 10), including emails from several members of the public who voiced opposition due to quality of life issues such as noise and public nuisance concerns.

Staff also received a recommendation from SDPD as part of SDPD's external review of the proposed permits. The SDPD recommendation is included as Attachment 8 and specifies that the SDPD does not recommend granting a CUP for outdoor live entertainment on the rooftop deck. The recommendation refers to an incident on October 27, 2021 wherein SDPD responded to a noise complaints and live entertainment occurring on the rooftop while the subject application was under review.

Staff considered the conclusions of the acoustical study, concerns expressed by members of the public, and SDPD's responses as part of its external review of the proposed permit, and concluded that staff is unable to make the required CUP findings that the proposed development will not be detrimental to the public health, safety, and welfare, and that the proposed use is appropriate at the proposed location. The Study demonstrated excess noise resulting from the introduction of live entertainment on the rooftop under its current physical conditions and reported that in order to reduce noise levels at the Project's property lines and adjacent residential developments to within the perimeters of the Noise Ordinance, additional noise mitigation treatments would be required. The Study made several recommendations and the Applicant has not agreed to install the noise-reducing measures recommended by the Study. In addition, SDPD's review and recommendation on the Project indicate that SDPD would not recommend approving a CUP for live entertainment due to

incidents of reported non-compliance with the Noise Ordinance indicated repeated incidents of violations of the Noise Ordinance, SDMC permit requirements, and the conditions of the existing NUP, which creates adverse impacts on the public health, safety, and welfare of the neighborhood and its residents. Therefore, staff is recommending that the CUP be conditioned to allow indoor live entertainment only, as supported by the Draft Findings (Attachment 6) and prohibit any outdoor live entertainment.

NUP for Sidewalk Café and Street-level Outdoor Dining

The Applicant is requesting 300 SF of outdoor dining area on private property for the street-level arcade/restaurant along Sixth Avenue and for the addition of sidewalk café dining areas within the public right-of-way on G Street, totaling 845 SF. The street-level outdoor dining and sidewalk café areas are proposed to be delineated by a decorative 3'-0" tall metal railing barrier which is painted black consistent with the Gaslamp Quarter Planned District Design Guidelines for sidewalk cafés. The barrier for the Sixth Avenue arcade/restaurant is located entirely within private property. The barrier for the G Street sidewalk café areas is placed to maintain a five-foot wide direct path of pedestrian travel and is located a minimum of eight feet clear from any existing obstruction in the public right-of-way.

The Applicant is requesting that the sidewalk cafe area be open from 11:00 a.m. to 12:00 a.m., seven days per week. In order to limit use of the sidewalk cafe to prevent disturbances to neighbors, the Separately Regulated Use Regulations for Sidewalk Cafes, SDMC [Section 141.0621\(a\)\(3\)\(F\)](#), states for sidewalk cafes permitted as a limited use, alcohol, food, or beverages shall not be served or permitted within the sidewalk cafe area after 10:00 p.m. Sunday through Thursday and after 11:00 p.m. Friday through Saturday. Per SDMC 141.0621(b), a Process Two NUP may be requested for deviations from the SDMC Section 141.0621(a), if the Applicant identifies the deviation and specifies why the deviation is needed, and the decision maker determines that the proposed deviation is a suitable use and will not infringe on the use of the public right-of-way by pedestrians. The Hearing Officer is the decision maker for the subject CUP and NUP application which has been consolidated pursuant to SDMC Section [112.0103](#). Therefore, the Hearing Officer is granted authority to approve a deviation to the Sidewalk Café limited use requirements, and the Applicant has identified the deviation and specified the request is due to the Project's location within the Gaslamp neighborhood, Downtown's premier entertainment district which tends to have commercial activities and businesses open later than other Downtown and citywide neighborhoods.

Exceptions to the limited use regulations for sidewalk café hours have been granted for sidewalk cafes within the Gaslamp Quarter through the approval of a Process Two NUP because the district serves as San Diego's prime entertainment and celebration destination and remains active until late each night. Typically, sidewalk cafes in the Gaslamp Quarter are allowed to operate until 12:00 a.m. each night of the week in order to be consistent with the State of California Alcoholic Beverage Control (ABC) conditions, which prohibit alcohol within sidewalk cafe areas past midnight.

Staff supports operation of the sidewalk cafe and street-level outdoor use area until 12:00 a.m. each day of the week as these hours are consistent with other sidewalk café and outdoor dining area hours granted through NUPs within the Project's vicinity and are consistent with the GQPDO and DCP goals/policies which envisions the Gaslamp neighborhood as Downtown's premier entertainment district.

Conclusion

City staff has reviewed this application for a Conditional Use Permit for indoor live entertainment and outdoor live entertainment, and the Neighborhood Use Permit for outdoor use dining area, including all the issues identified through the review process. Staff believes the findings can be made in support of the requested CUP to allow indoor live entertainment and the NUP for outdoor use dining area on Sixth Avenue and sidewalk café dining areas on G Street. Staff does not recommend approval of the CUP for outdoor live entertainment as staff does not believe the findings required for a CUP related to public health, safety, and welfare cannot be supported. A copy of the Draft Resolution and Draft Permit are included as Attachments 5 and 6.

ALTERNATIVES

1. Approve CUP No. 2412192 and NUP No. 2412193, with modifications.
2. Deny CUP No. 2412192 and NUP No. 2412193, if the findings required to approve the Project cannot be affirmed.

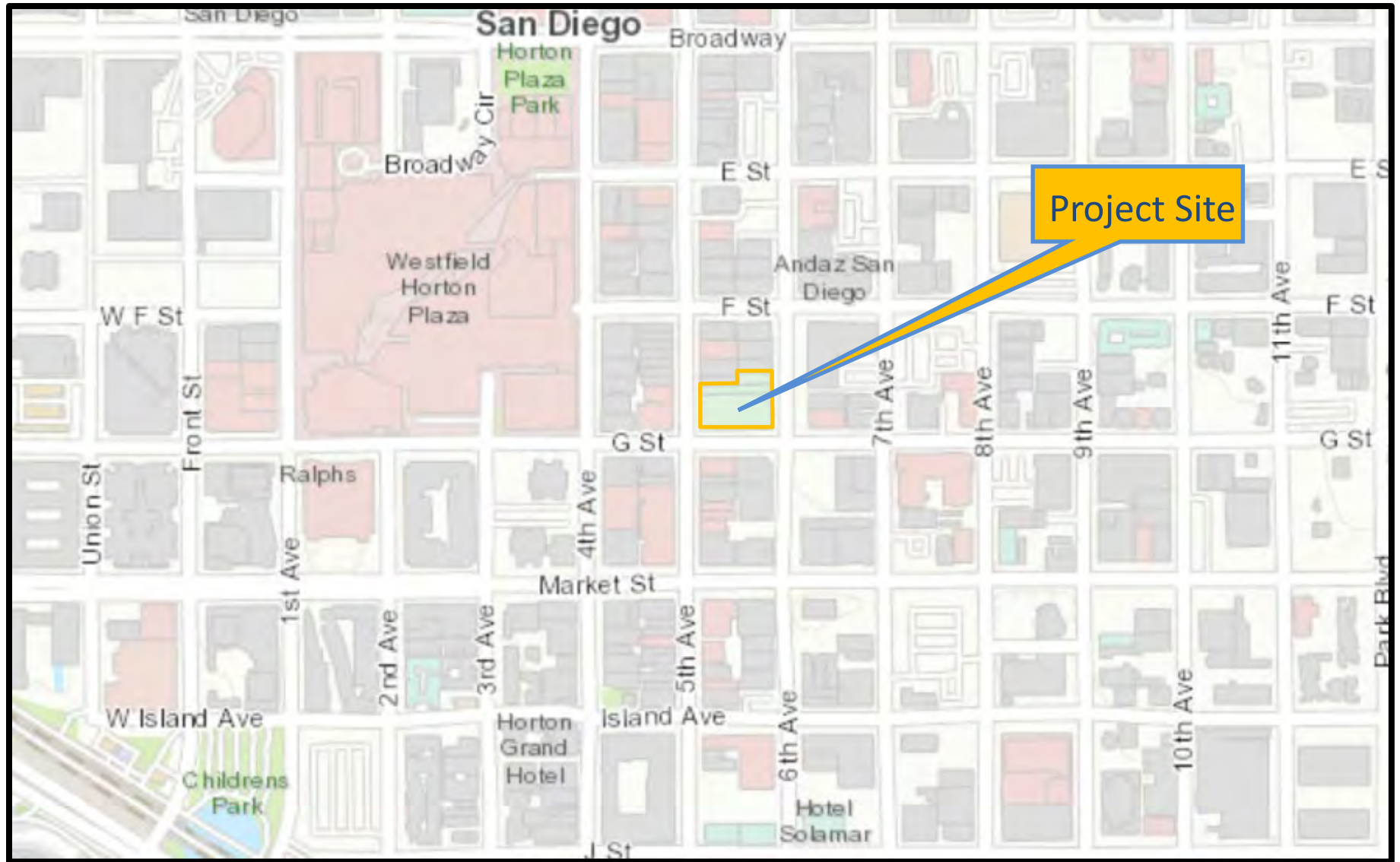
Respectfully submitted,



Nicole Paré
Associate Planner

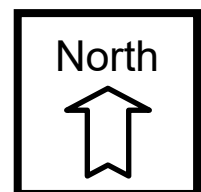
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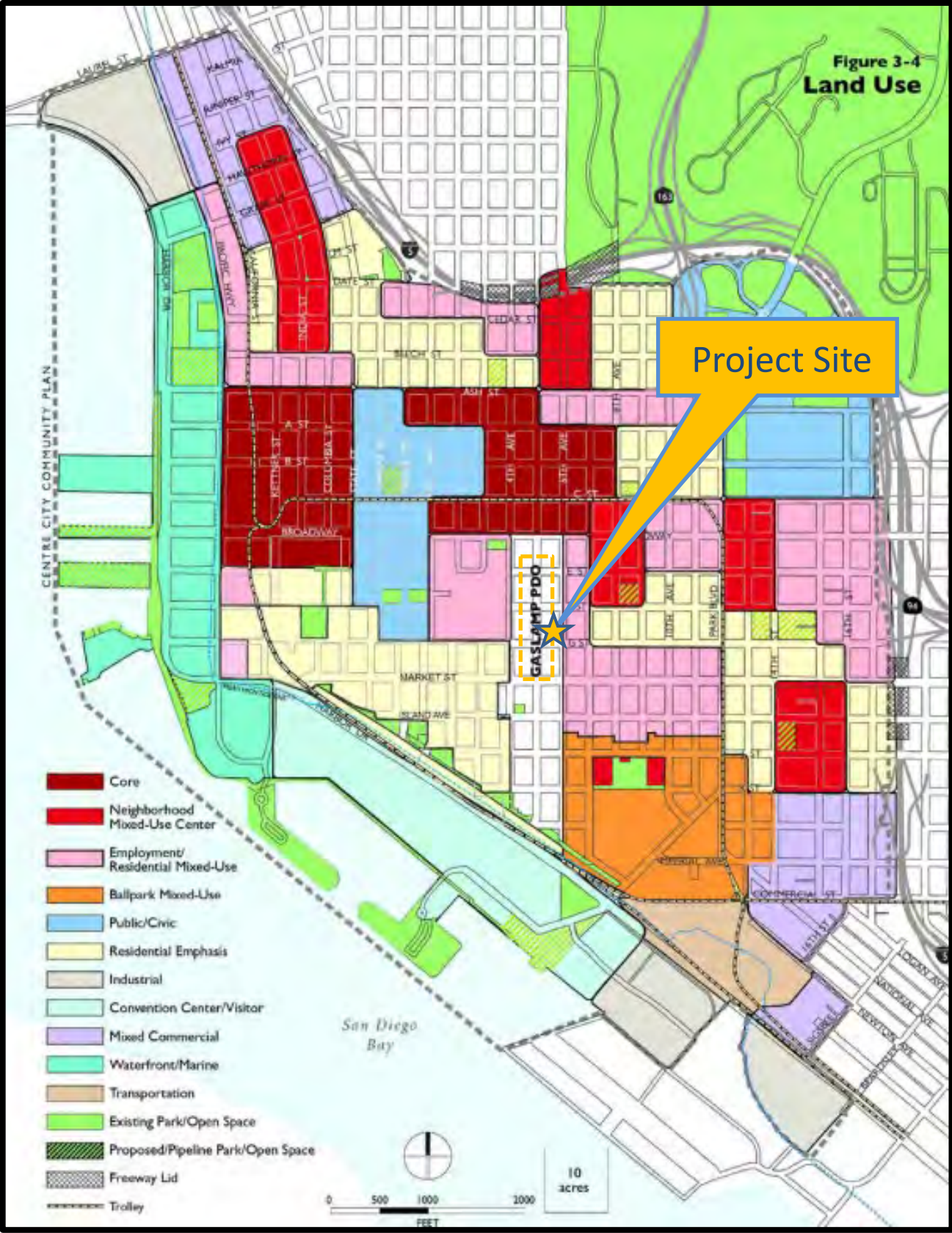
1. Project Location Map
2. Community Plan Land Use Map
3. Aerial Photograph
4. Draft Resolution with Findings
5. Draft Permit with Conditions
6. Existing NUP No. 2017-42
7. Acoustical Study
8. San Diego Police Department Recommendation
9. Community Planning Group Recommendation
10. Public Correspondence
11. Ownership Disclosure Statement
12. Project Plans



Project Location Map

701 5th Avenue CUP/NUP
PROJECT NO. 656544

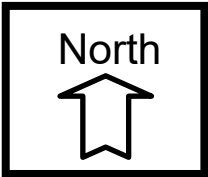




Community Plan Land Use Map

701 5th Avenue CUP/NUP

PROJECT NO. 656544





Aerial Photograph

701 5th Avenue CUP/NUP

PROJECT NO. 656544

North



HEARING OFFICER
RESOLUTION NO. HO-____
CONDITIONAL USE PERMIT NO. 2412192
NEIGHBORHOOD USE PERMIT NO. 2412193
701 5th AVENUE CUP/NUP - PROJECT NO. 656544

WHEREAS, Oliver McMillan Gaslamp Theaters LLC, Owner, and 701 Fifth Ave. LLC, Permittee, filed an application with the City of San Diego for a Conditional Use Permit (CUP) to allow indoor live entertainment and a Neighborhood Use Permit (NUP) to allow sidewalk café dining areas within the public right-of-way on G Street and a street-level outdoor use area on private property along Sixth Avenue ("Project"), as described in and by reference to the approved Exhibits "A" and corresponding conditions of approval for the associated CUP No. 2412192 and NUP No. 2412193, on portions of a 0.26-acre site;

WHEREAS, the Project site is located on the north side of G Street between Fifth and Sixth avenues in the Gaslamp Quarter Planned District (GQPD) and the Gaslamp/Horton neighborhood of the Downtown Community Plan (DCP) ("Downtown") area;

WHEREAS, the Project site is legally described as: South ½ of Lot D, Lots E, F, G, H and I in Block 70 of Horton's Addition, in the City of San Diego, County of San Diego, State of California, according to Map thereof, on file in the Office of the County Recorder of San Diego County;

WHEREAS, the Environmental Analysis Section (ESA) of the Development Services Department completed a California Environmental Quality Act (CEQA) review for the Project and determined that the Project is consistent with the previously certified City of San Diego Downtown Environmental Impact Report (SCH# 2003041001). Development within the Downtown Community Planning area is covered under the following documents, all referred to as the "Downtown FEIR": Final Environmental Impact Report (FEIR) for the San Diego Downtown Community Plan, Centre City Planned District Ordinance, and 10th Amendment to the Centre City Redevelopment Plan, certified

by the former Redevelopment Agency ("Former Agency") and the City Council on March 14, 2006 (Resolutions R-04001 and R-301265, respectively); subsequent addenda to the FEIR certified by the Former Agency on August 3, 2007 (Former Agency Resolution R-04193), April 21, 2010 (Former Agency Resolution R-04510), and August 3, 2010 (Former Agency Resolution R-04544), and certified by the City Council on February 12, 2014 (City Council Resolution R-308724) and July 14, 2014 (City Council Resolution R-309115); and, the Final Supplemental Environmental Impact Report for the Downtown San Diego Mobility Plan certified by the City Council on June 21, 2016 (Resolution R-310561). Development within the DCP area is also covered under the following documents, all referred to as the "CAP FEIR": FEIR for the City of San Diego Climate Action Plan (CAP), certified by the City Council on December 15, 2015 (City Council Resolution R310176), and the Addendum to the CAP, certified by the City Council on July 12, 2016 (City Council Resolution R-310595). Development within the DCP area is also consistent with the FEIR for Complete Communities: Housing Solutions and Mobility Choices (SCH No. 2019060003) certified by the San Diego City Council on November 9, 2020 (Resolution R313279). The Downtown FEIR, CAP FEIR, and Complete Communities FEIR are "Program EIRs" prepared in compliance with California Environmental Quality Act (CEQA) Guidelines Section 15168. The information contained in the Downtown FEIR, CAP FEIR, and Complete Communities FEIR reflects the independent judgement of the City of San Diego as the Lead Agency. The environmental impacts of the Project were adequately addressed in the Downtown FEIR, CAP FEIR, and Complete Communities FEIR; the Project is within the scope of the development program described in the Downtown FEIR, CAP FEIR, and Complete Communities FEIR and are adequately described within each document for the purposes of CEQA; and, none of the conditions listed in CEQA Guidelines Section 15162 exist. Therefore, no further environmental documentation is required under CEQA.

WHEREAS, on December 15, 2021, the Hearing Officer of the City of San Diego considered CUP No. 2412192 and NUP No. 2412193 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 CUP No. 2412192 and NUP No. 2412193:

A. CONDITIONAL USE PERMIT San Diego Municipal Code [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 proposed development consists of a Conditional Use Permit (CUP) request to allow indoor live entertainment on the ground floor in two vacant tenant spaces (a 3,968 square foot (SF) tenant space for a new restaurant/nightclub and a 3,463 SF tenant space for a new arcade/restaurant) and on the 2nd floor within the eight-auditorium movie theater totaling approximately 16,860 SF. The Project site is located on the north side of G Street between Fifth and Sixth avenues in the GQPD, Transit Priority Area, Transit Priority Area Overlay Zone, Airport Influence Area (San Diego International Airport - Review Area 2), and the Federal Aviation Administration (FAA) Part 77 Noticing Area within the Gaslamp neighborhood of the Downtown Community Plan (DCP) area.

Per the DCP, the Gaslamp neighborhood is envisioned as one which serves both downtown residents and employees and the region at large, as well as downtown's significant numbers of tourists and conventioners. Downtown's continued attractiveness to visitors in part relies on sustaining the spark, intrigue, and entertainment qualities of Horton/Gaslamp neighborhood. Planning for these two districts revolves around maintaining high activity levels, refining circulation, rejuvenating open spaces, and protecting Gaslamp's historic qualities.

The uses within the building offer a variety of commercial services to the surrounding neighborhood. The primary use of the building is a movie theater and an existing theater lobby, retail area, and two restaurant venues are located on the ground floor. The two vacant tenant spaces on the ground floor are proposed as a restaurant/nightclub and a new arcade/restaurant with live entertainment which will provide an additional mix of uses and contribute to the diversity of commercial service uses in the Gaslamp neighborhood. Additionally, the Sixth Avenue tenant space has been vacant since the building was remodeled in 2018, and a new arcade/restaurant venue will activate the west side of Sixth Avenue between Fifth and Sixth avenues with a high-activity use, an arcade and restaurant venue to access to the movie theater and retail shop.

Live entertainment is permitted in the GQPD with approval of a CUP, pursuant to the Gaslamp Quarter Planned District Ordinance (GQPDO) (SDMC Chapter 15, Article 7, divisions 1-3). The GQPDO provides Separately Regulated Use Regulations for establishments providing live entertainment. Per the Separately Regulated Use Regulations, SDMC 157.0305(a)(3)), all entertainment establishments are required to obtain and comply with all applicable permits, including a City of San Diego Police Permit; and sound and amplification equipment associated with live entertainment must conform to the noise abatement and control regulations of Chapter 5, Article 9.5 of the SDMC ("Noise Ordinance").

The proposed live entertainment on the ground floor and 2nd floor of the existing 66,180-square-foot Theater Box building provides additional variety to the commercial service uses offerings within the building. The conditions of approval require a Police Entertainment Permit be obtained as applicable per Chapter 3, Article 3, Division 15 of the SDMC. Additionally, the Applicant is proposing all doors and windows to remain closed during live entertainment as is noted on the approved Exhibit "A" which will reduce adverse off-site noise impacts and ensure compliance with the GQPDO Separately Regulated Use Regulations and Noise Ordinance.

In addition, the proposed indoor live entertainment is consistent with the DCP goals and policies aimed at providing an overall balance of uses (3.1-G-2), foster a rich mix of uses in the Gaslamp neighborhood (3.5-G-2), and maintain the Gaslamp Quarter as the entertainment and shopping district, with a broad mix of uses, high activity, and wide-ranging appeal (6.4-G-1) because the Project proposed two new uses within the building: a street-level restaurant/nightclub on Fifth Avenue and arcade/restaurant venue on Sixth Avenue.

The addition of the commercial restaurant and entertainment uses adds to the already diverse mix of commercial services uses currently occupying the building (movie theater and existing street-level restaurants). The additional uses coupled with existing movie theater retail, and restaurant uses, is consistent with the DCPs goal of providing a wide range of uses which appeal to residents, visitors, and employees of Downtown and a wide range of age groups. For example, the movie theater rooms, with the approval of the requested CUP, could be repurposed as is proposed, as karaoke rooms for private events or for special performances by nationally recognized musical and performance artists.

Live entertainment is permitted with the approval of a CUP in the GQPD. The Project is consistent with the land use goals and policies for the Gaslamp neighborhood per the DCP as the multi-use commercial venues will contribute to the wide variety of commercial land uses in the Gaslamp Quarter; therefore, the proposed use 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 proposed development consists of a CUP request to allow indoor live entertainment on the ground floor in two vacant tenant spaces (a 3,968 SF for a new restaurant/nightclub and a 3,463 SF tenant space for a new arcade/restaurant) and on the 2nd floor within the eight-auditorium movie theater totaling approximately 16,860 SF, will not be detrimental to the public health, safety and welfare of the community when operated with the recommended conditions of approval. Some of the recommended conditions of approval to protect the public health, safety and welfare of the community include a restriction on the live entertainment from 11:00 a.m. to 1:30 a.m., seven days a week. The conditioned hours are consistent with other live entertainment venues in the Project's vicinity. Additionally, the permit conditions require all doors and windows to remain closed during live entertainment and require made-to-order food to be available at all three of the interior tenant spaces where live entertainment is proposed. A condition of approval also requires a noise study prior to commencement of live entertainment to ensure that sound levels during live entertainment do not negatively impact adjacent land uses, including residential.

The San Diego Police Department reviewed the proposed live entertainment and recommended conditions aimed to address potential adverse impacts of the use on the health, safety, and welfare of the neighborhood which are included in the permit. These conditions include restricting live entertainment to within the enclosed building only, limiting live entertainment to the venues permanent sound system and prohibiting supplemental speakers or amplification equipment, restricting hours for indoor live entertainment, and requiring a second acoustical study prior to commencement of live entertainment on the premises.

Other standard conditions for live entertainment CUPs have been included in the permit including requiring security guards during live entertainment events, safe practice training for alcoholic beverage services, prohibiting loitering in the public right-of-way and requiring compliance with the Noise Ordinance. When operated in compliance with the recommended conditions of approval the proposed development will not be detrimental to the public health, safety, and welfare. The conditions of approval provide a revocation process in the event the Permittee is found in violation of the conditions of approval.

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 proposed development consists of a CUP request to allow indoor live entertainment on the ground floor in two vacant tenant spaces (a 3,968 SF for a new restaurant/nightclub and a 3,463 SF tenant space for a new arcade/restaurant) and on the 2nd floor within the eight-auditorium movie theater totaling approximately 16,860 SF. The proposed development was reviewed by a multiple-discipline review

team for compliance with GQPDO and applicable sections of the Land Development Code (LDC). The development was found in compliance with the LDC regulations, when operated in compliance with the conditions of approval and no deviations are proposed. Therefore, the proposed indoor live entertainment at the specified locations within the building, will comply with the regulations of the LDC including any allowable deviations pursuant to the LDC.

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

The proposed development consists of a CUP request to allow indoor live entertainment on the ground floor in two vacant tenant spaces (a 3,968 SF for a new restaurant/nightclub and a 3,463 SF tenant space for a new arcade/restaurant) and on the 2nd floor within the eight-auditorium movie theater (totaling approximately 16,860 SF) at an existing two-story plus mezzanine movie theater and restaurant building commonly known as the Theater Box. The building is located at 701 Fifth Avenue (north side of G Street between Fifth and Sixth avenues) in the GQPD, Transit Priority Area, and is within the Horton/Gaslamp neighborhood of the DCP area.

The GQPD is a mixed-use commercial district. A broad mix of high activity uses are permitted within the district, such as the active commercial uses proposed on the ground floor and the existing movie theater, are permitted by right in the GQPD.

The DCP envisions the Gaslamp/Horton neighborhood as Downtown's premier entertainment and nightlife district. Live entertainment associated with bona-fide eating and drinking establishments, as is proposed on the ground floor and 2nd floor, are permitted in the GQPD, subject to the approval of a CUP. The Project site is surrounded by low to mid-rise commercial restaurant and retail buildings to the north, south, and west. Existing land uses east of the Project site on the east side of Sixth Avenue include a mix of one-story and two-story restaurants as well as a four-story residential apartment building and a seven-story residential condominium with street-level restaurant space.

The proposed live entertainment use is permitted within the GQPD with approval of a CUP, and additionally, Gaslamp District is Downtown's premier entertainment district per the DCP, and the proposed indoor live entertainment is consistent with land use approvals for live entertainment within the Project's vicinity. Therefore, when operated in compliance with the conditions of approval, the proposed indoor live entertainment use is appropriate at the proposed location.

B. NEIGHBORHOOD USE PERMIT San Diego Municipal Code [SDMC section 126.0205]:

1. Findings for all Neighborhood Use Permits:

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

The proposed development includes a Neighborhood Use Permit (NUP) for a 300 SF street-level dining area on private property along Sixth Avenue and 845 SF of sidewalk café dining area within the public right-of-way on G Street.

Eating and drinking establishments with Outdoor Use Areas (outdoor dining on private property) and Sidewalk Cafes (outdoor dining within the public right-of-way) are allowed within the GQPDO with approval of an NUP. The GQPD is San Diego's prime entertainment and celebration destination and is intended to provide for a variety of uses including restaurants, retail shops, cafes, and nightclubs, as well as uses that support business, professional and personal needs.

The proposed sidewalk café area on G Street and street-level outdoor dining area on private property along Sixth Avenue is consistent with the following DCP goals and policies:

- 4.1-P-15: Encourage the position of outdoor seating and/or cafes where appropriate.
- 3.5-G-2: Foster a rich mix of uses in all neighborhoods, while allowing differences in emphasis on uses to distinguish between them.
- 3.1-G-2 Provide for an overall balance of uses—employment, residential, cultural, government, and destination—as well as a full compendium of amenities and services.

The street-level outdoor dining areas contribute to the overall balance of uses within the neighborhood as the outdoor dining areas provide a street-level dining experience for the building's restaurant tenant spaces including a new arcade/restaurant on Sixth Avenue. The sidewalk café dining areas on G Street will be used for grab-and-go food and beverage purchases. Made-to-order food and beverage items will be available during all hours the street-level outdoor dining areas are occupied and the multiple commercial uses in the building contribute to fostering a rich mix of uses in the GQPD.

Deviations from the Sidewalk Café Regulations, including the hours of use and occupancy of sidewalk café areas, is allowed through the approval of an NUP, and the requested hours for the occupancy of the sidewalk café dining areas on G Street are until 12:00 a.m. seven days a week, which is consistent with other NUPs granted for sidewalk café dining areas within the GQPD. In addition, Gaslamp is Downtown's premier entertainment district as described by the DCP, thereby accommodating a wide variety of uses and activity, including outdoor dining. The proposed sidewalk café barrier provides an adequate clear path and is compliant with the Sidewalk Café and GQPDO requirement that the encroachment is no more than one-half of the existing sidewalk width, per GQPD requirements. The sidewalk café on G Street maintains a five-foot clear direct path of travel and is eight feet clear of the existing street tree, street tree grate, and decorative street lights on G Street. Therefore, the proposed development will not adversely affect the applicable land use plan.

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

The proposed sidewalk café dining area on G Street and street-level outdoor dining area on private property along Sixth Avenue will not be detrimental to the public health, safety, and welfare of the community when operated with the recommended conditions of approval, which include requirements regarding noise, hours of operation, and additional standard conditions to ensure that the use is compatible with the surrounding neighborhood.

The conditions of approval also require public improvement upgrades surrounding the Project site in order to bring the site up to current City standards, including requiring installation of one (1) City standard bus pad on Fifth Avenue and the reconstruction of the existing curb ramps at the intersections fronting the property line with current City Standard curb ramps with truncated domes per Standard Drawing SDG-130 and SDG-132, satisfactory to the City Engineer.

In addition, the sidewalk café dining area on G Street is conditioned to comply with the GQPDO requirement that any encroachment shall be no more than one-half of the existing sidewalk width, provides the required five-foot minimum direct clear path of pedestrian travel per the Sidewalk Café Regulations, and is conditioned with the same hours for the sidewalk café dining area that were permitted on Fifth Avenue under the previously approved NUP No. 2017-42.

The 300 SF street-level outdoor dining area along Sixth Avenue is proposed completely within the property line boundary and does not encroach into the right-of-way. The proposed hours of this outdoor dining area of until 12:00 a.m. seven days per week are consistent with all other proposed outdoor dining areas in the Project vicinity.

The proposed development, including a sidewalk café area on G Street and a street-level outdoor dining area on private property along Sixth Avenue is conditioned to comply with the pedestrian clear path requirements found in the GQPDO and City's Sidewalk Café Regulations. The Project is proposing to install a bus pad and upgraded directional curbs at the two intersections fronting the property. The Project has been reviewed by all required disciplines and all issues have been addressed. Therefore, when operated in compliance with the conditions of approval, the proposed sidewalk café and outdoor use area 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 proposed development including sidewalk café dining areas in the right-of-way on G Street and an outdoor use area within the property line along Sixth Avenue, will comply to the maximum extent feasible with the regulations of the GQPDO and

LDC with the approval of an NUP including the requested deviation from SDMC Section 141.0621(a)(3)(F) which limits the hours of operation of a sidewalk café and restricts alcohol, food, or beverages service within the sidewalk café to no later than 10:00 p.m. Sunday through Thursday and after 11:00 p.m. Friday through Saturday for sidewalk cafes permitted as a Limited Use . Per SDMC Section 141.0621(b), deviations from the Sidewalk Café design and operational requirements are allowed through the approval of an NUP if the decision maker finds that the sidewalk café with the proposed deviation is a suitable use for the proposed site and will not infringe on use of the public right-of-way by pedestrians.

Per SDMC Section 141,0621(b)(2), in making the determination to approve a proposed deviation from the Sidewalk Café operational requirements, the decision maker shall consider: 1.) the width of the sidewalk; 2.) the design and relationship of the sidewalk café to other existing or planned uses in the vicinity; 3.) the amount of pedestrian use and impact of sidewalk café location on pedestrian activities; and, 4.) the sidewalk café's ability to fit the character of the area, create an outdoor pedestrian plaza, intensify pedestrian activity, and make the street activity more attractive. The requested hours for the sidewalk café and outdoor use area are until 12:00 a.m., seven days a week. The proposed outdoor use area on Sixth Avenue is not subject to the sidewalk café regulations because the outdoor use area is located on private property. The sidewalk café dining areas proposed within the public right-of-way on G Street are subject to the Sidewalk Café Regulations. The G Street sidewalk cafes provides a 5-foot-wide clear path of pedestrian travel as required per the Sidewalk Café Regulations. The Gaslamp Quarter is a neighborhood with a high-level of pedestrian activity; however, pedestrian traffic tends to be on north-south streets, whereas the sidewalk café area is proposed on G Street between Fifth and Sixth Avenue which is currently not activated with pedestrians due to street level vacancies at the subject premises. The proposed sidewalk café including the deviation from the limited use hours for sidewalk cafes, fits the character of the Gaslamp Quarter (Downtown's entertainment and nightlife venue), and will activate the public right-of-way on the north side of G Street between Fifth and Sixth Avenue.

In addition, the requested hours are consistent with NUPs granted for sidewalk café approvals in Gaslamp and the proposed sidewalk café dining areas in the public right-of-way on G Street and an outdoor use area along Sixth Avenue within the property line boundary were reviewed by a multiple discipline review team and all Project issues have been addressed. For example, the width of the sidewalk on G Street is 14 feet and the proposed sidewalk café barriers encroaches 6 feet and 12 inches maximum into the public right-of-way which is less than one half of the sidewalk width consistent with the GQPDO, SDMC Section 157.0304(f). The deviation from the sidewalk café hours is allowed with the approval of an NUP pursuant to SDMC Section 141.0621(b) and the sidewalk cafés on Sixth Avenue complies with all other limited use requirements for sidewalk cafes found in SDMC Section 141.0621. The sidewalk cafes barriers provide the required 5-foot-wide clear path of travel, provide accessible seating and clearance for wheelchair seating, and provide the minimum required clearances from adjacent commercial establishments. The sidewalk café dining areas are also consistent with the Gaslamp Quarter Planned

District Design Guidelines for the historic district which include the material of the railing, height of the railing, and a requirement that the sidewalk café shall encroach no more than one half of the sidewalk width. For example, the proposed sidewalk café barriers are painted black metal. Therefore, the proposed sidewalk café and outdoor use areas will comply with the LDC, including any allowable deviations pursuant to the LDC.

BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the Hearing Officer, Conditional Use Permit No. 2412192 and Neighborhood Use Permit No. 2412193 are hereby GRANTED by the Hearing Officer to the referenced Owner/Permittee, in the form, exhibits, terms and conditions as set forth in Permit No. 2412192 and 2412193, a copy of which is attached hereto and made a part hereof.

Nicole Paré
Associate Planner
Development Services

Adopted on: December 15, 2021

IO#: 24008563

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: 24008563

SPACE ABOVE THIS LINE FOR RECORDER'S USE

CONDITIONAL USE PERMIT NO. 2412192
NEIGHBORHOOD USE PERMIT NO. 2412193
701 5th AVENUE CUP/NUP - PROJECT NO. 656544
HEARING OFFICER

This Conditional Use Permit No. 2412192 and Neighborhood Use Permit No. 2412193 is granted by the Hearing Officer of the City of San Diego ("City") to Oliver McMillian Gaslamp Theatres, LLC, Owner, and 701 5th Ave., LLC, Permittee, pursuant to San Diego Municipal Code (SDMC) sections 126.0305 and 126.0205. The 0.26-acre site is located at 701 Fifth Avenue in the Gaslamp Quarter Planned District and within the Gaslamp neighborhood of the Downtown Community Plan area. The Project site is legally described as: South ½ of Lot D, Lots E, F, G, H and I in Block 70 of Horton's Addition, in the City of San Diego, County of San Diego, State of California, according to Map thereof, on file in the Office of the County Recorder of San Diego County.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/Permittee to allow indoor live entertainment and sidewalk café and street-level outdoor dining as described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] stamped approved December 15, 2021, on file in the Development Services Department.

The Project shall include:

- a. Indoor live entertainment on the ground level within the 3,320 SF restaurant/nightclub tenant space and the 2,270 square foot (SF) arcade restaurant/bar tenant space and on the second level within the eight auditoriums of the movie theater.
- b. A 300 SF street-level outdoor use area along 6th Avenue on private property.
- c. 845 SF of sidewalk café dining areas along G Street within the public right-of-way.
- d. Installation of City Standard public improvements including a bus pad adjacent to the site on Fifth Avenue, curb ramp with truncated domes at the corner of Fifth Avenue and G Street, and directional curb ramps with truncated domes at the corner of 6th Avenue.

- e. 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 31, 2024.
2. 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.
3. 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.
4. 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.
5. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.
6. Issuance of this Permit by the City does not authorize the Owner/Permittee for this Permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).
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.

10. 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.

11. 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.

ENVIRONMENTAL/MITIGATION REQUIREMENTS:

12. The Owner/Permittee shall comply with the Mitigation, Monitoring, and Reporting Program (MMRP) as specified in ENVIRONMENTAL IMPACT REPORT NO. 2003041001, to the satisfaction of the Development Services Department and the City Engineer.

CLIMATE ACTION PLAN REQUIREMENTS:

13. Owner/Permittee shall comply with the Climate Action Plan (CAP) Consistency Checklist stamped as Exhibit "A." Prior to issuance of any construction permit, all CAP strategies shall be noted

within the first three (3) sheets of the construction plans under the heading "Climate Action Plan Requirements" and shall be enforced and implemented to the satisfaction of the Development Services Department.

ENGINEERING REQUIREMENTS:

14. Prior to the issuance of any building permit, the Owner/Permittee shall assure by permit and bond the construction of one (1) City standard Bus Pad, adjacent to the site on Fifth Avenue as shown on Exhibit A, satisfactory to the City Engineer.
15. Prior to the issuance of any building permit, the Owner/Permittee shall assure, by permit and bond, the reconstruction of existing curb ramp at the corner of Fifth Avenue and G Street, with a current City Standard curb ramp with truncated domes per Standard Drawing SDG-130 and SDG-132, satisfactory to the City Engineer.
16. Prior to the issuance of any building permit, the Owner/Permittee shall assure, by permit and bond, the reconstruction of existing curb ramp at the corner of 6th Avenue and G Street, with current City Standard Directional curb ramps with truncated domes per Standard Drawing SDG-130 and SDG-132, satisfactory to the City Engineer.
17. Prior to the issuance of any building permit, the Owner/Permittee shall obtain a Sidewalk Café Permit, satisfactory to the City Engineer.
18. Prior to the issuance of any building permit, the Owner/Permittee shall obtain an Encroachment Maintenance Removal Agreement for tree grates, brick pavers, sidewalk cafe and removable private outdoor furniture located in the City's right-of-way, satisfactory to the City Engineer.
19. Prior to the issuance of any building permit, the Owner/Permittee shall obtain an Encroachment Maintenance Agreement for existing canopies, lights, and marquee encroaching in the City's right-of-way, satisfactory to the City Engineer.
20. Prior to the issuance of any building permit, the Owner/Permittee shall incorporate any construction Best Management Practices necessary to comply with Chapter 14, Article 2, Division 1 (Grading Regulations) of the SDMC, into the construction plans or specifications.
21. Prior to the issuance of any building 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.

LANDSCAPE REQUIREMENTS:

22. Prior to issuance of construction permits for public right-of-way improvements, the Permittee or Subsequent Owner shall submit complete landscape construction documents for right-of-way improvements to the Development Services Department for approval. Improvement plans shall take into account a 40 SF area around each tree which is unencumbered by utilities. Driveways, utilities,

drains, water and sewer laterals shall be designed so as not to prohibit the placement of street trees.

23. Prior to issuance of any building permit (including shell), the Owner/Permittee shall submit complete landscape and irrigation construction documents, which are consistent with the Landscape Standards, to the Development Services Department for approval. The construction documents shall be in substantial conformance with Exhibit "A," Landscape Development Plan, on file in the Development Services Department. Construction plans shall provide a 40-square-foot area around each tree that is unencumbered by hardscape and utilities unless otherwise approved per §142.0403(b)(6).

24. The Owner/Permittee shall be responsible for the maintenance of all landscape improvements shown on the approved plans, including in the right-of-way, unless long-term maintenance of said landscaping will be the responsibility of another entity approved by the Development Services Department. All required landscape shall be maintained consistent with the Landscape Standards in a disease, weed, and litter free condition at all times. Severe pruning or "topping" of trees is not permitted.

25. If any required landscape (including existing or new plantings, hardscape, landscape features, etc.) indicated on the approved construction documents is damaged or removed, 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.

PLANNING/DESIGN REQUIREMENTS:

26. All private outdoor lighting shall be shaded and adjusted to fall on the same premises where such lights are located and in accordance with the applicable regulations in the SDMC.

Indoor Live Entertainment

27. Indoor live entertainment consisting of amplified and non-amplified live music from a disc jockey, live band, and karaoke performances shall be permitted on the ground floor tenant spaces (3,396 SF restaurant/nightclub and a 3,463 SF arcade/restaurant) and on the 2nd floor in the eight-auditorium movie theater (totaling approximately 16,860 SF), subject to the following conditions:

- a. Live entertainment shall be limited to between the hours of 11:00 a.m. and 1:30 a.m. seven days per week.
- b. All doors and windows shall remain closed during all times of live entertainment.
- c. Made to order food shall be available during all times of live entertainment.
- d. No formal dance floor shall be provided.
- e. Live entertainment outside of the enclosed building is not permitted at any time.

28. The sound system shall include noise limiting equipment and shall be operated at all times in conformance with the recommended settings and speaker placement outlined in the acoustical study by Dr. Leslie E. Penzes dated July 23, 2021 on file at the Development Services Department.

29. No supplemental speakers or amplification equipment shall be used at any time. Any modifications to the sound system shall be submitted to the City's Development Services Department for approval prior to installation and an acoustical study will be required at that time to analyze the noise impacts on surrounding residences.

30. Prior to the commencement of live entertainment, another noise confirmation test by a certified acoustical engineer shall be conducted and submitted to the Development Services Department to ensure that the sound system and noise levels are adequate and are consistent with the acoustical study by Dr. Leslie E. Penzes dated July 23, 2021. The Permittee shall be in compliance with the City's Noise and Abatement Ordinance at all times.

31. All live entertainment must be conducted in compliance with all applicable SDMC permits and regulations. If required, San Diego Police Department regulatory permits shall be obtained.

32. Sound and amplification equipment shall be monitored during and after business hours to ensure that audible noise remains at acceptable levels. Noise levels shall be in conformance with the Noise Abatement Standards of the SDMC and the City's Noise Ordinance. In the event that a noise or vibration complaint is filed, the appropriate decision maker shall evaluate the complaints and if it is determined that the business is potentially creating a nuisance to the neighborhood, a duly noticed hearing shall be scheduled. After receiving public testimony, the City Hearing Officer may revoke or modify the permit.

33. During the hours of live entertainment, the Permittee shall employ one security officer for every fifty (50) patrons of the live entertainment venue(s). The security officers shall wear clothing that identifies them as security officers and shall be on duty from the time live entertainment and dancing begins until one-half hour after the live entertainment ceases. Their primary duty shall be to patrol the interior and the exterior of the premises in order to alleviate police problems, excessive noise, abusive behavior, disturbances, and any other violations of law that occur on or about the licensed premises.

34. Any queuing of patrons outside of the establishment shall be maintained in an orderly manner and shall be so situated as to allow a clear pedestrian path of at least eight (8) feet on all sidewalk areas. Any queuing may not obstruct access to any other business.

35. Patrons awaiting entrance as well as those leaving the establishment shall be monitored so as to not create a nuisance by obstructing the sidewalk in the area of the business or adjacent business or by being publicly inebriated, noisy, or rowdy.

36. No patron shall be permitted to remove a partially consumed bottle or drink of any type of alcoholic beverage from the premises.

37. All servers and security employees shall be trained and certified in responsible alcoholic beverage service policies and practices. This is to include: strong I.D. checking procedures, not serving intoxicated patrons and responsible beverage pricing.

Sidewalk Café on G Street

38. The 845 SF of sidewalk café dining area within the public right-of-way on G Street shall be delineated by a black metal railing no more than three feet tall as shown on the approved Exhibit "A" and shall maintain an eight-foot clearance from any obstruction in the public right-of-way and a direct clear path of travel no less than five feet wide.

39. The hours of operation for the sidewalk café on G Street shall be limited to no later than 12:00 a.m. seven days a week.

40. The sidewalk café on G Street may exist only in conjunction with the street-level eating and drinking establishment at 701 5th Avenue. The sidewalk café on G Street shall only be used for dining, drinking, and circulation and utilized by patrons during the hours allowed under this permit.

41. The sidewalk café on G Street shall comply with the design and operational regulations of the Gaslamp Quarter Design Guidelines and applicable regulations of the municipal code.

Outdoor Use Area on G Street

42. This permit allows use and operation of a 300 SF outdoor use area on private property on Sixth Avenue for the adjacent eating and drinking establishment. The hours of operation for the street-level outdoor use area shall be limited to no later than 12:00 a.m. seven days a week.

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.

APPROVED by the Hearing Officer of the City of San Diego on December 15, 2021 and HO-_____.

Conditional Use Permit No.: 2412192
Neighborhood Use Permit No.: 2412193
Date of Approval: December 15, 2021

AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES DEPARTMENT

Nicole Paré
Associate Planner, Urban Division
Development Services Department

**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.

Oliver McMillan Gaslamp Theatre, LLC
Owner

By _____
NAME
TITLE

701 5th Ave., LLC
Owner/Permittee

By _____
NAME
TITLE

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

RECORDING REQUESTED BY:

Civic San Diego
401 B Street, Suite 400
San Diego, CA 92101

AND WHEN RECORDED MAIL TO:

Civic San Diego
401 B Street, Suite 400
San Diego, CA 92101

DOC# 2018-0284630



Jul 12, 2018 03:39 PM
OFFICIAL RECORDS
Ernest J. Dronenburg, Jr.,
SAN DIEGO COUNTY RECORDER
FEES: \$44.00 (SB2 Atkins: \$0.00)

PAGES: 11

THIS SPACE FOR RECORDER'S USE ONLY

*NOTE: COUNTY RECORDER, PLEASE RECORD AS
RESTRICTION ON USE OR DEVELOPMENT OF
REAL PROPERTY AFFECTING THE TITLE TO OR
POSSESSION THEREOF*

**GASLAMP QUARTER PLANNED DISTRICT
NEIGHBORHOOD USE PERMIT
NO. 2017-42**

**TCL CHINESE THEATRE
SIDEWALK CAFÉ, OUTDOOR USE AREA,
& COMPREHENSIVE SIGN PLAN
701 G STREET
APN 535-093-06, -08, -09, -13, -15, -16-00**

**GASLAMP QUARTER PLANNED DISTRICT
NEIGHBORHOOD USE PERMIT
NO. 2017-42**

**TCL CHINESE THEATRE
SIDEWALK CAFÉ, OUTDOOR USE AREA,
& COMPREHENSIVE SIGN PLAN
701 G STREET
APN 535-093-06, -08, -09, -13, -15, -16-00**

WHEREAS, Ruben Andrews on behalf of Graphic Solutions, Permittee, and William P. Persky on behalf of OliverMcMillan Gaslamp Theatres, LLC, Property Owner, submitted Neighborhood Use Permit (NUP) application No. 2017-42 on November 22, 2017 for a Sidewalk Cafe and Outdoor Use Area (as shown in the plans on file in the office of Civic San Diego (“CivicSD”) dated June 22, 2017) and a Comprehensive Sign Plan (as shown in the plans on file in the office of CivicSD dated June 6, 2018) at TCL Chinese Theatre located at 701 G Street. The site is more particularly described in Exhibit A, and;

WHEREAS, CivicSD considered the plans and materials submitted prior to the decision, the inspection of the subject property, the comments received from the appropriate City of San Diego (“City”) departments, and public comments submitted prior to the decision;

WHEREAS, CivicSD considered the Sidewalk Café, Outdoor Use Area, and Comprehensive Sign Plan, the design, and the relationship of the Project to other uses along 5th Avenue and G Street and the impact the Project will have on the character of the area;

WHEREAS, CivicSD found that the establishment of a Sidewalk Café, Outdoor Use Area, and Comprehensive Sign Plan in this location, subject to conditions, will not adversely affect the neighborhood and will implement the goals of the DCP;

WHEREAS, CivicSD found that the Project will not be detrimental to persons residing, visiting, or working in the area; and,

WHEREAS, the Project will comply with all relevant regulations in the San Diego Municipal Code (SDMC), and all applicable building laws including State laws and regulations.

NOW, THEREFORE, BE IT RESOLVED:

- a. *That the proposed signs, as a whole, are in conformance with the intent of the sign regulations and any exceptions result in an improved relationship among the signs and building facades on the premises;*

The proposed signs of the Comprehensive Sign Plan, as whole, are in conformance with the intent of the sign regulations of the Gaslamp Quarter Design Guidelines. They are suitable for the location and do not interfere with the aesthetics of the neighborhood or historical significance of the district. The signs located above the ground floor are proportional to the height and width of the building and comparable to other building identification signage in the neighborhood. Despite minimal increases to the maximum letter height and sign areas,

the ground floor tenant signage otherwise matches adjacent ground floor signage of neighboring Gaslamp businesses, and does not adversely impact the overall appearance of the building façade or the neighborhood. All proposed signage is appropriately placed and designed in a way that is cohesive with the architecture of the building; therefore, the proposed signage is in conformance with the intent of the sign regulations.

b. That the proposed use will not adversely affect the applicable land use plan;

Eating and drinking establishments with Outdoor Use Areas and Sidewalk Cafes are allowed within the Gaslamp Quarter Planned District (GQPDO) with approval of an NUP. This district is San Diego's prime entertainment and celebration destination and is intended to provide for a variety of uses including restaurants, retail shops, cafes, and nightclubs, as well as uses that support business, professional and personal needs. Therefore, the Sidewalk Cafés for the ground floor dining spaces in the TCL Chinese Theatre development will not adversely affect the applicable land use plan.

The proposed Outdoor Use Area on the rooftop will not adversely affect the applicable land use plan as the proposed use with approval of an NUP is consistent with the regulations of the GQPDO and the following goals and policies of the DCP:

- Encourage the position of outdoor seating and/or cafes where appropriate;
- Foster a diverse mix of uses in each neighborhood to support urban lifestyles; and,
- Ensure an overall balance of uses that furthers downtown's role as the premier regional population, commercial, civic, cultural and visitor center.

The proposed Comprehensive Sign Plan is located within the Gaslamp Quarter Planned District of the DCP area. Planning for this district revolves around maintaining high activity levels, refining circulation, rejuvenating open spaces, and protecting Gaslamp's historic qualities. Exceptions from the Gaslamp Quarter Design Guidelines in order to accommodate building identification signs or signage that meets the intent of the guidelines is permitted through a Comprehensive Sign Plan with approval of an NUP. Therefore the proposed Comprehensive Sign Plan does not adversely affect the applicable land use plan as the proposed use with approval of an NUP is consistent with the regulations of the GQPDO.

c. That the proposed use will not be detrimental to the public health, safety and welfare; and,

The proposed Sidewalk Café, Outdoor Use Area, and Comprehensive Sign Plan will not be detrimental to the public health, safety, and welfare of the community when constructed in compliance with the conditions of approval, which include limitations on the hours of operation for the Sidewalk Café and Outdoor Use Area and limitations on the size of signs, in addition standard conditions to ensure that the use is compatible with the surrounding neighborhood.

d. That the proposed use will comply with the regulations of the Land Development Code (LDC) including any allowable deviations pursuant to the LDC.

The proposed Sidewalk Café, Outdoor Use Area, and Comprehensive Sign Plan will comply to the maximum extent feasible with the regulations of the GQPDO and City

LDC with approval of the NUP, including obtaining all additional applicable permits as required by the City of San Diego Development Services Department (DSD).

BE IT FURTHER RESOLVED that, based on the Findings hereinbefore adopted by CivicSD, NUP No. 2017-42 is hereby GRANTED to the Applicant subject to the approved Sidewalk Café and Outdoor Use Area plans dated June 22, 2017 and Comprehensive Sign Plan dated June 6, 2018 on file in the office of CivicSD and the following conditions:

Sidewalk Café

1. This NUP allows Sidewalk Cafe space for street-level eating and drinking establishments along the 5th Avenue street frontage of TCL Chinese Theatre totaling 562 square feet (SF) divided into three areas as follows:
 - a. Northernmost: 99 SF encroaching six-feet, four inches (6'-4") into the public right-of-way. An exception to the minimum clear path has been granted to allow for a clear path of no less than seven-feet, two-inches (7'-2") from the barrier to the edge of any obstruction in the public right-of-way (including the edge of the tree grate).
 - b. Center: 320 SF encroaching seven feet, eight inches (7'-8") into the public right-of-way. A clear path of no less than eight feet (8') from the barrier to the edge of any obstruction in the public right-of-way (including the edge of the tree grate).
 - c. Southernmost: 143 SF encroaching seven feet, eight inches (7'-8") into the public right-of-way. A clear path of no less than eight feet (8') from the barrier to the edge of any obstruction in the public right-of-way (including the edge of the tree grate).

Any proposed change or expansion of use shall be reviewed by CivicSD to determine the appropriate process for approval.

2. Each Sidewalk Café space shall be surrounded by a black metal tubing barrier painted black and not to exceed three-feet (3'-0") in height as shown in the approved drawings dated June 22, 2017.
3. The Sidewalk Café spaces may exist only in conjunction with the adjacent street-level eating and drinking establishments with 5th Avenue frontage. The Sidewalk Café spaces shall only be used for dining, drinking, and circulation, and utilized by patrons during the hours allowed under this NUP. Any change in utilization and/or hours of operation shall be reviewed by CivicSD to determine the appropriate process for approval.
4. The hours of operation for the Sidewalk Café spaces shall be limited to no later than 12:00 a.m. (midnight) seven days per week.
5. Smoking shall not be permitted within the Sidewalk Café spaces at any time.
6. The Owner and Permittee shall be responsible for maintaining the sidewalk within, and adjacent to, the cafe enclosure clean and free of litter at all times.

7. No live entertainment, musical instruments, or sound reproduction devices shall be allowed within any Sidewalk Café space.
8. The Owner and Permittee shall obtain and provide CivicSD with an approved copy of the Encroachment Maintenance and Removal Agreement (EMRA) and Building Permit from the City DSD prior to the installation of the Sidewalk Café.
9. No tables, chairs, A-frame signs, or any other furnishings or decorative displays shall be located in the Public Right-Of-Way in front of or adjacent to any Sidewalk Café space.
10. The Sidewalk Café spaces shall meet all applicable disable-accessibility codes.
11. No signs (including banners and/or pennants, and/or off-site advertising signs) are permitted on or within any Sidewalk Café space or barriers.

Outdoor Use Area

12. This NUP allows a 3,000 SF Outdoor Use Area on the rooftop of the TCL Chinese Theatre. The Outdoor Use Area shall only be used for eating, drinking, and circulation. No live entertainment or dancing shall be permitted in the Outdoor Use Area at any time. Any proposed change or expansion of use shall be reviewed by CivicSD to determine the appropriate process for approval.
13. The hours of operation for the Outdoor Use Area shall be limited to no later than 1:30 a.m. seven days per week.
14. No smoking shall be allowed in the Outdoor Use Area.
15. Patrons leaving the establishment shall be monitored as to not create a nuisance by obstructing the sidewalk in the area of the business or adjacent businesses or being publicly inebriated, noisy or rowdy.
16. Sound shall be monitored during and after business hours to ensure that audible noise remains at acceptable levels. Noise levels shall be in conformance with the Noise Abatement Standards of the SDMC and the City of San Diego Noise Ordinance. In the event that a noise complaint is filed, CivicSD shall evaluate the complaints and if it is determined that the business is potentially creating a nuisance to the neighborhood, a duly noticed hearing shall be scheduled. After receiving public testimony, the Hearing Officer may modify or revoke the permit.
17. Ambient recorded music shall be permitted in the Outdoor Use Area anytime that the establishment is open for business. Speakers shall be small, equally distributed, and pointed inward so as to not become a nuisance to adjacent uses. Ambient recorded music shall not be audible from adjacent residential uses after 11:00 p.m. each day of the week.
18. The Outdoor Use Area shall meet all applicable disabled accessibility codes.

Comprehensive Sign Plan

19. This NUP allows a Comprehensive Sign Plan for TCL Chinese Theatre as shown in the approved plans dated June 6, 2018 and listed in the table below:

Sign Type	Name	Location	Max. Letter Height	Max. Sign Area
Projecting	TCL Chinese Theatres	Above ground floor on 5 th Ave. no higher than 65' on the facade	17"	85.5 SF
	TCL Chinese Theatres	Above ground floor on G St., no higher than 65' on the facade	17"	85.5 SF
	Wild 'N Out	5 th Avenue		7.5 SF
	Sugar Factory	5 th Avenue		7.5 SF
	Sugar Factory	6 th Avenue		7.5 SF
Wall	TCL Chinese Theatres	Above ground floor on G St., no higher than 47' on the facade	18"	43 SF
	TCL Chinese Theatres	Above ground floor on 6 th Ave., no higher than 47' on the facade	18"	43 SF
	Coming Attraction Movie Posters (25)	Cabinets on ground floor of each facade		17 SF each
	Wild 'N Out	Ground floor on 5 th Ave		25 SF
	Daiquiri Bar	Ground floor on 5 th Ave	15"	10 SF
	Chocolate Lounge	Above tall windows on G St.	22"	26 SF
	Chocolate Lounge	Ground floor at corner of 6 th & G	18"	18 SF
Canopy (valance)	TCL Chinese Theatres	5 th Avenue	14"	25.5 SF
	TCL Chinese Theatres	G Street	14"	26 SF
	Theatre Box	G Street	14"	9.5 SF
	Theatre Box	5 th Avenue	14"	9.5 SF
	Wild 'N Out	5 th Avenue	14"	26 SF
	Wild 'N Out	6 th Avenue	14"	26 SF
	Sugar Factory	5 th Ave; extending no more than 6' above and below valance		36 SF
	Sugar Factory	G St; extending no more than 6' above and below valance		36 SF
Permanent Banners	Multiple tenants (4)	Above ground floor on 6 th Ave. in four existing facade recesses	15"	12 SF (copy) 41.5 SF (banner)

Any proposed change to the approved signage under this permit shall be reviewed by CivicSD staff prior to installation. Any additional signage on the property shall comply with the applicable sign regulations of the GQPDO and the City LDC.

Standard Conditions

20. The Permittee shall respond to complaints pertaining to this NUP by members of the public within 24 hours of receiving the complaint. A current point of contact shall be maintained with CivicSD for the premise to ensure full compliance with this condition.

21. The Applicant shall obtain all appropriate permits as required by the City DSD.
22. This Permit is a covenant running with the lands and shall be binding upon the Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out in this permit and all referenced documents.
23. Construction and operation of the approved use shall comply at all times with the regulations of this or any other governmental agencies.
24. The Permittee shall maintain a copy of this NUP and other business licenses on the premises and shall make these documents available to anyone lawfully engaged in the inspection of the premises.
25. 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 Section 126.0108 of the SDMC within the 36 month period, this Permit shall be void unless an Extension of Time (EOT) has been granted pursuant to Section 126.011 of the SDMC.
26. After establishment of the project, the property shall not be used for any other purposes unless:
 - a. Authorized by CivicSD; and
 - b. The proposed use meets every requirement of the zone existing for the property at the time of conversion; or
 - c. The Permit has been revoked by CivicSD.
27. This Permit may be revoked by CivicSD if there is a material breach or default in any of the conditions of this Permit.
28. No permit for construction, operation or occupancy of any facility shall be granted nor shall any activity authorized by this Permit be conducted on the premises until this Permit is recorded in the OFFICE OF THE COUNTY RECORDER.

CIVIC SAN DIEGO

Date of Decision: June 7, 2018

ATTEST:


James Alexander
Associate Planner
Date 6/26/18

PERMITEE:


Ruben Andrews
Graphic Solutions
Date 7/9/18

**Note: Notary acknowledgements
must be attached per Civil Code
Section 1189 et seq**

PROPERTY OWNER:


William P. Persky
Date 7/6/18
OliverMcMillan Gaslamp Theatres, LLC

EXHIBIT A

LEGAL DESCRIPTION:

PARCEL 1:

LOTS "E" AND "F" IN BLOCK 70 OF HORTON'S ADDITION, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF MADE BY L. L. LOCKLING ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY.

PARCEL 2:

LOTS "G" AND "H" AND THE SOUTH HALF OF LOTS "D" AND "I" IN BLOCK 70 OF HORTON'S ADDITION, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF MADE BY L. L. LOCKLING ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY.

PARCEL 3:

THE NORTH HALF OF LOT "I" AND THE SOUTH 10 FEET OF LOT "J" IN BLOCK 70 OF HORTON'S ADDITION, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF MADE BY L. L. LOCKLING, ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY.

PARCEL NUMBERS:

535-093-06-00

535-093-08-00

535-093-09-00

535-093-13-00

535-093-15-00

535-093-16-00

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

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 }

County of SAN DIEGO }

On 7/9/2018 before me, Del Lau, Notary Public
(Here insert name and title of the officer)

personally appeared RUBEN ANDREWS
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.

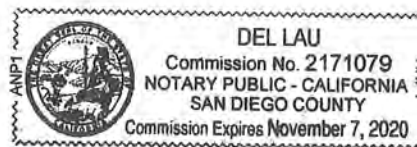
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Notary Public Signature

(Notary Public Seal)



ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages _____ Document Date _____

CAPACITY CLAIMED BY THE SIGNER

- ☐ Individual (s)
☐ Corporate Officer

(Title)

- ☐ Partner(s)
☐ Attorney-in-Fact
☐ Trustee(s)
☐ Other _____

INSTRUCTIONS FOR COMPLETING THIS FORM

This form complies with current California statutes regarding notary wording and, if needed, should be completed and attached to the document. Acknowledgments from other states may be completed for documents being sent to that state so long as the wording does not require the California notary to violate California notary law.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. he/she/they- is/are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ✧ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ✧ Indicate title or type of attached document, number of pages and date.
 - ✧ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document with a staple.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

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)

County of San Diego)On June 26, 2018 before me, Nicole Marie Pare, Notary Public
Date Here Insert Name and Title of the Officerpersonally appeared James Alexander
Name(s) of Signer(s)

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 Nicole Marie Pare
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer — Title(s): _____☐ Partner — ☐ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: _____

Signer Is Representing: _____

Signer's Name: _____

☐ Corporate Officer — Title(s): _____☐ Partner — ☐ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: _____

Signer Is Representing: _____

MUSIC ON THE ROOF FOR THE REPORT
ENTITLED: "SOUND TESTS, ACOUSTICAL
ANALYSIS AND DESIGN FOR THE SUGAR
FACTORY RESTAURANT LOCATED AT
701 FIFTH AVENUE, SAN DIEGO, CA
92101

TO: Mr. Macro Polo Cortes
President
MP PERMITS INC.
640 West Beech Street, Site 3 B
San Diego, CA 92101

CC: Mr. Doug Miler
Accountant
Sugar Factory Restaurant
701 Fifth Avenue
San Diego CA 92101

FROM: Dr. Leslie E. Penzes
Certified Acoustical Consultant, P. E.

DR. PENZES & ASSOCIATED
18210 Aceituno Street
San Diego, CA 92128

July 23, 2021

DR. PENZES & ASSOCIATES
ACOUSTICS & VIBRATION
Reports, Testing and Research

MUSIC ON THE ROOF FOR THE REPORT ENTITLED: "SOUND TEST ACOUSTICAL ANALYSIS AND DESIGN FOR THE SUGAR FACTORY LOCATED AT 701 FIFTH AVENUE IN SAN DIEGO CA 92101"

RECOMMENDATIONS:

D J Music with a Maximum 85 dBA Sound Level of Music is permitted to perform on the Roof, however, Live Music is not permitted to play. For this application the Roof Structure must be modified and a 5 Ft High Sound Wall must be erected around the periphery of the Roof (Sheet A17).

Dr Leslie E. Penzes

Dr. Leslie E. Penzes
Certified Acoustical Consultant, P. E.



DISCUSSION

Based on our Phone Conversation related to the comments of the City of San Diego, I am extending my report by an Additional Acoustical Study for the Sugar Factory at 701 Fifth Avenue, San Diego. CA 92101.

This establishment is planned to provide Musical Entertainment inside of the building and in addition to the Roof. The City of San Diego will require an Acoustical Study. This study is based on the previous study made according to Ref.1. The Municipal Code of the City of San Diego requires the noise from the establishment not to exceed the Noise Limits of the Noise Ordinance of the City of San Diego or in some extreme case, the External Ambient Noise. This study will extended the possible Music on the Roof of the Restaurant.

In order to accomplish this Acoustical Study and to ensure the Noise Levels from the new establishment are not in violation of the Noise Ordinances of the City of San Diego, the following tasks will have to be performed:

SOUND LEVELS FROM MUSIC OF THE ROOFSound Reduction of Music due to Effect of Barrier

Table 1 presents the Input and Output for the Listing of the Program. Table 2 provides a Sound Reduction LB = 9.75 dBA at the Residential Area of G Street.

Music Level at the Residential Area of G Street from DJ Music

If the Maximum Sound Level is 85 dBA of DJ Music on the Roof, then the Sound level at the Residential Area of G Street is:

$$L_{\text{equ.}} = 85 - 9.75 - \text{LOG}(75/3.281) = 48 \text{ dBA} < 50 \text{ dBA}$$

Therefore, the Maximum Sound Level of the DJ Music is not violated the Noise Ordinance Limit of 50 dBA.

Music Level at the Residential Area of G Street from Live Music

If the Maximum Sound Level is 95 dBA of Live Music on the Roof, then the Sound level at the Residential Area of G Street is:

$$L_{\text{egu}} = 95 - 9.75 - \text{LOG}(75/3.281) = 58 \text{ dBA} > 50 \text{ dBA}$$

Therefore, the Maximum Sound Level of the Live Music is violated the Noise Ordinance Limit of 50 dBA.

MODIFIED ROOF STRUCTURE

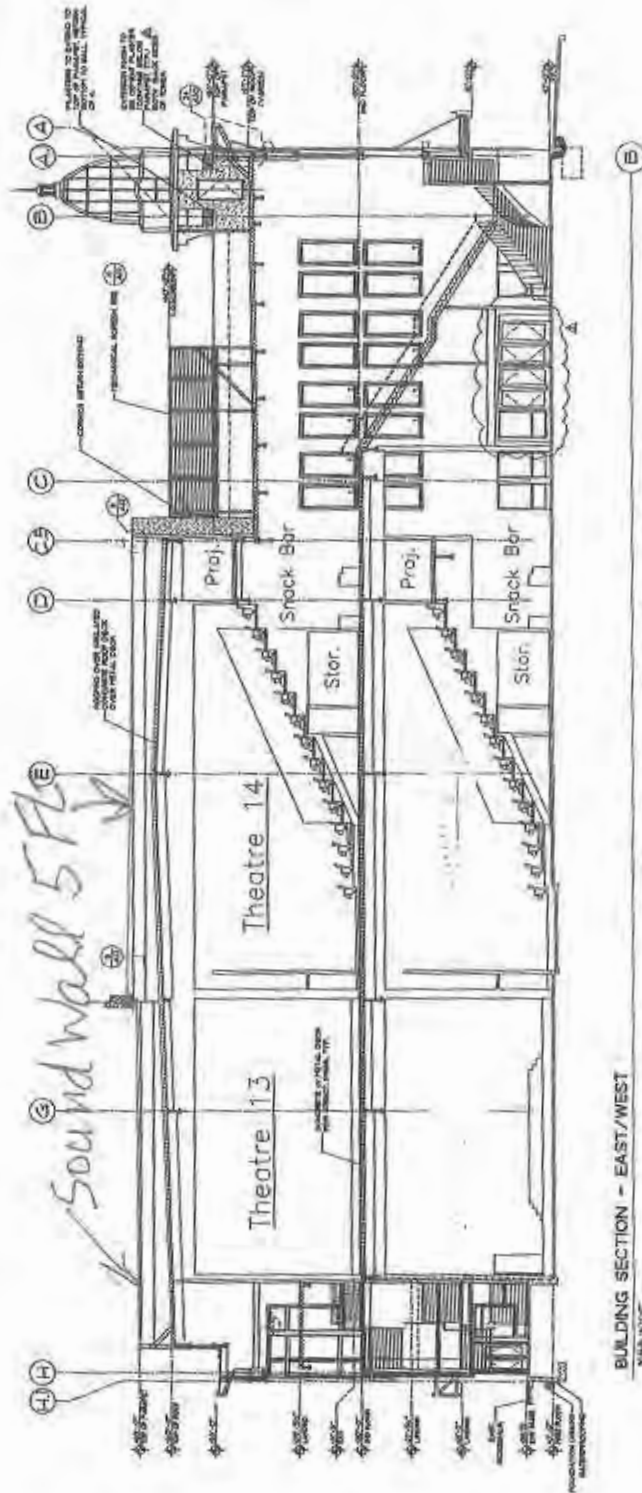
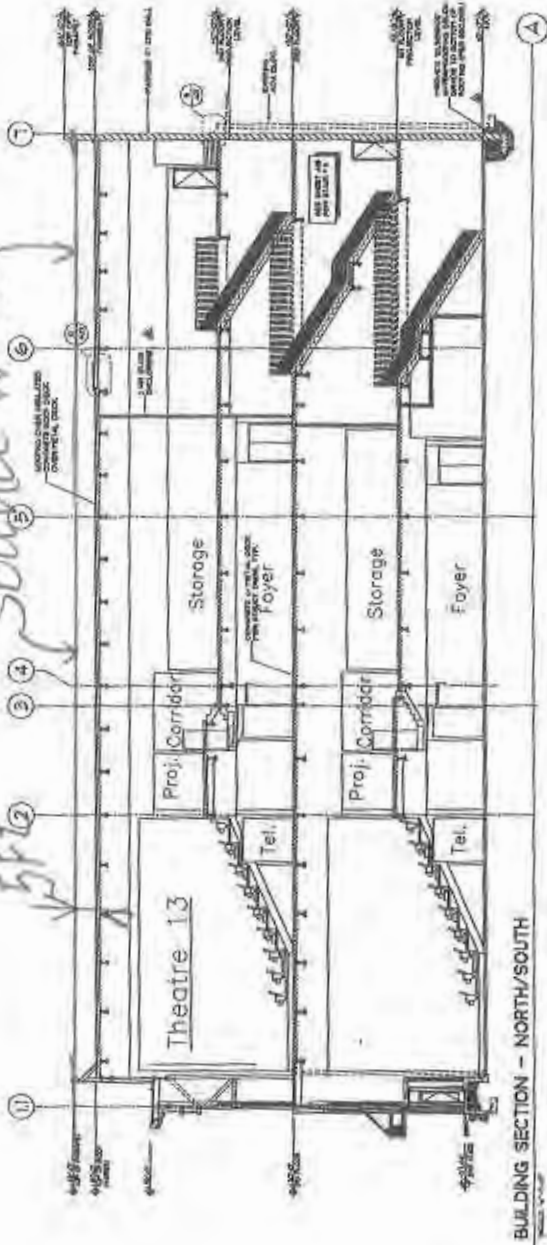
Due to the Application of Music on Roof the Roof Structure must be modified. Fig. 1 of Ref. 2 presents by Cases g or e the Proposed Roof Design.

REFERENCES

1. SOUND TEST, ACOUSTICAL ANALYSIS AND DESIGN FOR THE SUGAR FACTORY RESTAURANT LOCATED AT 701 FIFTH AVENUE IN SAN DIEGO, CA 9201
Dr. Lastly E. Penes, February 26, 2021.
2. Catalog of SAC and ICC Ratings for Wall and Floor/Ceiling Assemblies. California Department of Health Services Local Environmental Health Services Branch, 714 P Street-Sacramento, California 95814

FIGURES

SHEET A 17



Sheet A17.

TABLES

TABLE 1

-300
 ANALYSIS OF IIC RATING OF FLOOR/CEILING
 TV = THICKNESS OF VINYL
 TPA = THICKNESS OF PARQUET
 TPL = THICKNESS OF PLYWOOD
 TTG = THICKNESS OF TONGUE AND GROOVE PLYWOOD
 TP = THICKNESS OF PARTICLE BOARD
 TS = THICKNESS OF SAND
 TC = THICKNESS OF CONCRETE
 TH = THICKNESS OF HOMASOTE
 TCT = THICKNESS OF CERAMIC TILE
 WC = WEIGHT OF CONCRETE
 WCT = WEIGHT OF CERAMIC TILE
 TI = THICKNESS OF INSULATION
 TG = THICKNESS OF GYPSUM BOARD
 FACTOR OF COVER MATERIAL: FPA=PARQUET, FV=VINYL, FCT=CERAMIC TILE (0 OR 1)
 FACTOR OF COVER MATERIAL: FPLC=PLYWOOD, FCC=CONCRETE (0 OR 1)
 FACTOR OF NOISE REDUCING MATERIALS: FC=CONCRETE, FS= SANDS (0 or 1)
 FACTOR OF NOISE REDUCING MATERIAL: FPL=PLYWOOD (0 or 1)
 IIC = IMPACT ISOLATION CLASS

2RUN 3LOAD" 4SAVE" 5CONT 6,"LPT1 7TRON 8TROFF 9KEY 0SCREE

TABLE 2

ENTER VALUES FOR C1,C2,H,S1,R,T,FR
 ? 10,80,15,14,2,68,550
 ENTER VALUES FOR EB
 ? 0
 ENTER VALUES FOR PL,PR
 ? -90,90

A1= 10.04988 B1= 81.04933 C= 90.79644 D0= .3027573 N0= .8997264
 RC= 23
 P0=-1.570796 P3=-.6283185 P7= .6283186 P10= 1.570796 DFF= 3.141593
 U0= 4.268008E-07 U3= 4.573494 U7= 4.573493 U10= 4.268008E-07
 VS0= 4.267964E-07 VS3= .9459814 VS7= .9459813 VS10= 4.267964E-07
 Z0= .9999896 Z3= .20684 Z7= .20684 Z10= .9999896
 IU= 1.051066
 LBL=-9.755199
 Ok
 1LIST 2RUN 3LOAD" 4SAVE" 5CONT 6,"LPT1 7TRON 8TROFF 9KEY 0SCREEN
 Ok

DR. PENZES & ASSOCIATES
ACOUSTICS & VIBRATION
Reports, Testing and Research

Mr. Marco Polo Cortes
 President
 MP PERMITS INC.
 640 West Beech Street, Site 3B
 San Diego, CA 92101

Mr. Doug Miler
 Accountant
 Sugar Factory Restaurant
 701 Fifth Avenue
 San Diego CA 92101

Subject: Music on the Roof for the Report entitled "Sound Tests, Acoustical Analysis and Design for the Sugar Factory Restaurant located at 701 Fifth Avenue, San Diego, CA 92101"

INVOICE OF PROFESSIONAL SERVICES

You received the report entitled: "Music on the Roof for the Report entitled "Sound Tests, Acoustical Analysis and Design for the Sugar Factory Restaurant located at 701 Fifth Avenue, San Diego, CA 92101".

In order to complete this project, the following steps were taken:

- . Visit the site to perform the necessary sound measurements of simulated "Live and DJ Music" and Ambient noise at critical locations.....2.0 hours
- . Computer Simulation of the Music on the Roof in order to determine the Music generated sound levels at the Property Lines and validate the measured simulation results to be included in the Final Report.....2.0 hours
- . Preparation of Acoustical Report that will satisfy the Noise Ordinances of the City of San Diego.....3.0 hours

Total 7.0 hours

18210 Aceituno Street, San Diego, California 92128
 (858) 592-7374, drpenzes007@gmail.com

The fee for the total work performed is 7 hours at a rate of \$130 per hour, which is \$910 due and payable.

If you have any questions, please feel free to contact me.

Sincerely,

Dr Leslie E Penzes

Dr. Leslie E. Penzes
Certified Acoustical Consultant, P. E.

July 26, 2021



REQUIRED ARCHITECTURAL DESIGN

Based on Sheet A9 the Stairs must be extended from the Second Floor to the Roof. Also, a 5 Ft High Sound Wall must be shown at the Periphery of the Roof.

From: [Mcelroy, Adam](#)
To: [DSD Offline Reviews](#)
Cc: [Pare, Nicole](#); [Mccurry, Benjamin](#)
Subject: 701 5th Ave. / PTS 656544/ update and amendment
Date: Tuesday, November 16, 2021 9:23:11 AM

To Whom it may concern,

The San Diego Police Department would like to formally amend our prior stance on this project. In the time that our previous recommendation was submitted, the venue held an event in violation of City Regulations. We would like to recommend that Live Entertainment not be allowed in the rooftop space known as 5th and Sky. Below is a narrative describing the events that happened on October 23rd, 2021:

Sugar Factory (5th & Sky Rooftop) – Detective Nicholas went to 701 5th Avenue after receiving a complaint regarding live entertainment and loud music coming from the rooftop of Sugar Factory (5th & Sky Rooftop). The reporting party provided photos of a DJ performing on the rooftop and expressed the music was very loud. Detective Nicholas went to the venue to observe any potential violations. Detective Nicholas was met by security and explained he was Vice and walked upstairs to the rooftop. As Detective Nicholas was walking up the rooftop an employee of the event was attempting to run past him. The employee who did not know detective Nicholas was a plain clothes SDPD Vice Operations detective told Detective Nicholas to move out of the way because the employee needed to pull the DJ from the stage. Detective Nicholas identified himself as SDPD Vice to the employee and continued walking up the staircase to the rooftop. Due to the potential enforcement, Detective Nicholas activated his BWC that was on the outside of his hooded sweatshirt. As Detective Nicholas made it to the rooftop, the employee ran to the stage where the DJ was set up and immediately turned off the music. Detective Nicholas saw the rooftop manager, Damarious Whitten, and asked to speak with him. Detective Nicholas asked Whitten who was in charge of the event and Whitten explained he was not. Detective Nicholas asked Whitten if general manager, Mauricio Merlos, was available to speak to, Whitten said he would get Merlos for Detective Nicholas to speak to. Detective Nicholas waited approximately 30 minutes before the entire rooftop was empty and Merlos did not meet Detective Nicholas on the rooftop. Detective Nicholas went to the ground level of Sugar Factory and called Merlos' cell phone and asked to speak with him in the lobby. Merlos met Detective Nicholas and they had a discussion regarding who was in charge. Merlos explained to Detective Nicholas that the event that was going on was sponsored by a non-profit organization. Detective Nicholas asked Merlos for the contractual agreement and also the organization sponsoring the event and Merlos did not have those documents in his

possession or readily available for Detective Nicholas. Detective Nicholas spoke to Merlos and Whitten regarding the rooftop and about who is in charge so he would know who to contact when he arrives to the location. Merlos advised he would be the initial point of contact and if he was gone, then Whitten would be the next person in line to speak with. Detective Nicholas made a request to Merlos and Whitten if they were going to be having sponsored events by a non-profit organization for them to e-mail Detective Nicholas a copy of the contract as well as a copy of the Tax Exemption for the non-profit organization. Whitten and Merlos agreed to sending Detective Nicholas the forms for future events so Vice Operations would know about such events before they occurred.

Should the venue be granted the privilege of providing live-entertainment please consider the below conditions.

The following is a list of Police Department recommendations concerning the CUP application regarding 701 5th Ave. / PTS 656544. Our input is regarding the rooftop venue known as 5th and Sky and focuses on safety and nuisance noise mitigation. We believe the most current model for rooftop venues requesting conditional use permits would be appropriate and applicable to this location. Including but not limited to the following considerations:

- Restricting live entertainment to the venues permanent sound system and prohibiting supplemental speakers or amplification equipment;

- Limiting live entertainment hours to between 11:00 a.m. and 10:00 p.m. Sunday through Thursday and 11:00 a.m. to 11:00 p.m. Friday and Saturday (and Sunday when the following Monday is a recognized holiday)

- Limiting excessive light displays, such as laser lights and high powered club type lighting.

- Requiring a physical barrier around the perimeter of the property of a typical height and Material to mitigate sound affecting neighboring residential buildings.

- Requiring noise compressor equipment and operation based on the recommended settings and speaker placement as established by the acoustical analysis.

- Requiring all speakers to be pointed toward the interior of the venue.

- Requiring a second acoustical study after the equipment is installed and prior to the commencement of live entertainment on the property.

From: [Mcelroy, Adam](#)
To: [DSD Offline Reviews](#)
Cc: [Pare, Nicole](#); [Mccurry, Benjamin](#)
Subject: 701 5th Ave. / PTS 656544
Date: Tuesday, October 12, 2021 9:07:06 AM

To Whom it may concern,

The following is a list of Police Department recommendations concerning the CUP application regarding 701 5th Ave. / PTS 656544. Our input is regarding the rooftop venue known as 5th and Sky and focuses on safety and nuisance noise mitigation. We believe the most current model for rooftop venues requesting conditional use permits would be appropriate and applicable to this location. Including but not limited to the following considerations:

Restricting live entertainment to the venues permanent sound system and prohibiting supplemental speakers or amplification equipment;

Limiting live entertainment hours to between 11:00 a.m. and 10:00 p.m. Sunday through Thursday and 11:00 a.m. to 11:00 p.m. Friday and Saturday
(and Sunday when the following Monday is a recognized holiday)

Limiting excessive light displays, such as laser lights and high powered club type lighting.

Requiring a physical barrier around the perimeter of the property of a typical height and
Material to mitigate sound affecting neighboring residential buildings.

Requiring noise compressor equipment and operation based on the recommended settings and speaker placement as established by the acoustical analysis.

Requiring all speakers to be pointed toward the interior of the venue.

Requiring a second acoustical study after the equipment is installed and prior to the commencement of live entertainment on the property.

Thank you for your consideration,

Adam McElroy 5505
Police Officer/SDPD Vice
619 531-2435

Page 3		City of San Diego · Information Bulletin 620		May 2020		
		Community Planning Committee Distribution Form				
Project Name: Sugar Factory			Project Number: 656544			
Community: Downtown						
For project scope and contact information (project manager and applicant), log into OpenDSD at https://aca.accela.com/SANDIEGO. Select "Search for Project Status" and input the Project Number to access project information.						
☐ Vote to Approve ☒ Vote to Approve with Conditions Listed Below ☐ Vote to Approve with Non-Binding Recommendations Listed Below ☐ Vote to Deny						
# of Members Yes 10		# of Members No 1		# of Members Abstain 1		
Conditions or Recommendations: approval conditional upon NUP limited to rooftop entertainment/music limited to 12:00 am (midnight) Friday, Saturday and Sunday only before Holiday, 10:00 pm Sunday (except before holiday) thru Thursday.						
☐ No Action (Please specify, e.g., Need further information, Split vote, Lack of quorum, etc.)						
NAME: ROBERT LINK						
TITLE: INTERIM CHAIRPERSON			DATE: October 26, 2021			
<i>Attach additional pages if necessary (maximum 3 attachments).</i>						

From: [Kelly Van Den Heuvel](#)
To: [Pare, Nicole](#)
Subject: [EXTERNAL] 5th and G
Date: Tuesday, November 2, 2021 5:45:41 AM

This email came from an external source. Be cautious about clicking on any links in this email or opening attachments.

Dear Ms. Pare,

I sent the below email to Mr. Whitburn. Would you please provide me more information on this business? What decibel level will be allowed? At what hours will there be loud live music? I am very distressed about this one because it will be the loudest yet. Once it is here, there is nothing we can do, our noise complaints go nowhere over the 12 years I have lived here. They have already blasted DJ music it is seriously awful. Please help us.

-kelly

Dear Mr. Whitburn,

As a resident living at Alta on 6th and Market, I am writing to protest the outdoor amplified music permit for the business on 5th and G.

This venue has already had DJ's and the sound is directed right to our building. It is extremely loud - like having a live band right outside your window. I'm sure you would not support this if you lived where we live.

My son has special needs and has sensory issues. I believe this noise violates his rights.

We already have terrible noise pollution with SideBar, the pedicabs, and the talentless live street musicians on 5th and Market.

Please please do not permit this to go forward. I live downtown and work downtown. I can walk or take the bus. These noise permits are driving families out to the suburbs contributing to traffic and carbon pollution.

Sincerely,
Dr. Kelly van den Heuvel

From: [Bonner, Emily](#)
To: [Pare, Nicole](#)
Subject: FW: [EXTERNAL] Re: Noise violation from Sugar Factory
Date: Wednesday, October 20, 2021 6:56:33 PM
Attachments: [Video 3.mov](#)
[Video 2.mov](#)

Emily Bonner

She/Her/Hers

Policy Advisor and Council Representative

Office of Council President Pro Tem Stephen Whitburn

City of San Diego, Third District

202 C Street, M.S. 10A

San Diego, CA 92101

Office: (619) 533-4068

From: Bonner, Emily
Sent: Thursday, May 6, 2021 2:17 PM
To: Sennett, Leslie <LSennett@sandiego.gov>
Cc: Sturak, Jeff <JeffSturak@sandiego.gov>; Valk, Michaela <MValk@sandiego.gov>; Zaiser, Kohta <ZaiserK@sandiego.gov>
Subject: FW: [EXTERNAL] Re: Noise violation from Sugar Factory

Hello all,

We also got a call from this resident at 12:30 in the morning. She's at the end of her rope with this one. Their CUP doesn't allow for them to operate past 11:00, and it's a site that police have been called to recently for violence as well.

Thank you for all that you do,

Emily Bonner

She/Her/Hers

Policy Advisor and Council Representative

Office of Council President Pro Tem Stephen Whitburn

City of San Diego, Third District

202 C Street, M.S. 10A

San Diego, CA 92101

Office: (619) 533-4068

From: Councilmember Stephen Whitburn <StephenWhitburn@sandiego.gov>
Sent: Thursday, May 6, 2021 12:10 PM
To: Bonner, Emily <EBonner@sandiego.gov>
Subject: Fw: [EXTERNAL] Re: Noise violation from Sugar Factory

From: Barbara Talisman <btalisman@talismanol.com>
Sent: Thursday, May 6, 2021 12:30 AM
To: Councilmember Stephen Whitburn <StephenWhitburn@sandiego.gov>
Subject: [EXTERNAL] Re: Noise violation from Sugar Factory

****This email came from an external source. Be cautious about clicking on any links in this email or opening attachments.****

I have called police non emergency to learn others have also called. And police MAY investigate and THEN determine if the noise is too much?? I thought there is a noise code both volume as well as time limit. The dispatcher on the police non emergency had no idea what the law or code was.

Barbara Talisman, CFRE
312-953-9048
Skype Barbara.talisman
@btalisman
www.talismanol.com

On May 6, 2021, at 12:11 AM, Barbara Talisman <btalisman@talismanol.com> wrote:

Since Saturday night which was the worst w a party starting at 10pm and ending at 230am Sunday morning their rooftop parties loud music can be heard w the windows closed. Tonight it started again at 8pm and continues thru midnight with no let up.

I thought there was a noise curfew in Gaslamp.

With more of us buying and renting in this commercial area we need find a way to live together. We are working and paying taxes while they are bringing in revenue.

What is the recourse to hold bars accountable for the law? The police won't respond to these calls. So we are left without sleep while Trying to work the next day or enjoy a Sunday after a sleepless Saturday night and morning.

This is with the windows closed. So I need to live here with my windows closed??

These are from this evening it is 1205am and they are not quitting anytime soon and this is SOMEWHAT quieter than Saturday night when I couldn't figure out where it was coming from. It gets progressively louder as the night goes on.

Your my elected representative and I have filed w Get it Done and city code enforcement

I expect to hear from YOU!



Barbara Talisman, CFRE
702 Broadway 92101
312-953-9048
Skype Barbara.talisman
@btalisman
www.talismantol.com

	City of San Diego Development Services 1222 First Ave., MS 302 San Diego, CA 92101 (619) 446-5000	Ownership Disclosure Statement	FORM DS-318 October 2017
---	---	--	--

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 Waiver ☐ Land Use Plan Amendment • ☐ Other _____

Project Title: LIVE ENTERTAINMENT **Project No. For City Use Only:** 656544

Project Address: 701 5TH AVENUE, SAN DIEGO, CA, 92101

Specify Form of Ownership/Legal Status (please check):

☐ Corporation ☒ Limited Liability -or- ☐ General - What State? CALIFORNIA Corporate Identification No. 199623910025

☐ 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: OLIVERMCMILLAN GASLAMP THEATERS LLC C/O NEWMARK MERRILL COS. ☒ Owner ☐ Tenant/Lessee ☐ Successor Agency

Street Address: 427 COLLEGE BLVD, #K

City: OCEANSIDE State: CA Zip: 92057

Phone No.: 760-630-8899

Fax No.: 760-630-4693

Email: _____

Signature: _____

Date: 3/8/21

Additional pages Attached: ☐ Yes ☒ No

Applicant

Name of Individual: 701 FIFTH AVE LLC C/O THEATRE BOX - SAN DIEGO LLC ☐ Owner ☒ Tenant/Lessee ☐ Successor Agency

Street Address: 701 5TH AVENUE

City: SAN DIEGO State: CA Zip: 92101

Phone No.: 619-814-2225

Fax No.: _____

Email: _____

Signature: _____

Date: 3/8/21

Additional pages Attached: ☐ Yes ☒ No

Other Financially Interested Persons

Name of Individual: _____ ☐ Owner ☐ Tenant/Lessee ☐ Successor Agency

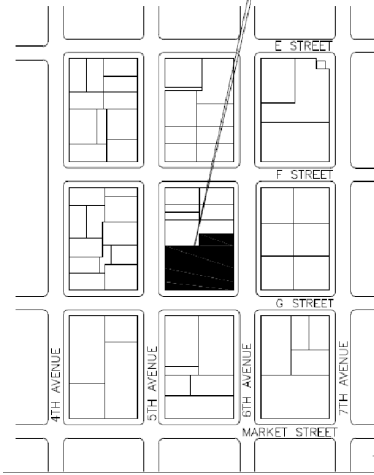
Street Address: _____

City: _____ State: _____ Zip: _____

Phone No.: _____ Fax No.: _____ Email: _____

Signature: _____ Date: _____

Additional pages Attached: ☐ Yes ☐ No

DEVELOPMENT SUMMARY		PROJECT DIRECTORY		SHEET INDEX	
PROJECT DESCRIPTION: DISCRETIONARY PERMIT NUP AND CUP LIVE ENTERTAINMENT PROPOSED - CONDITIONAL USE PERMIT HOURS OF OPERATION: 6:00 AM UNTIL 1:30 AM LIVE ENTERTAINMENT: YES PUBLIC IMPROVEMENTS: BUS PAD AND CURBS LIVE ENTERTAINMENT HOURS: 11:00 a.m. AND 10:00 p.m. SUNDAY THROUGH THURSDAY AND 11:00a.m. TO 11:00 p.m. FRIDAY AND SATURDAY AND SUNDAY WHEN THE FOLLOWING MONDAY US A RECOGNIZED HOLIDAY AREAS: (REFER TO PLAN FOR LOCATION) "G" STREET SIDEWALK SEATING: OUTDOOR SIDEWALK SEATING AVAILABLE FOR PATRONS OF TWO RESTAURANTS AND BAR SERVING LUNCH AND DINNER INSIDE A DECORATIVE FENCE ACCESSED FROM THE SIDEWALK OR INTERIOR AREA OUTDOOR SPACE "D" 217 S.F. OUTDOOR SPACE "E" 166 S.F. OUTDOOR SPACE "F" 263 S.F. OUTDOOR SPACE "G" 199 S.F. 6TH AVENUE SIDEWALK SEATING: OUTDOOR SIDEWALK SEATING AVAILABLE FOR PATRONS OF TWO RESTAURANTS AND BAR SERVING LUNCH AND DINNER INSIDE A DECORATIVE FENCE ACCESSED FROM THE SIDEWALK OR INTERIOR AREA OUTDOOR SPACE OUTDOOR SPACE "H" 300 S.F. 5TH AVENUE SIDEWALK SEATING: OUTDOOR SIDEWALK SEATING AVAILABLE FOR PATRONS OF TWO RESTAURANTS AND BAR SERVING LUNCH AND DINNER INSIDE A DECORATIVE FENCE ACCESSED FROM THE SIDEWALK OR INTERIOR AREA OUTDOOR SPACE OUTDOOR SPACE "A" 73 S.F. OUTDOOR SPACE "B" 247 S.F. OUTDOOR SPACE "C" 143 S.F. TOTAL AREA = 1,608 S.F.		LEGAL OWNER OLIVER MCMILLAN 733 8TH AVENUE SAN DIEGO, CA 92101 T: 619-321-1111 ARCHITECT: RETAIL AMP, CONRADO GALLARDO CONTACT: CRISTINA RODRIGUEZ 2300 BOSWELL RD #265 CHULA VISTA, CA 91914 T: 619-215-1677 E: CRISTINA@RETAILAMP.NET CONSTRUCTION MANAGER: ACS CONSTRUCTION CONTACT: ALAN HAJJAR 1666 1/2 MCCADDEN PLACE HOLLYWOOD, CA 90028 T: 818-383-1800 E: ALAN@MYACSINC.COM		T1 COVER SHEET T2 STORMWATER REQUIREMENTS T3 STORMWATER REQUIREMENTS T4 SIDEWALK MEANS OF EGRESS T5 RECYCLING AREA T6 OVERALL ACCESSIBILITY & EGRESS PLAN D1 EXISTING SIDEWALK A0 OVERALL SITE PLAN A1 OUTDOOR SPACE "D" A2 OUTDOOR SPACE "E" A3 OUTDOOR SPACE "H" A4 RAIL DETAILS A5 OUTDOOR LIGHTING A6 OUTDOOR SPACE "A" A7 OUTDOOR SPACE "B" A8 OUTDOOR SPACE "C" A9 OUTDOOR SPACE "F" A10 OUTDOOR SPACE "G" A11 5TH AVE RENDERING A12 6TH AVE RENDERING A13 "G" STREET FACADE A14 RESTAURANT A15 ARCADE / RESTAURANT A16 SECOND FLOOR A17 ROOFTOP A18 DIRECTIONAL CURB A19 DIAGONAL CURB A20 BUS PAD DEFERRED FIRE SPRINKLER FIRE ALARM BUILDING NOTES: 1. A LETTER FROM THE CONTRACTOR AND OR THE BUILDING OWNER CERTIFYING WHAT MATERIAL HAS BEEN USED AND ITS COMPLIANCE WITH THE CODE MUST BE SUBMITTED TO THE BUILDING INSPECTOR 2. ARCHITECTURAL PAINTS AND COATINGS SHALL COMPLY WITH CALGREEN TABLE 5.504.4.3 3. AEROSOL PAINTS AND COATINGS SHALL MEET THE PWMIR LIMITS FOR ROC IN SECTION 94522(a) (3) AND OTHER REQUIREMENTS, INCLUDING PROHIBITIONS ON USE OF CERTAIN TOXIC COMPOUNDS AND OZONE DEPLETING SUBSTANCES, IN SECTIONS 94522(c)(2) AND (d)(2) OF CCR, TITLE 17, COMMENDING WITH SECTION 94520 4. A LETTER FROM THE CONTRACTOR AND OR THE BUILDING OWNER CERTIFYING WHAT PAINT HAS BEEN USED AND ITS COMPLIANCE WITH THE CODE MUST BE SUBMITTED TO THE BUILDING INSPECTOR 5. AT LEAST 80% OF THE FLOOR AREA RECEIVING RESILIENT FLOORING SHALL MEET ONE OF THE FOLLOWING CRITERIA 1) CERTIFIED UNDER THE RESILIENT FLOOR COVERING INSTITUTE (RFCI) FLOORSORE PROGRAM 2) COMPLIANT WITH THE VOC-EMISSION LIMITS AND TESTING REQUIREMENTS SPECIFIED IN THE CALIFORNIA DEPARTMENT OF PUBLIC HEALTH'S 2010 STANDARD METHOD FOR THE TESTING AND EVALUATION CHAMBERS, VERSION 1.1, FEBRUARY 2010 6. PROHIBIT SMOKING WITHIN 25 FEET OF BUILDING ENTRIES, OUTDOOR AIR INTAKES AND OPERABLE WINDOWS. PROVIDE NO SMOKING SIGNAGE WITHIN THESE AREAS.	
LEGAL DESCRIPTION		PROJECT SITE 		LOCATION MAP 	
LOTS E, F, G, H, THE SOUTH HALF OF LOTS D & I, AND THE NORTH HALF OF LOT I AND THE SOUTH 10.00 FEET OF LOT J IN BLOCK 70 OF HORTON'S ADDITION. IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO. STATE OF CALIFORNIA ACCORDING TO MAP THEREOF MADE BY L.L. LOCKING, ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY		GOVERNING CODES: BUILDING: AMENDMENTS 2019 CALIFORNIA BUILDING CODE W/ LOCAL 2019 CALIFORNIA EXISTING BUILDING CODE PLUMBING: 2019 CALIFORNIA PLUMBING CODE MECHANICAL: 2019 CALIFORNIA MECHANICAL CODE ELECTRICAL: 2019 CALIFORNIA ELECTRICAL CODE FIRE: 2019 CALIFORNIA FIRE CODE ENERGY: 2019 CALIFORNIA ENERGY CODE 2019 CALIFORNIA GREEN BUILDING STANDARDS ACCESSIBILITY: 2019 CALIFORNIA BUILDING CODE CHAPTER 11B			

JOB#: 19-1538.1
STORE#:



PROJECT ARCHITECT
RETAIL AMP
DESIGN
801 BOWSPRIT ROAD
CHULA VISTA, CA 91914
PH: (619) 215-1677

DISCRETIONARY PERMIT FOR
SUGAR FACTORY BUILDING
701 FIFTH AVENUE
SAN DIEGO, CA 92101

REVISIONS	
N.U.P. PRELIM:	01.13.2020
N.U.P. PRELIMINARY:	03.02.2020
N.U.P. SUBMITTAL:	04.03.2020
N.U.P. DELTA 1:	09.20.2021
N.U.P. DELTA 2:	11.12.2021

SHEET NAME

COVER SHEET

SHEET NUMBER

T1



RETAIL
AMP
DESIGN

DISCRETIONARY PERMIT FOR
SUGAR FACTORY BUILDING
701 FIFTH AVENUE
SAN DIEGO, CA 92101

REVISIONS	
N.U.P. PRELIM:	01.13.2020
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N.U.P. DELTA 1:	09.20.2021
N.U.P. DELTA 2:	11.12.2021

STORMWATER REQUIREMENTS

T2

	City of San Diego Development Services 1222 First Ave., MS-302 San Diego, CA 92101 (619) 446-5000	Storm Water Requirements Applicability Checklist	FORM DS-560 OCTOBER 2016
Project Address: 701 5TH AVE		Project Number (for City Use Only): 656544	
SECTION 1. Construction Storm Water BMP Requirements: All construction sites are required to implement construction BMPs in accordance with the performance standards in the <u>Storm Water Standards Manual</u> . Some sites are additionally required to obtain coverage under the State Construction General Permit (CGP) ¹ , which is administered by the State Water Resources Control Board.			
For all projects complete PART A: If project is required to submit a SWPPP or WPCP, continue to PART B.			
PART A: Determine Construction Phase Storm Water Requirements.			
1. Is the project subject to California's statewide General NPDES permit for Storm Water Discharges Associated with Construction Activities, also known as the State Construction General Permit (CGP)? (Typically projects with land disturbance greater than or equal to 1 acre.) ☐ Yes; SWPPP required, skip questions 2-4 ☒ No; next question			
2. Does the project propose construction or demolition activity, including but not limited to, clearing, grading, grubbing, excavation, or any other activity resulting in ground disturbance and contact with storm water runoff? ☐ Yes; WPCP required, skip 3-4 ☒ No; next question			
3. Does the project propose routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of the facility? (Projects such as pipeline/utility replacement) ☐ Yes; WPCP required, skip 4 ☒ No; next question			
4. Does the project only include the following Permit types listed below? • Electrical Permit, Fire Alarm Permit, Fire Sprinkler Permit, Plumbing Permit, Sign Permit, Mechanical Permit, Spa Permit. • Individual Right of Way Permits that exclusively include only ONE of the following activities: water service, sewer lateral, or utility service. • Right of Way Permits with a project footprint less than 150 linear feet that exclusively include only ONE of the following activities: curb ramp, sidewalk and driveway apron replacement, pot holing, curb and gutter replacement, and retaining wall encroachments. ☐ Yes; no document required			
Check one of the boxes below, and continue to PART B:			
☐ If you checked "Yes" for question 1, a SWPPP is REQUIRED. Continue to PART B ☐ If you checked "No" for question 1, and checked "Yes" for question 2 or 3, a WPCP is REQUIRED. If the project proposes less than 5,000 square feet of ground disturbance AND has less than a 5-foot elevation change over the entire project area, a Minor WPCP may be required instead. Continue to PART B. ☒ If you checked "No" for all questions 1-3, and checked "Yes" for question 4 PART B does not apply and no document is required. Continue to Section 2.			
1. More information on the City's construction BMP requirements as well as CGP requirements can be found at: www.sandiego.gov/stormwater/regulations/index.shtml			
Printed on recycled paper. Visit our web site at www.sandiego.gov/development-services . Upon request, this information is available in alternative formats for persons with disabilities.			Clear Page 1

Page 2 of 4 City of San Diego • Development Services • Storm Water Requirements Applicability Checklist	
PART B: Determine Construction Site Priority This prioritization must be completed within this form, noted on the plans, and included in the SWPPP or WPCP. The city reserves the right to adjust the priority of projects both before and after construction. Construction projects are assigned an inspection frequency based on if the project has a "high threat to water quality." The City has aligned the local definition of "high threat to water quality" to the risk determination approach of the State Construction General Permit (CGP). The CGP determines risk level based on project specific sediment risk and receiving water risk. Additional inspection is required for projects within the Areas of Special Biological Significance (ASBS) watershed. NOTE: The construction priority does NOT change construction BMP requirements that apply to projects; rather, it determines the frequency of inspections that will be conducted by city staff.	
Complete PART B and continued to Section 2	
1.	☐ ASBS a. Projects located in the ASBS watershed.
2.	☐ High Priority a. Projects 1 acre or more determined to be Risk Level 2 or Risk Level 3 per the Construction General Permit and not located in the ASBS watershed. b. Projects 1 acre or more determined to be LUP Type 2 or LUP Type 3 per the Construction General Permit and not located in the ASBS watershed.
3.	☐ Medium Priority a. Projects 1 acre or more but not subject to an ASBS or high priority designation. b. Projects determined to be Risk Level 1 or LUP Type 1 per the Construction General Permit and not located in the ASBS watershed.
4.	☐ Low Priority a. Projects requiring a Water Pollution Control Plan but not subject to ASBS, high, or medium priority designation.
SECTION 2. Permanent Storm Water BMP Requirements. Additional information for determining the requirements is found in the Storm Water Standards Manual .	
PART C: Determine if Not Subject to Permanent Storm Water Requirements. Projects that are considered maintenance, or otherwise not categorized as "new development projects" or "redevelopment projects" according to the Storm Water Standards Manual are not subject to Permanent Storm Water BMPs.	
If "yes" is checked for any number in Part C, proceed to Part F and check "Not Subject to Permanent Storm Water BMP Requirements".	
If "no" is checked for all of the numbers in Part C continue to Part D.	
1.	Does the project only include interior remodels and/or is the project entirely within an existing enclosed structure and does not have the potential to contact storm water? ☒ Yes ☐ No
2.	Does the project only include the construction of overhead or underground utilities without creating new impervious surfaces? ☒ Yes ☐ No
3.	Does the project fall under routine maintenance? Examples include, but are not limited to: roof or exterior structure surface replacement, resurfacing or reconfiguring surface parking lots or existing roadways without expanding the impervious footprint, and routine replacement of damaged pavement (grinding, overlay, and pothole repair). ☒ Yes ☐ No
Clear Page	

City of San Diego • Development Services • Storm Water Requirements Applicability Checklist	Page 3 of 4
PART D: PDP Exempt Requirements. PDP Exempt projects are required to implement site design and source control BMPs. If “yes” was checked for any questions in Part D, continue to Part F and check the box labeled “PDP Exempt.” If “no” was checked for all questions in Part D, continue to Part E.	
1. Does the project ONLY include new or retrofit sidewalks, bicycle lanes, or trails that: • Are designed and constructed to direct storm water runoff to adjacent vegetated areas, or other non-erodible permeable areas? Or; • Are designed and constructed to be hydraulically disconnected from paved streets and roads? Or; • Are designed and constructed with permeable pavements or surfaces in accordance with the Green Streets guidance in the City’s Storm Water Standards manual? ☐ Yes; PDP exempt requirements apply ☐ No; next question	
2. Does the project ONLY include retrofitting or redeveloping existing paved alleys, streets or roads designed and constructed in accordance with the Green Streets guidance in the City’s Storm Water Standards Manual? ☐ Yes; PDP exempt requirements apply ☐ No; project not exempt.	
PART E: Determine if Project is a Priority Development Project (PDP). Projects that match one of the definitions below are subject to additional requirements including preparation of a Storm Water Quality Management Plan (SWQMP). If “yes” is checked for any number in PART E, continue to PART F and check the box labeled “Priority Development Project”. If “no” is checked for every number in PART E, continue to PART F and check the box labeled “Standard Development Project”.	
1. New Development that creates 10,000 square feet or more of impervious surfaces collectively over the project site. This includes commercial, industrial, residential, mixed-use, and public development projects on public or private land.	☐ Yes ☐ No
2. Redevelopment project that creates and/or replaces 5,000 square feet or more of impervious surfaces on an existing site of 10,000 square feet or more of impervious surfaces. This includes commercial, industrial, residential, mixed-use, and public development projects on public or private land.	☐ Yes ☐ No
3. New development or redevelopment of a restaurant. Facilities that sell prepared foods and drinks for consumption, including stationary lunch counters and refreshment stands selling prepared foods and drinks for immediate consumption (SIC 5812), and where the land development creates and/or replace 5,000 square feet or more of impervious surface.	☐ Yes ☐ No
4. New development or redevelopment on a hillside. The project creates and/or replaces 5,000 square feet or more of impervious surface (collectively over the project site) and where the development will grade on any natural slope that is twenty-five percent or greater.	☐ Yes ☐ No
5. New development or redevelopment of a parking lot that creates and/or replaces 5,000 square feet or more of impervious surface (collectively over the project site).	☐ Yes ☐ No
6. New development or redevelopment of streets, roads, highways, freeways, and driveways. The project creates and/or replaces 5,000 square feet or more of impervious surface (collectively over the project site).	☐ Yes ☐ No

BUILDING NOTES:

1. PLANS FOR THE DEFERRED SUBMITTAL ITEMS SHALL BE SUBMITTED IN A
TIMELY MANNER BUT NOT LESS THAN 30 BUSINESS DAYS PRIOR TO
INSTALLATION FOR CITY REVIEW AND APPROVAL.
2. THE DEFERRED SUBMITTAL ITEMS SHALL NOT BE INSTALLED UNTIL THEIR
DESIGN AND SUBMITTAL DOCUMENTS HAVE BEEN APPROVED BY THE
BUILDING OFFICIAL.
3. THE REGISTERED AND RESPONSIBLE DESIGN PROFESSIONAL SHALL
REVIEW THE DEFERRED SUBMITTAL DOCUMENTS AND SUBMIT THEM TO
THE BUILDING OFFICIAL, WITH ANNOTATION INDICATING THAT THE
DEFERRED SUBMITTAL DOCUMENTS HAVEN BEEN REVIEWED AND FOUND
TO BE IN GENERAL CONFORMANCE TO THE DESIGN OF THE BUILDING.
4. I AM THE DESIGN/OWNER IN RESPONSIBLE CHARGE OF THIS TENANT
IMPROVEMENT PROJECT. I HAVE INSPECTED THE TOILET AND BATHING
FACILITIES FOR MEN AND WOMEN, AND DETERMINED THAT EXISTING
CONDITIONS ARE IN FULL COMPLIANCE WITH CURRENT ACCESSIBILITY

REQUIREMENTS TO THE EXTEND REQUIRED BY LAW
PRINT NAME: CONRADO GALLARDO
DATE: 05.26.2021 SIGNATURE:

IF THE CITY BUILDING INSPECTOR DETERMINES NON-COMPLIANCE WITH ANY ACCESSIBILITY PROVISIONS, A COMPLETE AND DETAILED REVISED PLANS CLEARLY SHOWING ALL EXISTING NON-COMPLYING CONDITIONS AND THE PROPOSED MODIFICATIONS TO MEET CURRENT ACCESSIBILITY REQUIREMENTS (INCLUDING SITE PLAN, FLOOR PLANS, DETAILS, ETC.) WILL BE SUBMITTED TO THE DEPARTMENT FOR REVIEW AND APPROVAL.

LOCATIONS AND CLASSIFICATIONS OF EXTINGUISHERS SHALL BE IN ACCORDANCE WITH CFC 906 AND CALIFORNIA CODE OF REGULATIONS (CCR) TITLE 19

DURING CONSTRUCTION, AT LEAST ONE EXTINGUISHER SHALL BE PROVIDED ON EACH FLOOR LEVEL AT EACH STAIRWAY, IN ALL STORAGE AND CONSTRUCTION SHEDS, IN LOCATIONS WHERE FLAMMABLE OR

COMBUSTIBLE LIQUIDS ARE STORED OR USED, AND WHERE OTHER SPECIAL
HAZARDS ARE PRESENT PER CFC SECTION 3315.1

9. IN BUILDINGS THAT REQUIRE STANDPIPES, STANDPIPES SHALL BE PROVIDED DURING CONSTRUCTION WHEN THE HEIGHT REACHES 40 FEET ABOVE THE LOWEST LEVEL OF FIRE DEPARTMENT VEHICLE ACCESS ROADWAYS CFC SECTIONS 3310, 3313

10. BUILDING UNDERGOING CONSTRUCTION, ALTERATION, OR DEMOLITION SHALL CONFIRM TO CFC CHAPTER 33. WELDING, CUTTING, AND OTHER HOT WORK SHALL BE IN CONFORMANCE WITH CFC CHAPTER 35

11. ADDRESS IDENTIFICATION SHALL BNE PROVIDED FOR ALL NEW AND EXISTING BUILDINGS IN A LOCATION THAT IS PLAINLY VISIBLE AND LEGIBLE FROM THE STREET OR ROAD FRONTING THE PROPERTY. WHERE ACCESS IS BY WAY OF A PRIVATE ROAD AND THE BUILDING ADDRESS CANNOT BE VIEWED FROM THE PUBLIC WAY, AN APPROVED SIGN OR MEANS SHALL BE USED TO IDENTIFY THE STRUCTURE. PREMISES IDENTIFICATION SHALL CONFORM TO CBC SECTION 501.2

THE PROPOSED PROJECT WILL COMPLY WITH ALL THE REQUIREMENTS OF THE CURRENT CITY OF SAN DIEGO STORM WATER STANDARDS MANUAL BEFORE A GRADING OR BUILDING PERMIT IS ISSUED. IT IS THE RESPONSIBILITY OF THE OWNER/DESIGNER/APPLICANT TO ENSURE THAT THE CURRENT STORM WATER PERMANENT BPM DESIGN STANDARDS ARE INCORPORATED INTO THE PROJECT.

Page 4 of 4

City of San Diego • Development Services • Storm Water Requirements Applicability Checklist

7.

New development or redevelopment discharging directly to an Environmentally Sensitive Area. The project creates and/or replaces 2,500 square feet of impervious surface (collectively over project site), and discharges directly to an Environmentally Sensitive Area (ESA). "Discharging directly to" includes flow that is conveyed overland a distance of 200 feet or less from the project to the ESA, or conveyed in a pipe or open channel any distance as an isolated flow from the project to the ESA (i.e. not commingled with flows from adjacent lands).

YesNo

8.

New development or redevelopment projects of a retail gasoline outlet (RGO) that create and/or replaces 5,000 square feet of impervious surface. The development project meets the following criteria: (a) 5,000 square feet or more or (b) has a projected Average Daily Traffic (ADT) of 100 or more vehicles per day.

YesNo

9.

New development or redevelopment projects of an automotive repair shops that creates and/or replaces 5,000 square feet or more of impervious surfaces. Development projects categorized in any one of Standard Industrial Classification (SIC) codes 5013, 5014, 5541, 7532-7534, or 7536-7539.

YesNo

10.

Other Pollutant Generating Project. The project is not covered in the categories above, results in the disturbance of one or more acres of land and is expected to generate pollutants post construction, such as fertilizers and pesticides. This does not include projects creating less than 5,000 sf of impervious surface and where added landscaping does not require regular use of pesticides and fertilizers, such as slope stabilization using native plants. Calculation of the square footage of impervious surface need not include linear pathways that are for infrequent vehicle use, such as emergency maintenance access or bicycle pedestrian use, if they are built with pervious surfaces or if they sheet flow to surrounding pervious surfaces.

YesNo

PART F: Select the appropriate category based on the outcomes of PART C through PART E.

1.

The project is **NOT SUBJECT TO PERMANENT STORM WATER REQUIREMENTS.**

X

2.

The project is a **STANDARD DEVELOPMENT PROJECT.** Site design and source control BMP requirements apply. See the [Storm Water Standards Manual](#) for guidance.

3.

The project is **PDP EXEMPT.** Site design and source control BMP requirements apply. See the [Storm Water Standards Manual](#) for guidance.

4.

The project is a **PRIORITY DEVELOPMENT PROJECT.** Site design, source control, and structural pollutant control BMP requirements apply. See the [Storm Water Standards Manual](#) for guidance on determining if project requires a hydromodification plan management

CONRADO GALLARDO

ARCHITECT

Name of Owner or Agent (Please Print)

Title

JUNE 15.2021

Signature

Date

Clear Page 4

Clear Form

STORMWATER QUALITY NOTES - CONSTRUCTION BMPS

THIS PROJECT SHALL COMPLY WITH ALL CURRENT REQUIREMENTS OF THE STATE PERMIT; CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD (SDRWQCB), SAN DIEGO MUNICIPAL STORM WATER PERMIT, THE CITY OF SAN DIEGO LAND DEVELOPMENT CODE, AND THE STORM WATER STANDARDS MANUAL.

PRIOR TO ANY SOIL DISTURBANCE, TEMPORARY SEDIMENT CONTROLS SHALL BE INSTALLED BY THE CONTRACTOR OR QUALIFIED PERSON(S) AS INDICATED BELOW:

1.

ALL REQUIREMENTS OF THE CITY OF SAN DIEGO "STORM WATER STANDARDS MANUAL" MUST BE INCORPORATED INTO THE DESIGN AND CONSTRUCTION OF THE PROPOSED GRADING/IMPROVEMENTS CONSISTENT WITH THE APPROVED STORM WATER POLLUTION PREVENTION PLAN (SWPP) AND/OR WATER POLLUTION CONTROL PLAN (WPCP) FOR CONSTRUCTION LEVEL BMPS AND, IF APPLICABLE, THE STORM WATER QUALITY MANAGEMENT PLAN (SWQMP) FOR POST-CONSTRUCTION BMPS.

2.

THE CONTRACTOR SHALL INSTALL AND MAINTAIN ALL STORM DRAIN INLET PROTECTION, INLET PROTECTION IN THE PUBLIC RIGHT-OF-WAY MUST BE TEMPORARILY REMOVED PRIOR TO A RAIN EVENT TO ENSURE NO FLOODING OCCURS AND REINSTALLED AFTER RAIN IS OVER.

3.

ALL CONSTRUCTION BMPS SHALL BE INSTALLED AND PROPERLY MAINTAINED THROUGHOUT THE DURATION OF CONSTRUCTION.

4.

THE CONTRACTOR SHALL ONLY GRADE, INCLUDING CLEARING AND GRUBBING AREAS FOR WHICH THE CONTRACTOR OR QUALIFIED CONTACT PERSON CAN PROVIDE EROSION AND SEDIMENT CONTROL MEASURES.

5.

THE CONTRACTOR IS RESPONSIBLE FOR ENSURING THAT ALL SUB-CONTRACTORS AND SUPPLIERS ARE AWARE OF ALL STORM WATER BMPS AND IMPLEMENT SUCH MEASURES, FAILURE TO COMPLY WITH THE APPROVED SWPPP/WPCP WILL RESULT IN THE ISSUANCE OF CORRECTION NOTICES, CITATIONS, CIVIL PENALTIES, AND/OR STOP WORK NOTICES.

6.

THE CONTRACTOR OR QUALIFIED CONTACT PERSON SHALL BE RESPONSIBLE FOR CLEANUP OF ALL SILT, DEBRIS, AND MUD ON AFFECTED AND ADJACENT STREET(S) AND WITHIN STORM DRAIN SYSTEM DUE TO CONSTRUCTION VEHICLES/EQUIPMENT AND CONSTRUCTION ACTIVITY AT THE END OF EACH WORK DAY.

7.

THE CONTRACTOR SHALL PROTECT NEW AND EXISTING STORM WATER CONVEYANCE SYSTEMS FROM SEDIMENTATION, CONCRETE RINSE, OR OTHER CONSTRUCTION-RELATED DEBRIS AND DISCHARGES WITH THE APPROPRIATE BMPS THAT ARE ACCEPTABLE TO THE CITY RESIDENT ENGINEER AND AS INDICATED IN THE SWPPP/WPCP

8.

THE CONTRACTOR OR QUALIFIED CONTACT PERSON SHALL CLEAR DEBRIS, SILT, AND MUD FROM ALL DITCHES AND SWALES PRIOR TO AND WITHIN 3 BUSINESS DAYS AFTER EACH RAIN EVENT OR PRIOR TO THE NEXT RAIN EVENT, WHICHEVER IS SOONER.

9.

IF A NON-STROM WATER DISCHARGE LEAVES THE SITE, THE CONTRACTOR SHALL IMMEDIATELY STOP THE ACTIVITY AND REPAIR THE DAMAGES. THE CONTRACTOR SHALL NOTIFY THE CITY RESIDENT ENGINEER OF THE DISCHARGE, PRIOR TO RESUMING CONSTRUCTION ACTIVITY, ANY AND ALL WASTE MATERIAL, SEDIMENT, AND DEBRIS FROM EACH NON-STORM WATER DISCHARGE SHALL BE REMOVED FROM THE STORM DRAIN CONVEYANCE SYSTEM AND PROPERLY DISPOSED OF BY THE CONTRACTOR

10.

EQUIPMENT AND WORKERS FOR EMERGENCY WORK SHALL BE MADE AVAILABLE AT ALL TIMES, ALL NECESSARY MATERIALS SHALL BE STOCKPILED ONSITE AT CONVENIENT LOCATION TO FACILITATE RAPID DEPLOYMENT OF CONSTRUCTION BMPS WHEN RAIN IS IMMINENT.

11.

THE CONTRACTOR SHALL RESTORE AND MAINTAIN ALL EROSION AND SEDIMENT CONTROL BMPS TO WORKING ORDER YEAR-ROUND.

12.

THE CONTRACTOR SHALL INSTALL ADDITIONAL EROSION AND SEDIMENT CONTROL MEASURE DUE TO UNFORESEEN CIRCUMSTANCES TO PREVENT NON-STORM WATER AND SEDIMENT-LADEN DISCHARGES.

13.

THE CONTRACTOR SHALL BE RESPONSIBLE AND SHALL TAKE NECESSARY PRECAUTIONS TO PREVENT PUBLIC TRESPASS ONTO AREAS WHERE IMPOUNDED WATERS CREATE A HAZARDOUS CONDITION.

14.

ALL EROSION AND SEDIMENT CONTROL MEASURES PROVIDED PER THE APPROVED SWPP/WPCP SHALL BE INSTALLED AND MAINTAINED. ALL EROSION AND SEDIMENT CONTROLS FOR INTERIM CONDITION SHALL BE PROPERLY DOCUMENTED AND INSTALLED TO THE SATISFACTION OF THE CITY RESIDENT ENGINEER.

15.

AS NECESSARY, THE CITY RESIDENT ENGINEER SHALL SCHEDULE MEETINGS FOR THE PROJECT TEAM (GC, QUALIFIED CONTACT PERSON, EROSION CONTROL SUBCONTRACTOR IF ANY, ENGINEER OF WORK, OWNER/DEVELOPER, AND THE CITY RESIDENT ENGINEER) TO EVALUATE THE ADEQUACY OF THE EROSION AND SEDIMENT CONTROL MEASURES AND OTHER BMPS RELATIVE TO ANTICIPATED CONSTRUCTION ACTIVITIES.

16.

THE CONTRACTOR OR QUALIFIED CONTACT PERSON SHALL CONDUCT VISUAL INSPECTION AND MAINTAIN ALL BMPS DAILY AND AS NEEDED. VISUAL INSPECTION AND MAINTENANCE OF ALL BMPS SHALL BE CONDUCTED BEFORE, DURING AND AFTER EVERY RAIN EVENT AND EVERY 24 HOURS DURING ANY PROLONGED RAIN-EVENT. THE CONTRACTOR SHALL MAINTAIN AND REPAIR ALL BMPS AS SOON AS POSSIBLE AS SAFETY ALLOWS.

17.

CONSTRUCTION ENTRANCE AND EXIT AREA. TEMPORARY CONSTRUCTION ENTRANCE AND EXITS SHALL BE CONSTRUCTED IN ACCORDANCE WITH CASQA FACT SHEET TC-1 OR CALTRANS FACT SHEET TC-D1 TO PREVENT TRACKING OF SEDIMENT AND OTHER POTENTIAL POLLUTANTS ONTO PAVED SURFACES AND TRAVELED WAYS. WIDTHS SHALL BE 10' OR THE MINIMUM NECESSARY TO ACCOMMODATE VEHICLES AND EQUIPMENT WITHOUT BY-PASSING THE ENTRANCE. (A) NON-STORM WATER DISCHARGES SHALL BE EFFECTIVELY MANAGED PER THE SAN DIEGO MUNICIPAL CODE CHAPTER 4, ARTICLE 3, DIVISION 3 "STORM WATER MANAGEMENT AND DISCHARGE CONTROL".

PROJECT ARCHITECT

RETAIL
AMP
DESIGN

801 BOWSPRIT ROAD
CHULA VISTA, CA 91914
PH: (619) 215-1677

DISCRETIONARY PERMIT FOR
SUGAR FACTORY BUILDING
701 FIFTH AVENUE
SAN DIEGO, CA 92101

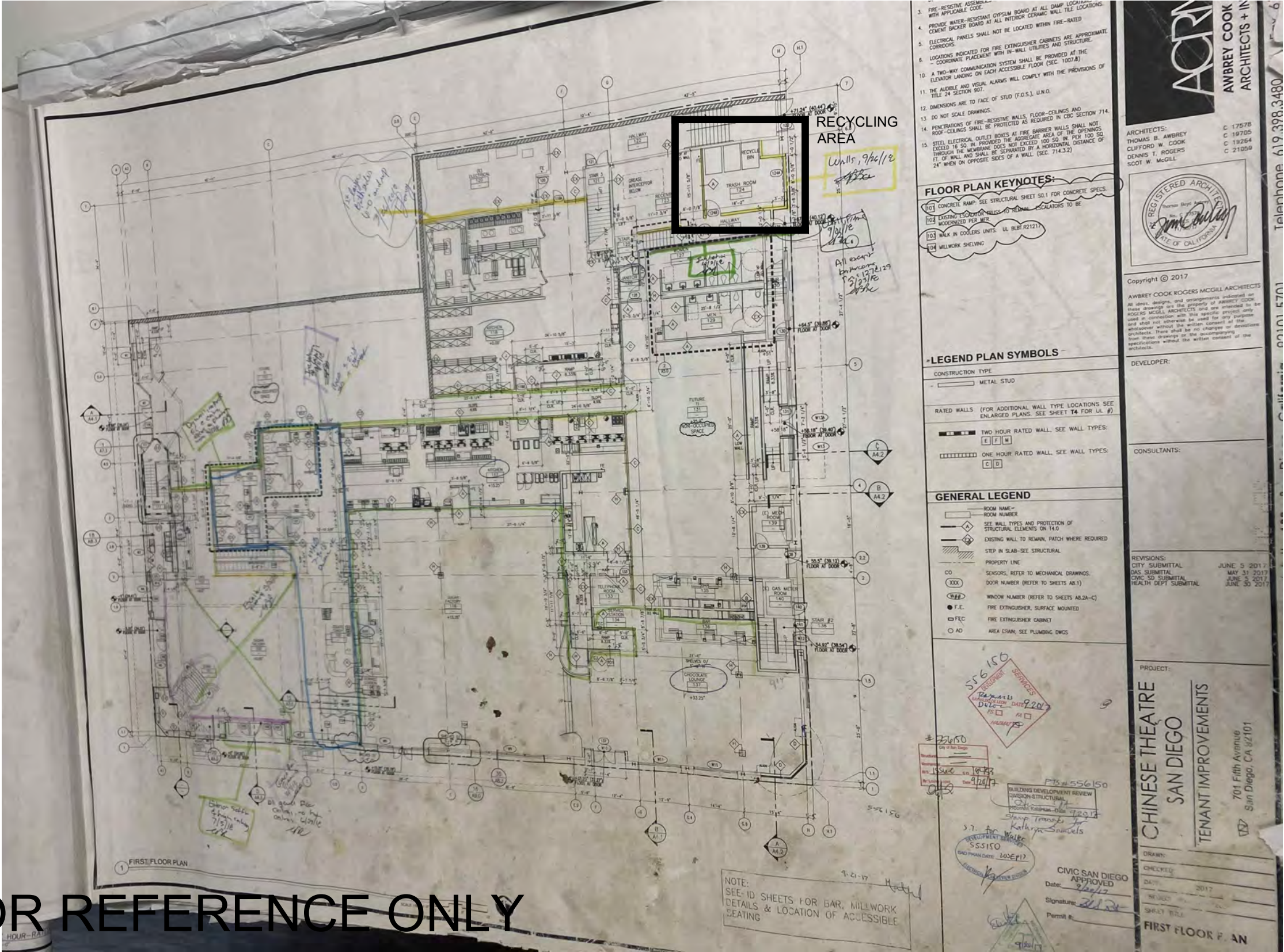
REVISIONS	
N.U.P. PRELIM:	01.13.2020
N.U.P. PRELIMINARY:	03.02.2020
N.U.P. SUBMITTAL:	04.03.2020
N.U.P. DELTA 1:	09.20.2021
N.U.P. DELTA 2:	11.12.2021

SHEET NAME

STORMWATER
REQUIREMENTS

SHEET NUMBER

T3



FOR REFERENCE ONLY



PROJECT ARCHITECT
**RETAIL
AMP
DESIGN**

801 BOWSPRIT ROAD
CHULA VISTA, CA 91914
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SAN DIEGO, CA 92101

REVISIONS	
N.U.P. PRELIM:	01.13.2020
N.U.P. PRELIMINARY:	03.02.2020
N.U.P. SUBMITTAL:	04.03.2020
N.U.P. DELTA 1:	09.20.2021
N.U.P. DELTA 2:	11.12.2021

JOB# 19-1538.1
STORE#



PROJECT ARCHITECT
**RETAIL
AMP
DESIGN**

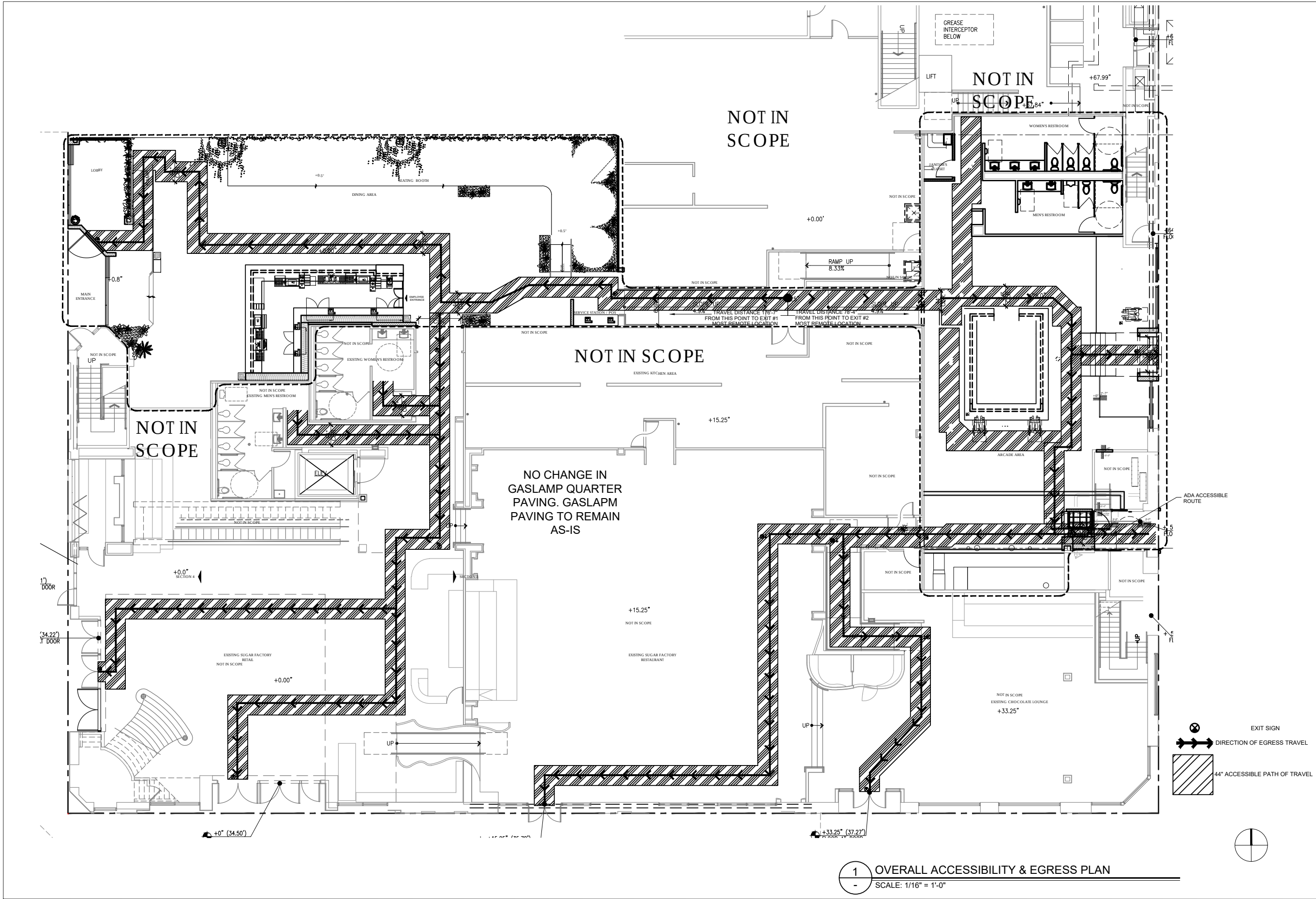
801 BOWSPRIT ROAD
CHULA VISTA, CA 91914
PH: (619) 215-1677

DISCRETIONARY PERMIT FOR
SUGAR FACTORY BUILDING
701 FIFTH AVENUE
SAN DIEGO, CA 92101

REVISIONS	
N.U.P. PRELIM:	01.13.2020
N.U.P. PRELIMINARY:	03.02.2020
N.U.P. SUBMITTAL:	04.03.2020
N.U.P. DELTA 1:	09.20.2021
N.U.P. DELTA 2:	11.12.2021

SHEET NAME
**OVERALL
ACCESSIBILITY &
EGRESS PLAN**
SHEET NUMBER

T6
1



1 OVERALL ACCESSIBILITY & EGRESS PLAN
SCALE: 1/16" = 1'-0"

JOB# 19-1538.1
STORE#



PROJECT ARCHITECT
**RETAIL
AMP
DESIGN**

801 BOWSPRIT ROAD
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N.U.P. DELTA 1:	09.20.2021
N.U.P. DELTA 2:	11.12.2021

SHEET NAME

OUTDOOR
SPACE "D"

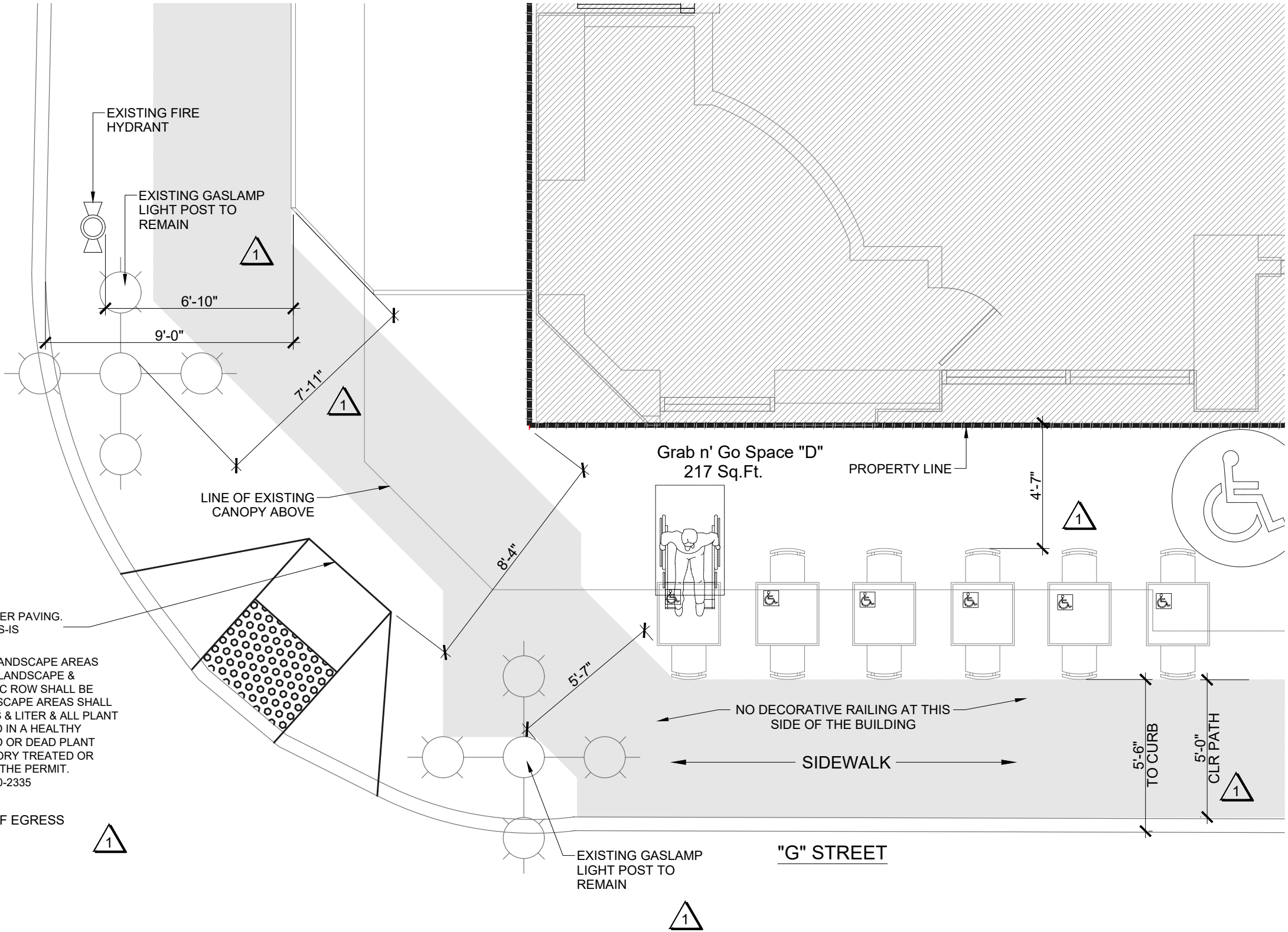
SHEET NUMBER

A1

NO CHANGE IN GASLAMP QUARTER PAVING.
GASLAMP PAVING TO REMAIN AS-IS

MAINTENANCE: ALL REQUIRED LANDSCAPE AREAS
SHALL BE MAINTAINED BY ACS LANDSCAPE &
IRRIGATION AREAS IN THE PUBLIC ROW SHALL BE
MAINTAINED BY ACS. THE LANDSCAPE AREAS SHALL
BE MAINTAINED FREE OF DEBRIS & LITER & ALL PLANT
MATERIAL SHALL BE MAINTAINED IN A HEALTHY
GROWING CONDITION. DISEASED OR DEAD PLANT
MATERIAL SHALL BE SATISFACTORY TREATED OR
REPLACED PER CONDITIONS OF THE PERMIT.
CONTACT: EDDIE DAHER (323)460-2335

REFER TO T4 FOR MEANS OF EGRESS



1 OUTDOOR SPACE "D" FLOOR PLAN
SCALE: 1/4" = 1'-0"

JOB# 19-1538.1
STORE#



PROJECT ARCHITECT
**RETAIL
AMP
DESIGN**

801 BOWSPRIT ROAD
CHULA VISTA, CA 91914
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SAN DIEGO, CA 92101

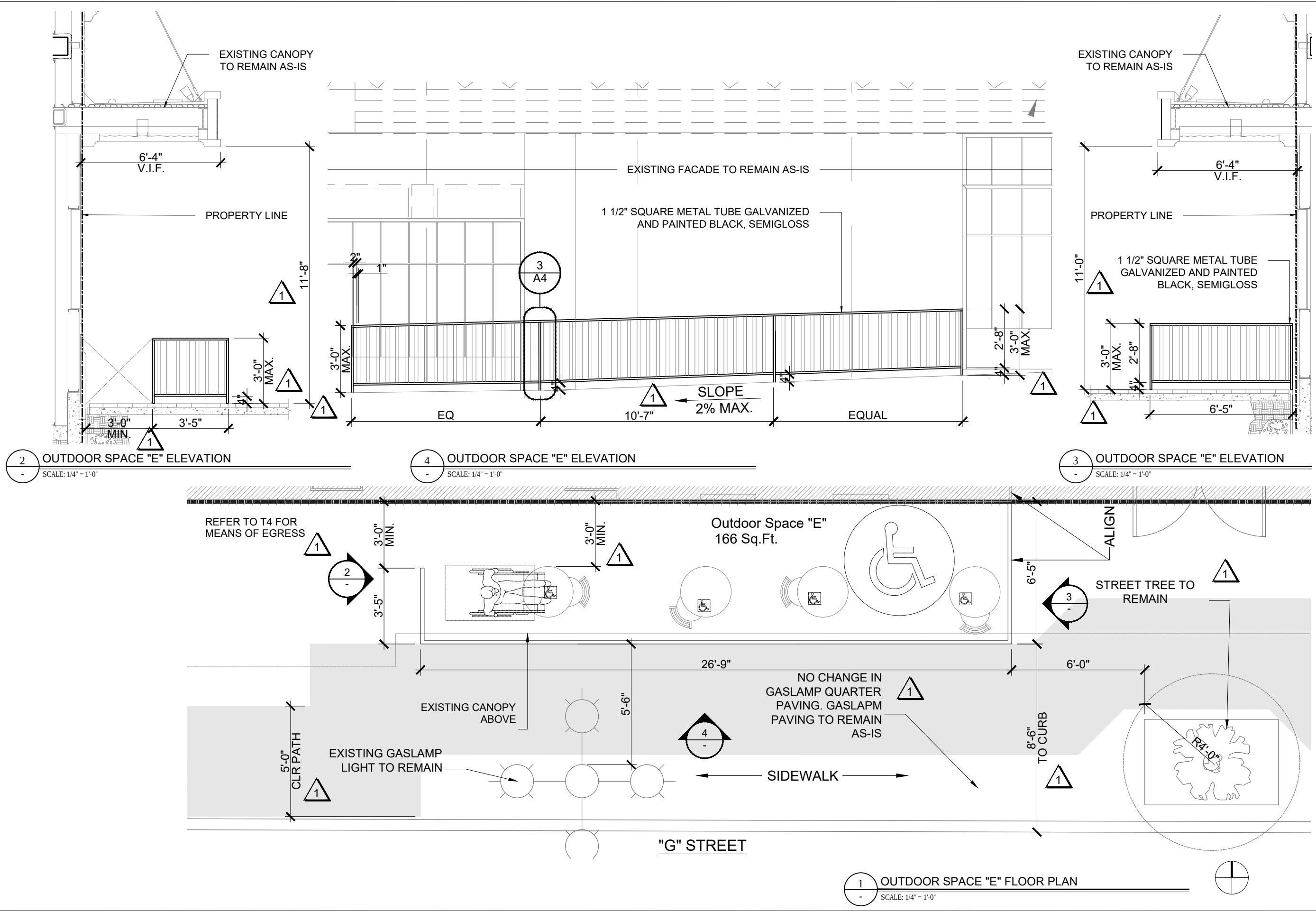
REVISIONS	
N.U.P. PRELIM:	01.13.2020
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N.U.P. SUBMITTAL:	04.03.2020
N.U.P. DELTA 1:	09.20.2021
N.U.P. DELTA 2:	11.12.2021

SHEET NAME

OUTDOOR SPACE "E"

SHEET NUMBER

A2



JOB# 19-1538.1
STORE#



PROJECT ARCHITECT
**RETAIL
AMP
DESIGN**

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DISCRETIONARY PERMIT FOR
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SAN DIEGO, CA 92101

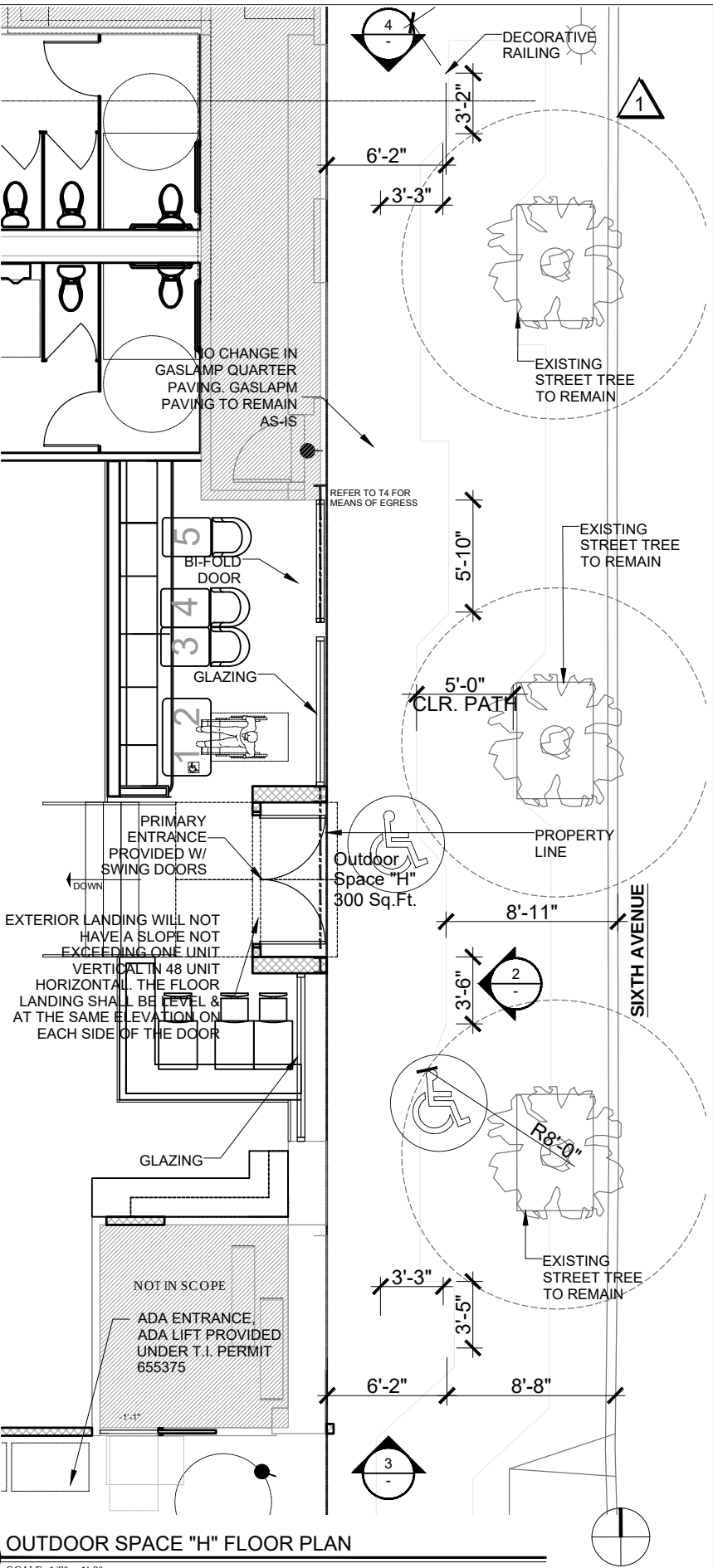
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N.U.P. PRELIMINARY:	03.02.2020
N.U.P. SUBMITTAL:	04.03.2020
N.U.P. DELTA 1:	09.20.2021
N.U.P. DELTA 2:	11.12.2021

SHEET NAME

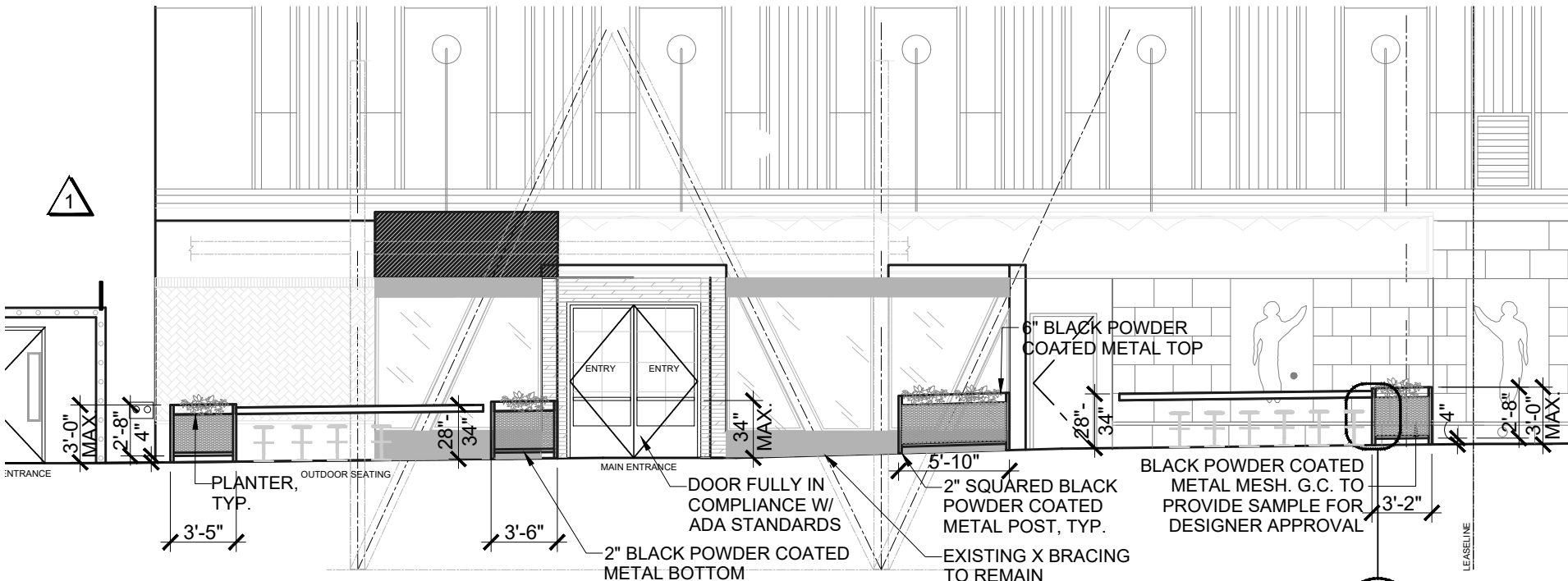
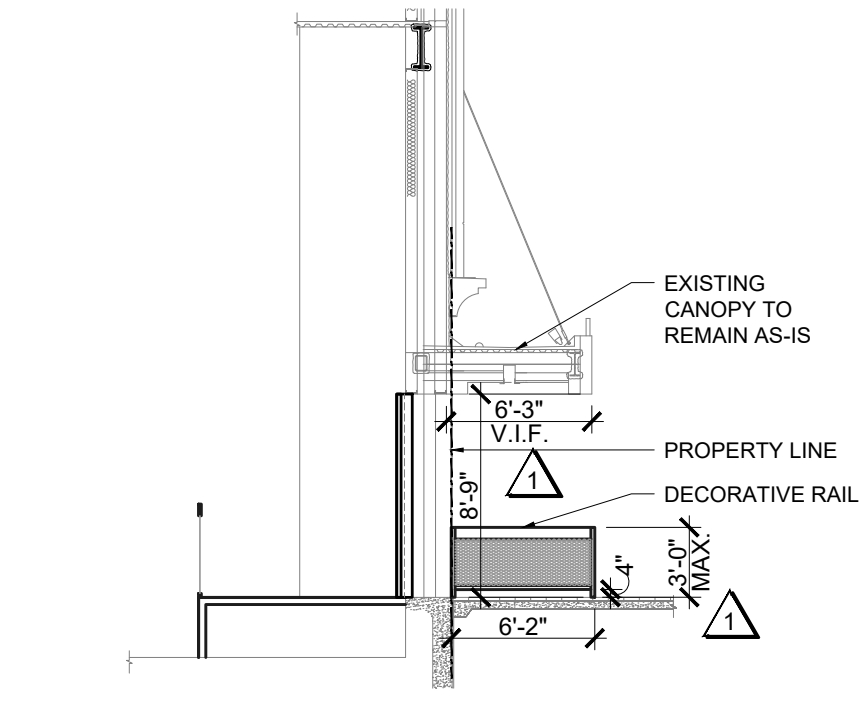
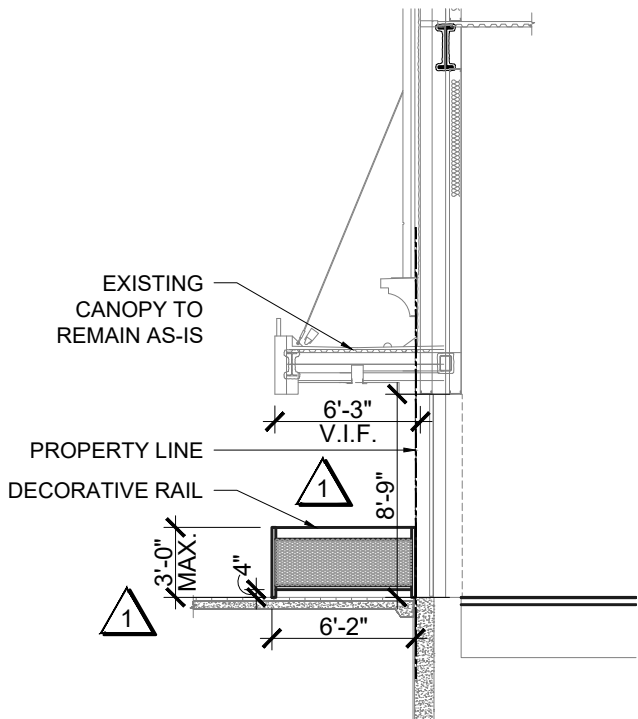
OUTDOOR
SPACE "H"

SHEET NUMBER

A3



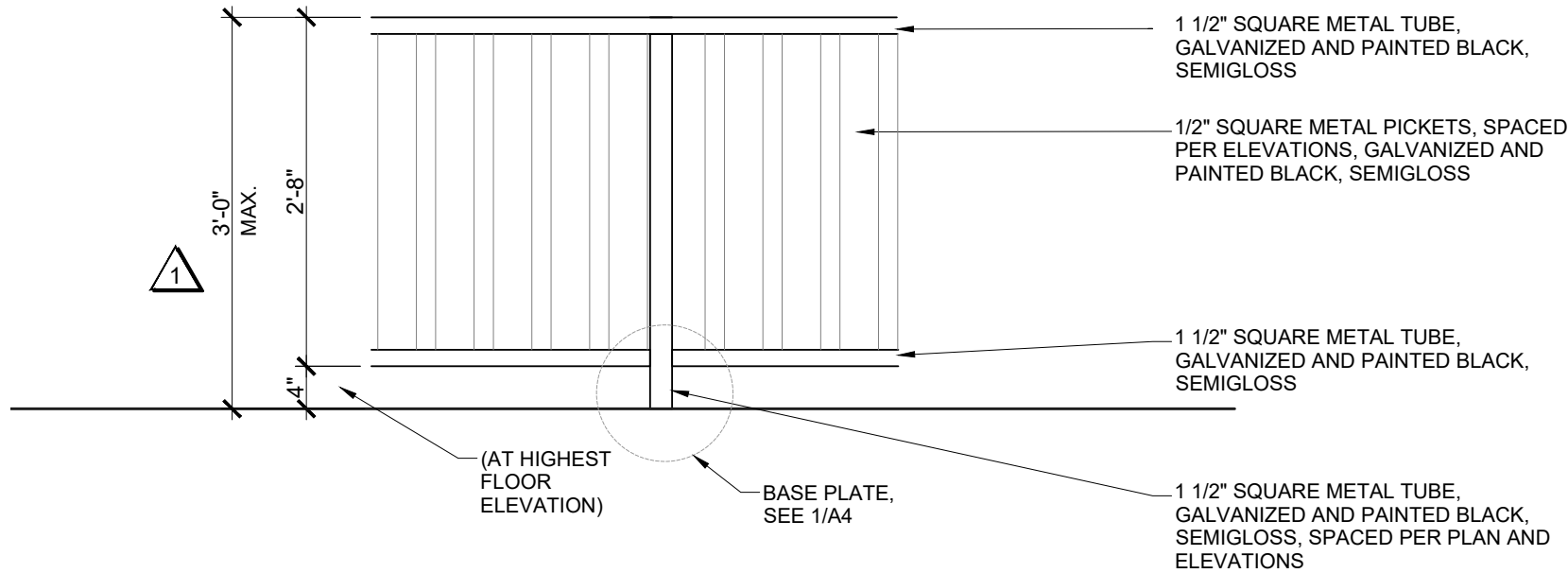
DECORATIVE RAIL



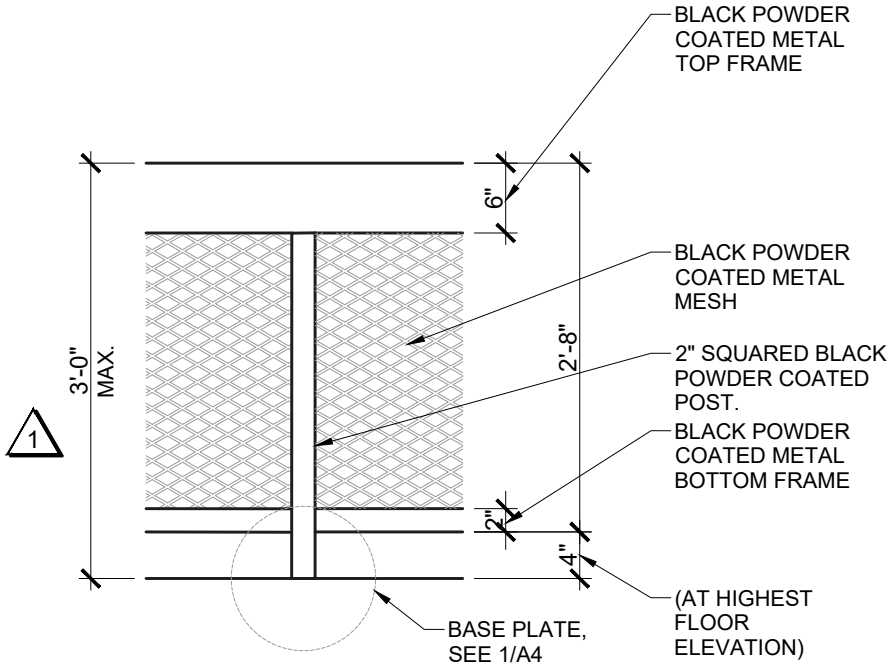
BUILDING NOTES:

1.
- WALL, FLOOR AND CEILING FINISHES AND MATERIALS SHALL NOT EXCEED THE INTERIOR FINISH CLASSIFICATIONS IN CBC TABLE 803.11 AND SHALL MEET THE FLAME PROPAGATION PERFORMANCE CRITERIA OF THE CALIFORNIA CODE OF REGULATIONS. TITLE 19, DIVISION 1. DECORATIVE MATERIALS SHALL BE PROPERTY TREATED BY A PRODUCT OR PROCESS APPROVED BY THE STATE FIRE MARSHAL WITH APPROPRIATE DOCUMENTATION PROVIDED TO THE CITY OF SAN DIEGO.
2.
- KEY BOXES SHALL BE PROVIDED FOR ALL HIGH-RISE BUILDINGS, POOL ENCLOSURES, GATES IN THE PATH OF FIREFIGHTER TRAVEL TO STRUCTURES, SECURED PARKING LEVELS, DOORS GIVING ACCESS TO ALARM PANELS AND/OR ANNUNCIATORS, AND ANY OTHER STRUCTURES OR AREAS WHERE ACCESS TO AN AREA IS RESTRICTED AND SHALL BE INSTALLED PER CFC 506
3.
- DUMPSTERS AND TRASH CONTAINERS EXCEEDING 1.5 CUBIC YARDS SHALL NOT BE STORED IN BUILDINGS OR PLACED WITHIN 5 FEET OF COMBUSTIBLE WALLS,M OPENINGS OR COMBUSTIBLE ROOF EAVE LINES UNLESS PROTECTED BY AN APPROVED SPRINKLER SYSTEM OR LOCATED IN A TYPE I OR TYPE IIA STRUCTURE SEPARATED BY 10 FEET FROM OTHER STRUCTURES. CONTAINERS LARGER THAN 1 CUBIC YARD SHALL BE OF NON-OR-LIMITED -COMBUSTIBLE MATERIALS OR SIMILARLY PROTECTED OR SEPARATED. CFC 304.3
4.
- EXITS, EXIT SIGNS, FIRE ALARM PANELS, HOSE CABINETS, FIRE EXTINGUISHER LOCATIONS. AND STANDPIPE CONNECTIONS SHALL NOT BE CONCEALED BY CURTAINS, MIRRORS, OR OTHER DECORATIVE METAL.
5.
- OPEN FLAMES, FIRE, AND BURNING ON ALL PREMISES IS PROHIBITED EXCEPT AS SPECIFICALLY PERMITTED BY THE CITY OF SAN DIEGO AND CFC 308
6.
- THE EGRESS PATH SHALL REMAIN FREE AND CLEAR OF ALL OBSTRUCTIONS AT ALL TIMES. NO STORAGE IS PERMITTED IN ANY EGRESS PATHS.

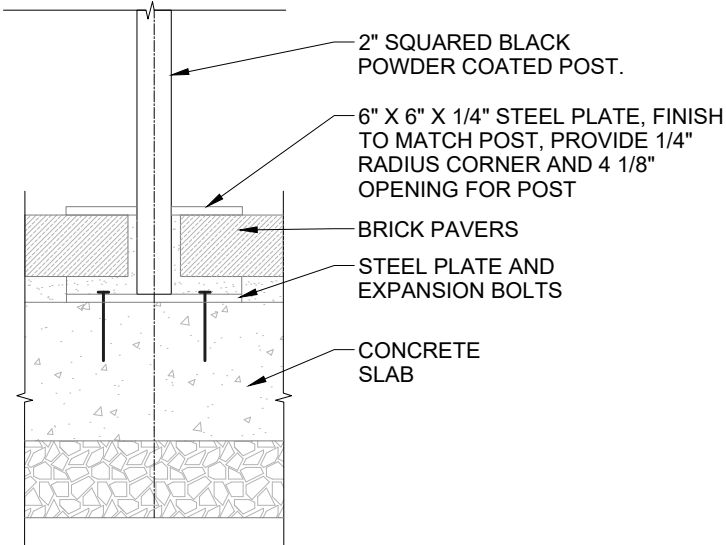
7.
- ADHESIVES, SEALANTS AND CAULKS SHALL MEET THE REQUIREMENTS OF THE FOLLOWING STANDARDS
- 1)ADHESIVES, ADHESIVES BONDING PRIMERS, ADHESIVES PRIMERS, SEALANTS, SEALANT PRIMERS, AND CAULKS SHALL COMPLY WITH LOCAL OR REGIONAL AIR POLLUTION CONTROL AIR QUALITY MANAGEMENT DISTRICT RULES WHERE APPLICABLE, OR SCAQMD RULE 1168 VOC LIMITS, AS SHOWN IN CALGREEN TABLES 5.504.4.1 AND 5.5.4.4.2.
- 2)AEROSOL ADHESIVES, ANS SMALLER UNIT SIZED OF ADHESIVES, AND SEALANT OR CAULKING COMPOUNDS (IN UNITS OF PRODUCT, LESS PACKAGING, WHICH DO NOT WEIGH MRE THAN ONE POUND AND DO NOT CONSIST OF MORE THAN 16 FLUID OUNCES) SHALL COMPLY WITH STATEWIDE VOC STANDARDS AND OTHER REQUIREMENTS, INCLUDING PROHIBITIONS ON USE OF CERTAIN TOXIC COMPOUNDS, OF CALIFORNIA CODE OF REGULATIONS (CCR), TITLE 17, COMMENCING WITH SECTION 94507



3
-
DETAIL
SCALE: 3/4" = 1'-0"



2
-
DETAIL
SCALE: 3/4" = 1'-0"



1
-
DETAIL
SCALE: 3/4" = 1'-0"

JOB#: 19-1538.1
STORE#:



PROJECT ARCHITECT
RETAIL
AMP
DESIGN

801 BOWSPRIT ROAD
CHULA VISTA, CA 91914
PH: (619) 215-1677

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701 FIFTH AVENUE
SAN DIEGO, CA 92101

REVISIONS		
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N.U.P. DELTA 2:	11.12.2021	

SHEET NAME

RAIL
DETAILS

SHEET NUMBER

A4

JOB# 19-1538.1
STORE#



PROJECT ARCHITECT
**RETAIL
AMP
DESIGN**

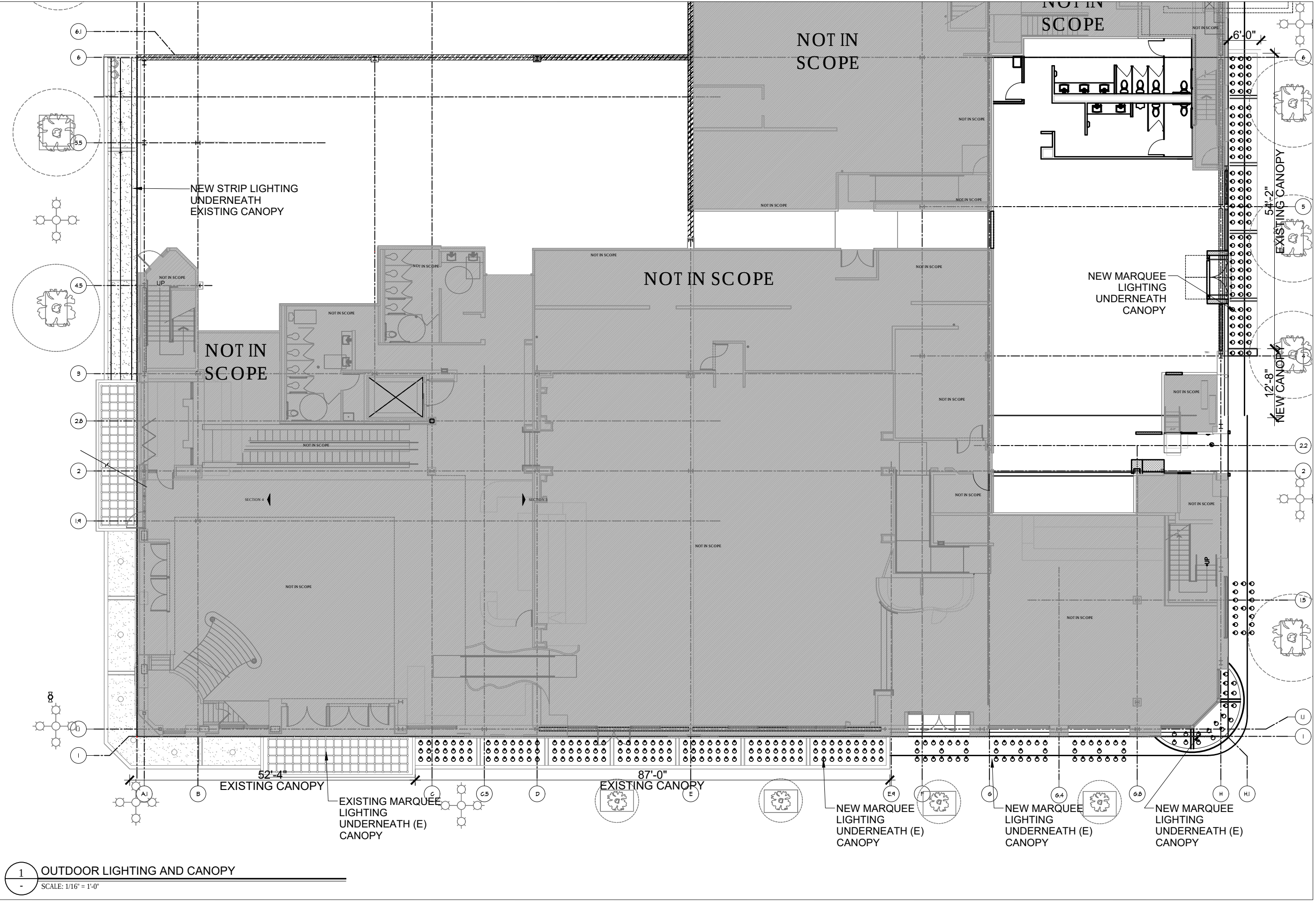
801 BOWSPRIT ROAD
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SAN DIEGO, CA 92101

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SHEET NAME
**OUTDOOR
LIGHTING**
SHEET NUMBER

A5



JOB#: 19-1538.1
STORE#:



PROJECT ARCHITECT
**RETAIL
AMP
DESIGN**

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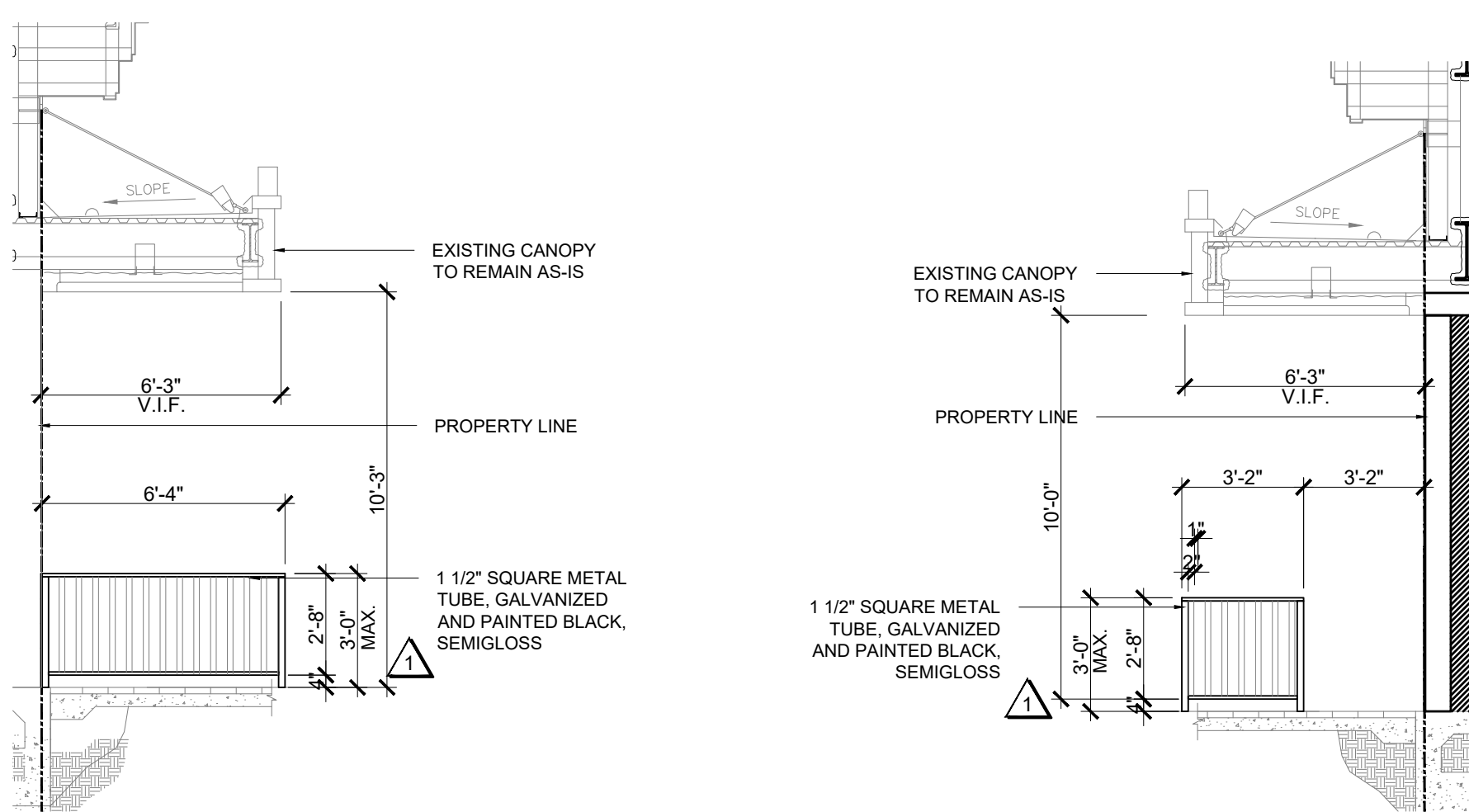
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N.U.P. PRELIM:	01.13.2020
N.U.P. PRELIMINARY:	03.02.2020
N.U.P. SUBMITTAL:	04.03.2020
N.U.P. DELTA 1:	09.20.2021
N.U.P. DELTA 2:	11.12.2021

SHEET NAME

OUTDOOR
SPACE "A"

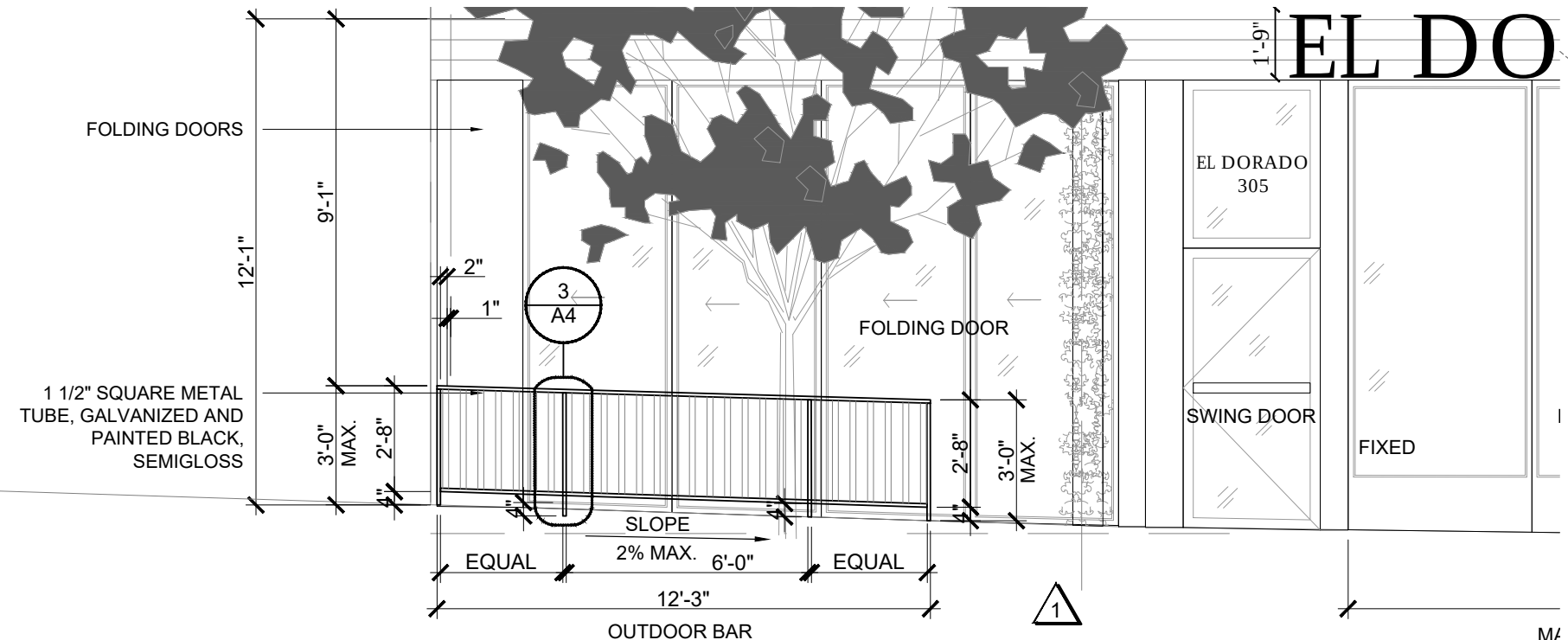
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A6

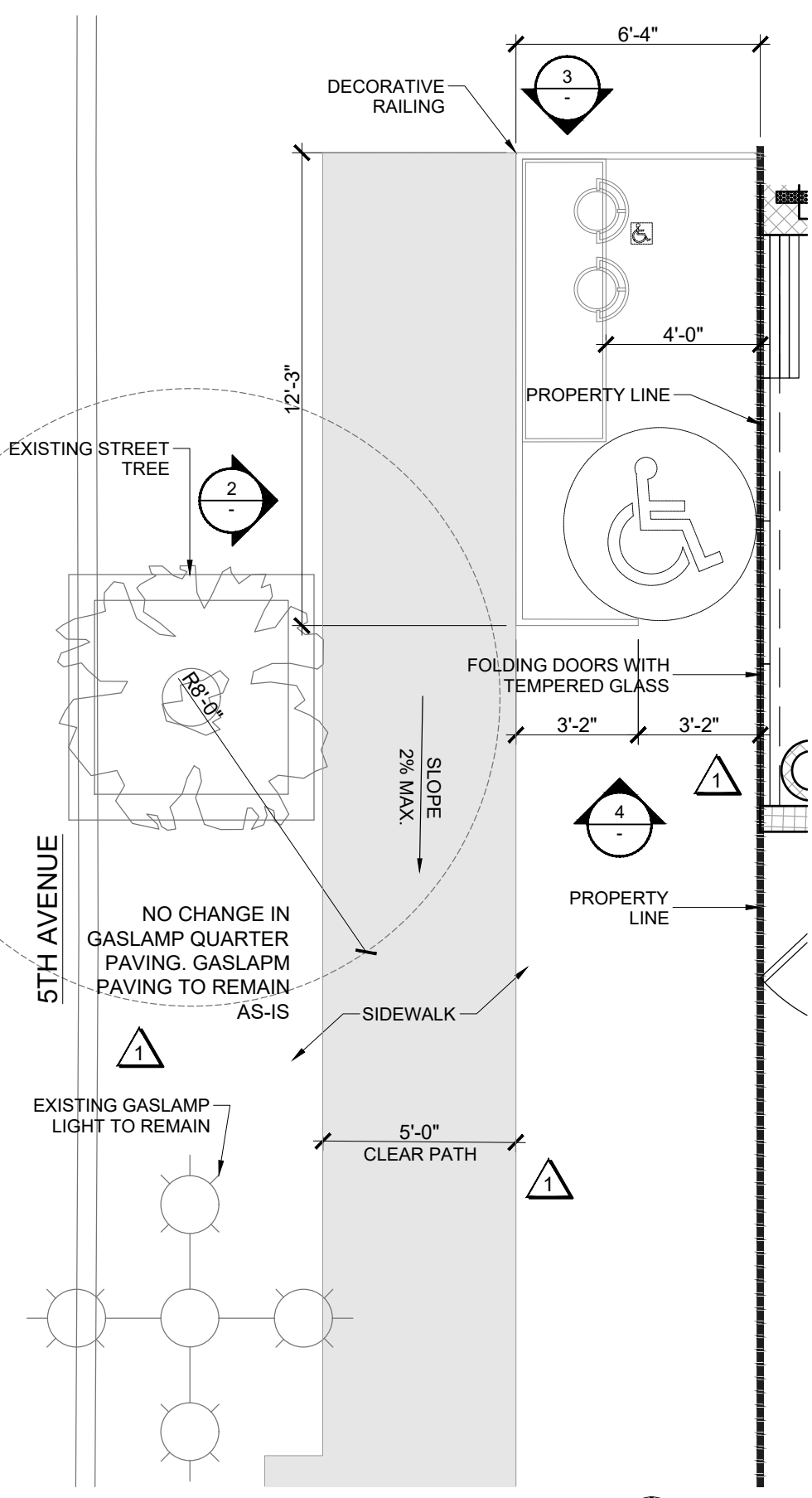


3 OUTDOOR SPACE "A" ELEVATION
SCALE: 1/4" = 1'-0"

4 OUTDOOR SPACE "A" ELEVATION
SCALE: 1/4" = 1'-0"



2 OUTDOOR SPACE "A" ELEVATION
SCALE: 1/4" = 1'-0"



1 OUTDOOR SPACE "A" FLOOR PLAN
SCALE: 1/4" = 1'-0"

JOB# 19-1538.1
STORE#



PROJECT ARCHITECT
**RETAIL
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DESIGN**

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DISCRETIONARY PERMIT FOR
SUGAR FACTORY BUILDING
701 FIFTH AVENUE
SAN DIEGO, CA 92101

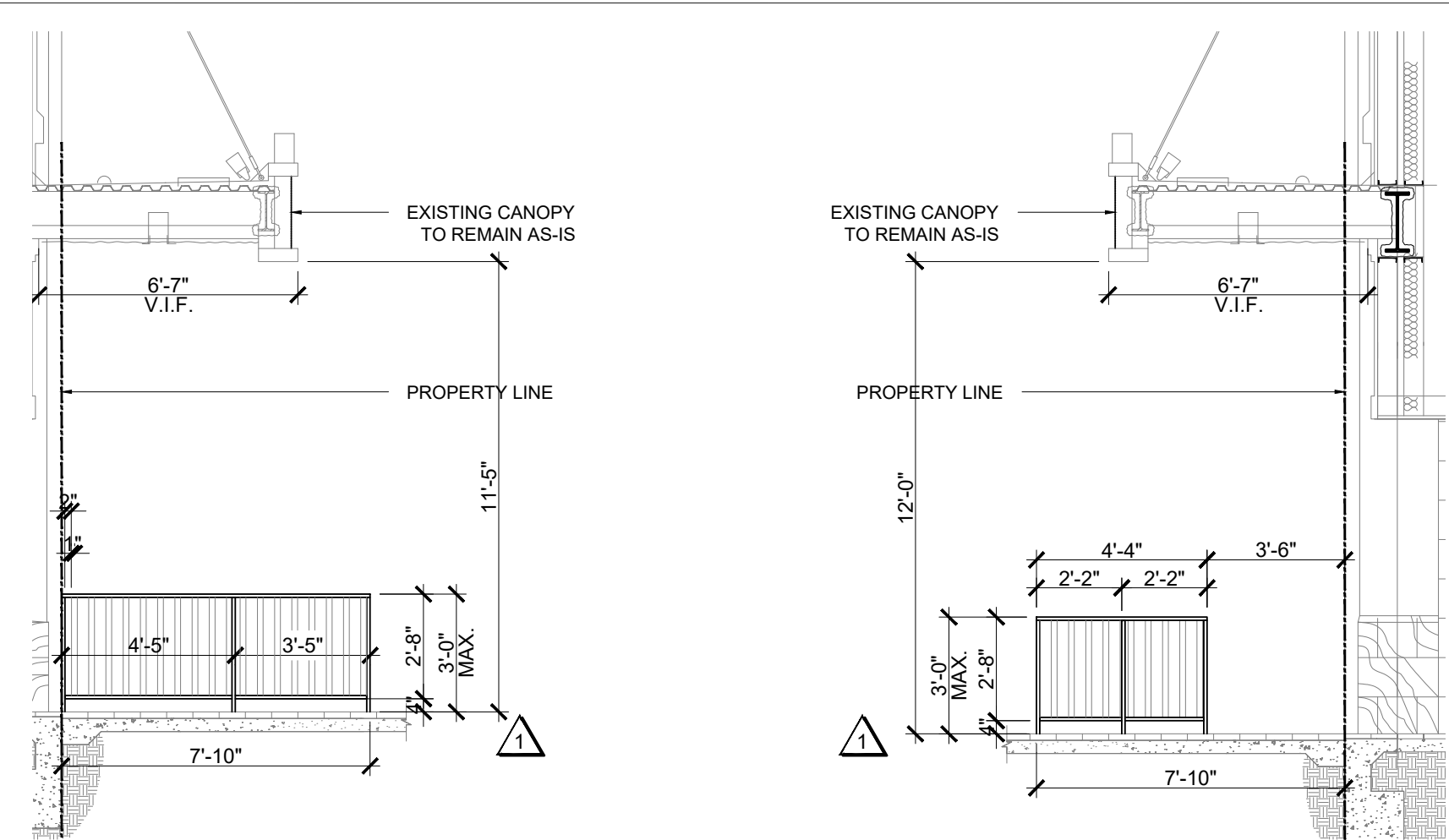
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N.U.P. DELTA 1:	09.20.2021
N.U.P. DELTA 2:	11.12.2021

SHEET NAME

OUTDOOR
SPACE "B"

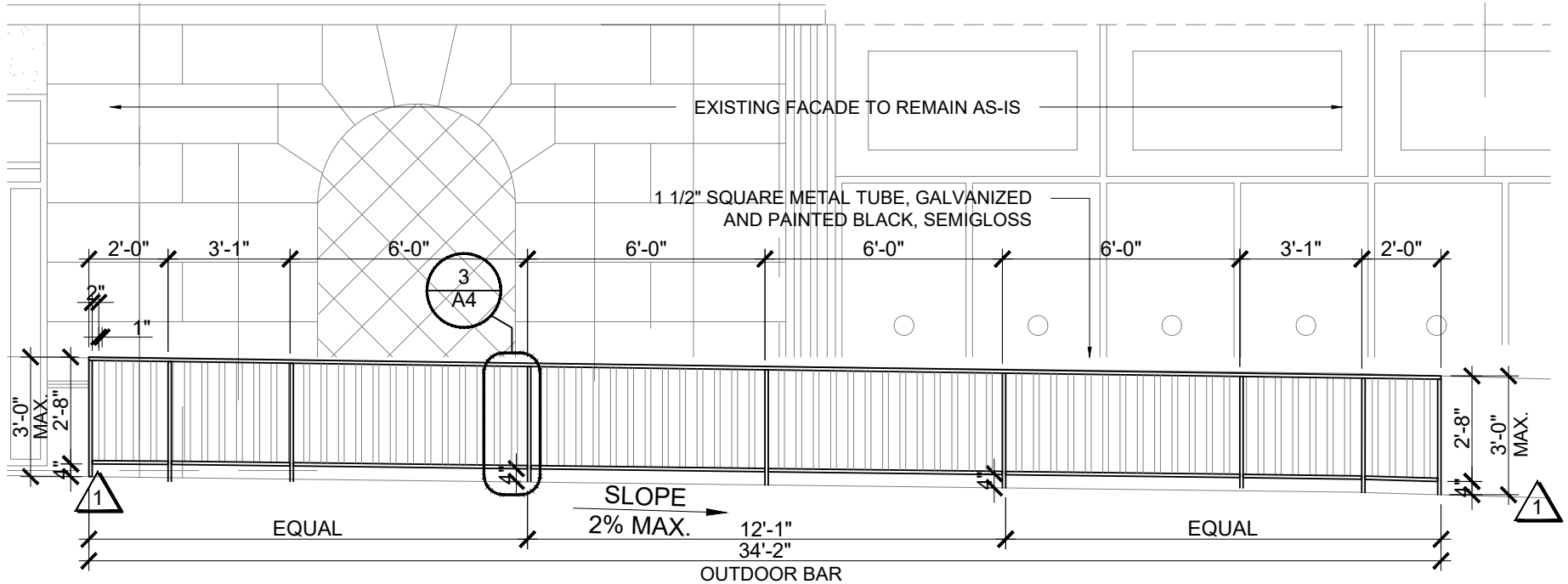
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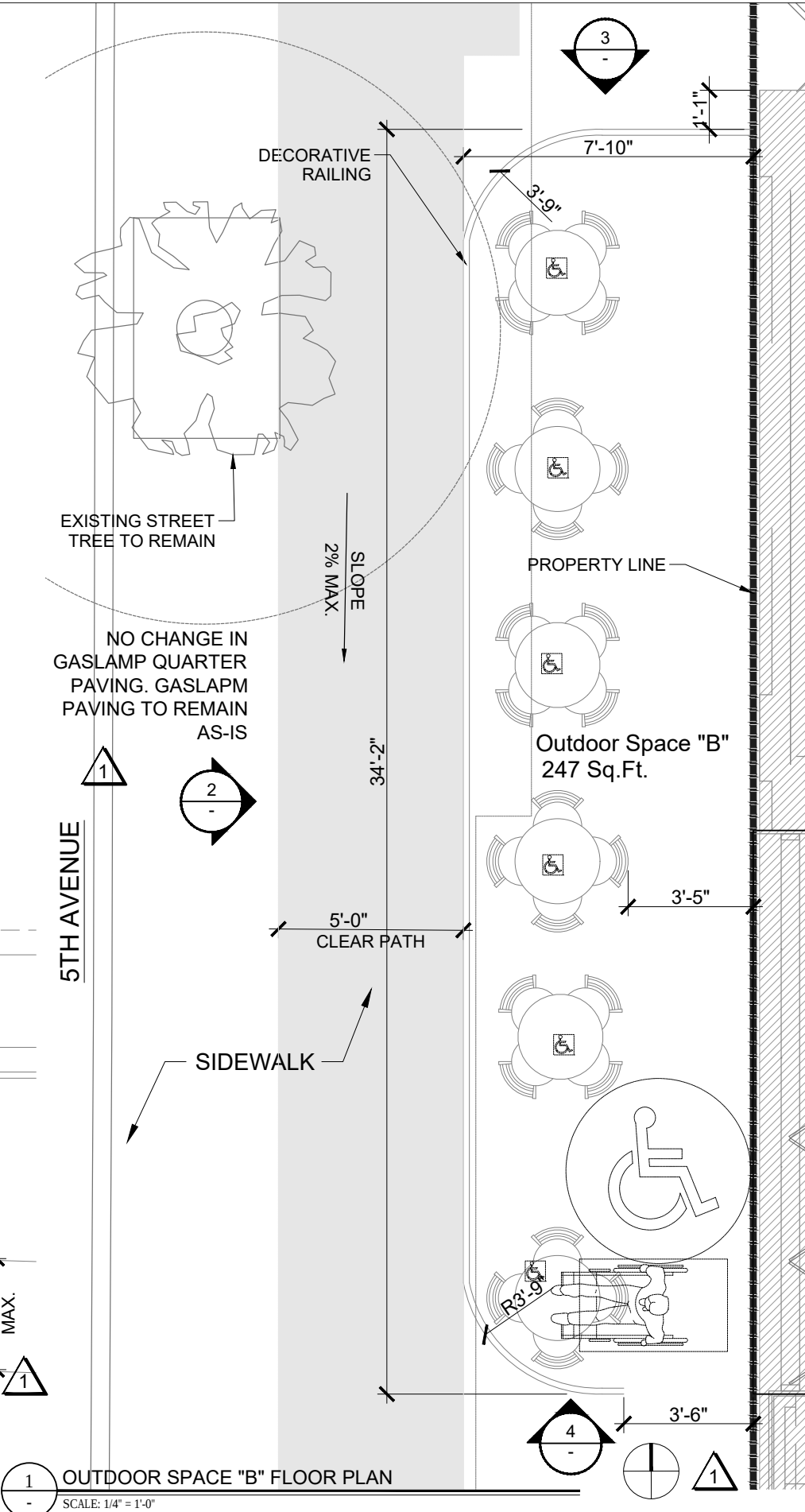


3 OUTDOOR SPACE "B" ELEVATION
SCALE: 1/4" = 1'-0"

4 OUTDOOR SPACE "B" ELEVATION
SCALE: 1/4" = 1'-0"



2 OUTDOOR SPACE "B" ELEVATION
SCALE: 1/4" = 1'-0"



1 OUTDOOR SPACE "B" FLOOR PLAN
SCALE: 1/4" = 1'-0"

JOB# 19-1538.1
STORE#



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DESIGN**

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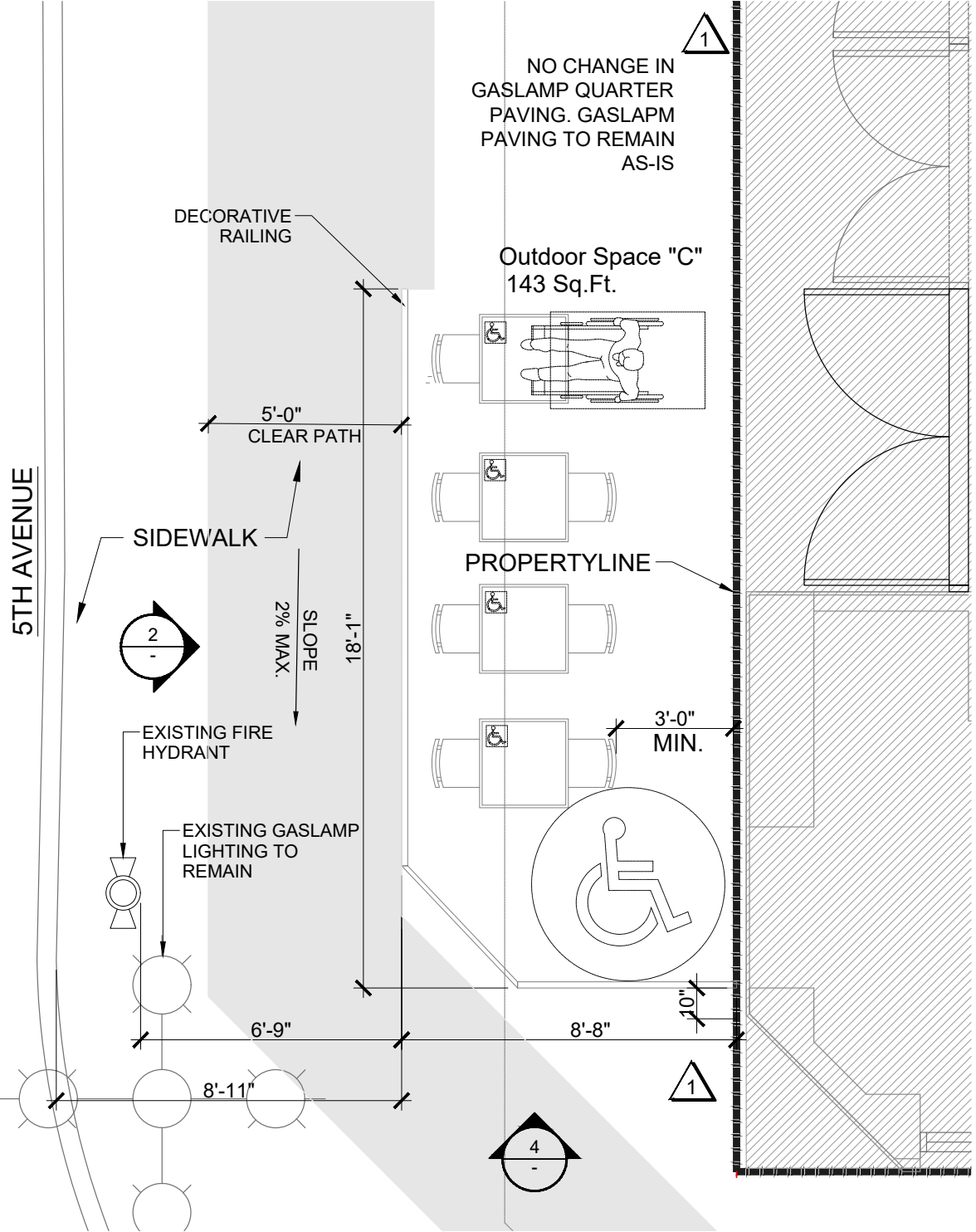
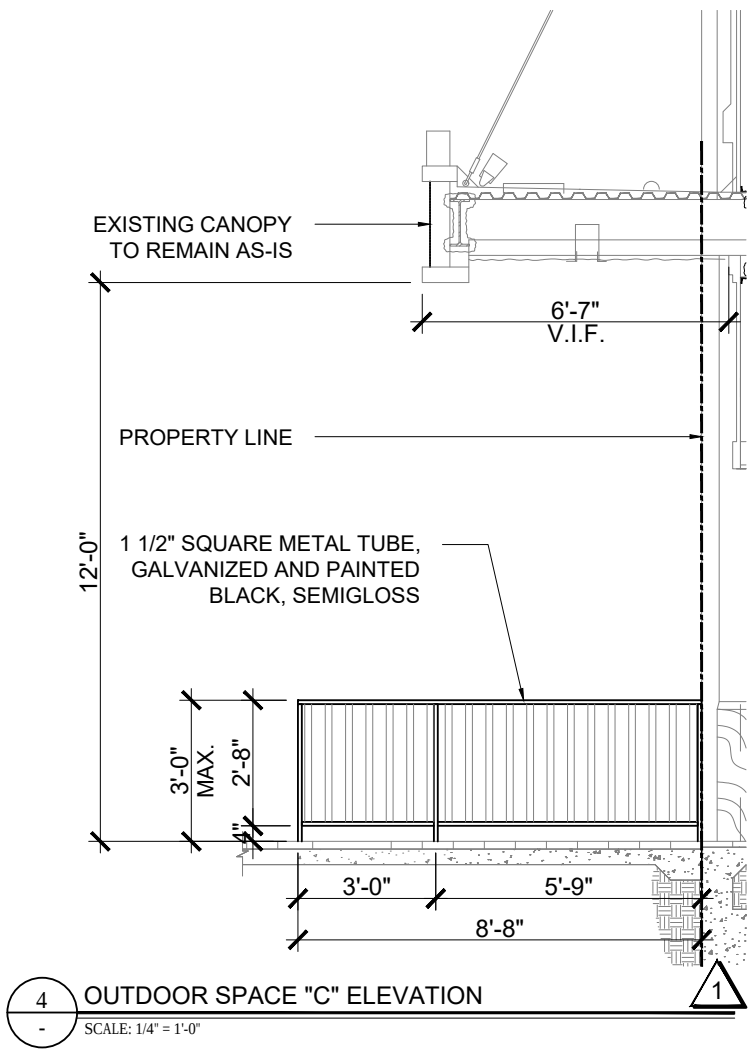
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SHEET NAME

OUTDOOR
SPACE "C"

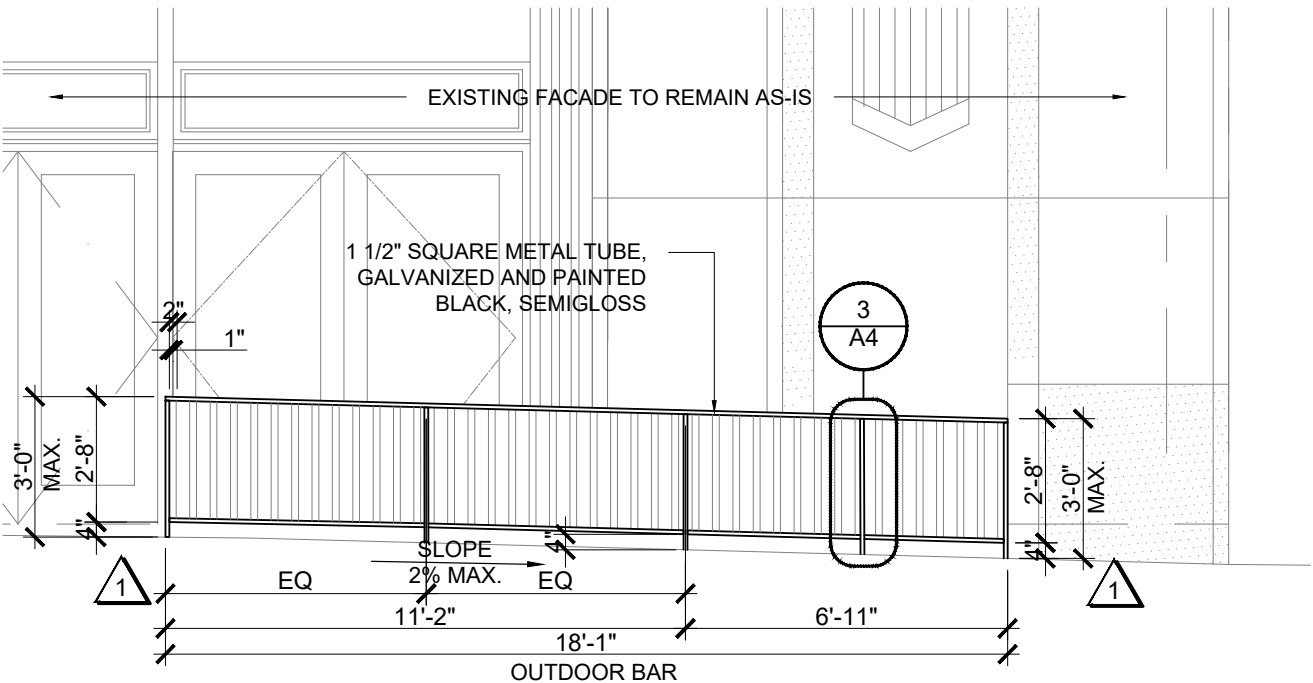
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A8



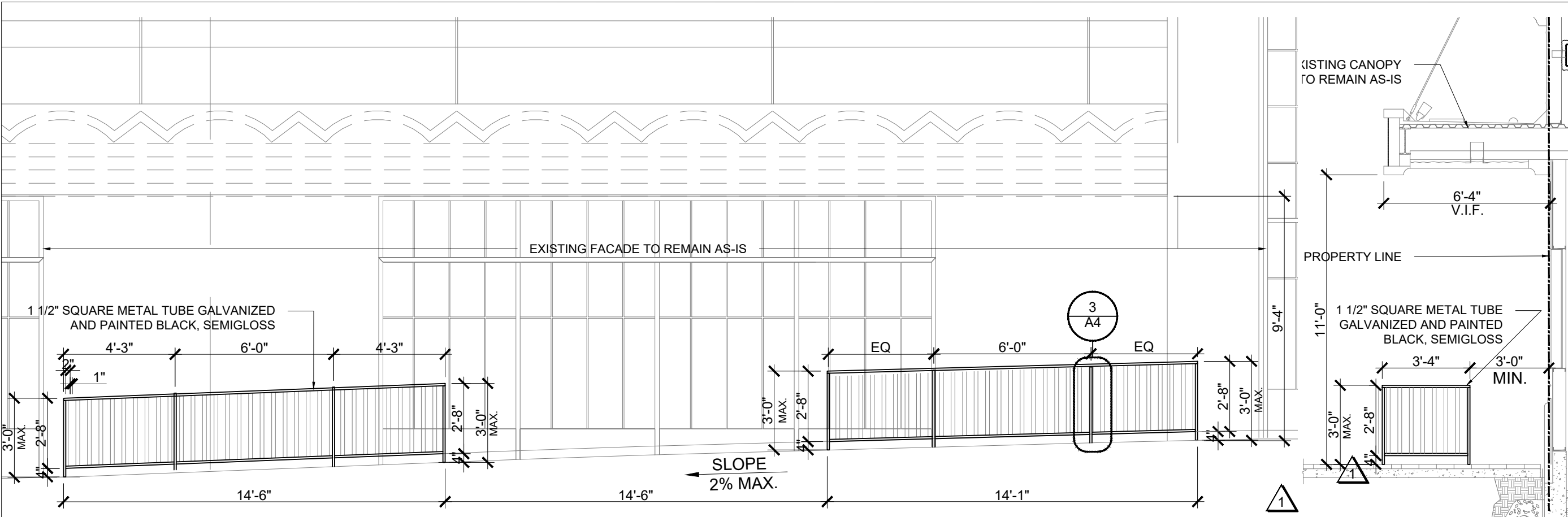
1 OUTDOOR SPACE "C" FLOOR PLAN

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



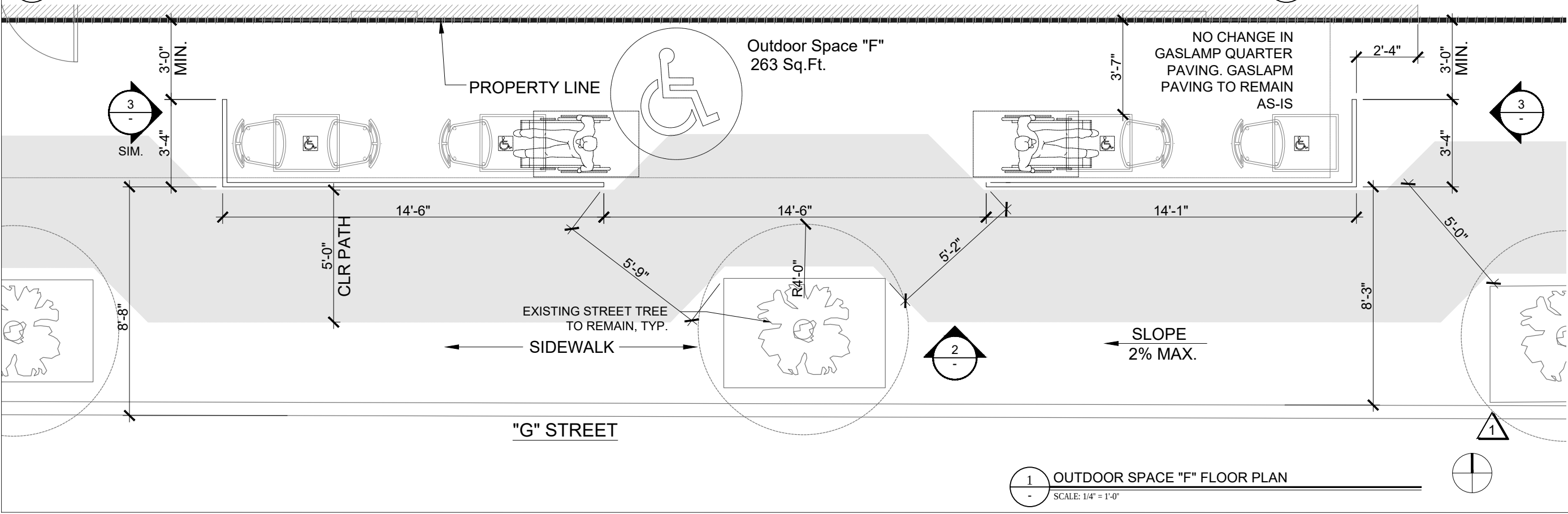
2 OUTDOOR SPACE "C" ELEVATION

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



2 OUTDOOR SPACE "F" ELEVATION
SCALE: 1/4" = 1'-0"

3 OUTDOOR SPACE "F" ELEVATION
SCALE: 1/4" = 1'-0"



1 OUTDOOR SPACE "F" FLOOR PLAN
SCALE: 1/4" = 1'-0"

JOB# 19-1538.1
STORE#



PROJECT ARCHITECT
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SHEET NAME

OUTDOOR
SPACE "F"

SHEET NUMBER

A9

JOB# 19-1538.1
STORE#



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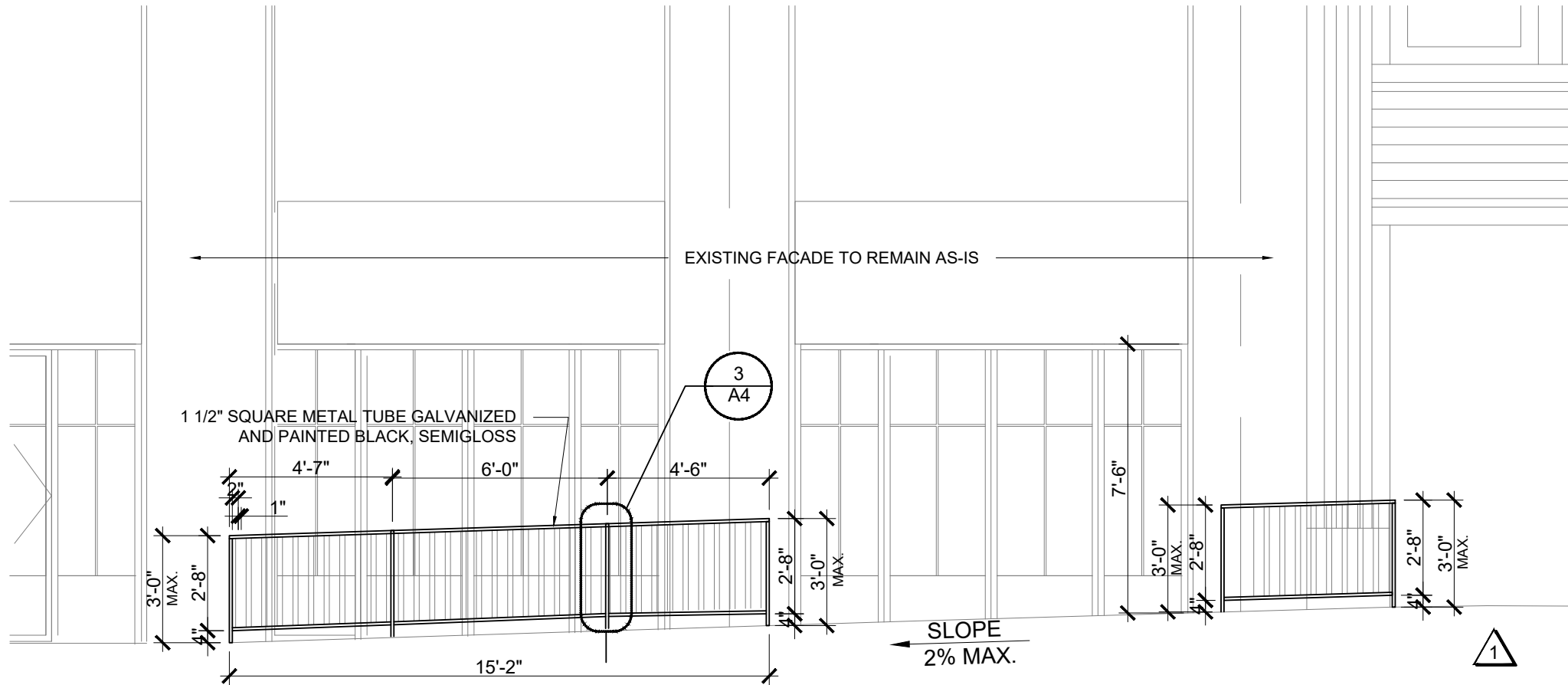
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N.U.P. DELTA 2:	11.12.2021

SHEET NAME

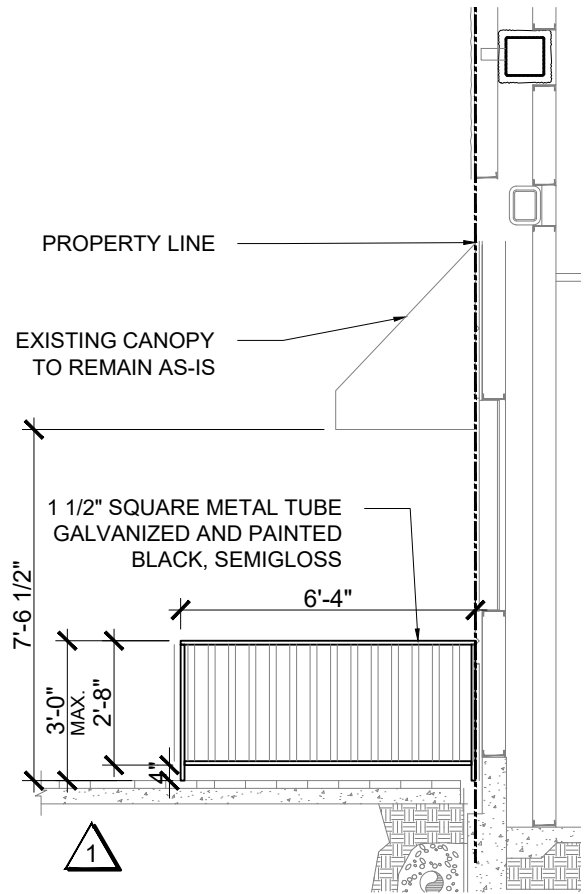
OUTDOOR
SPACE "G"

SHEET NUMBER

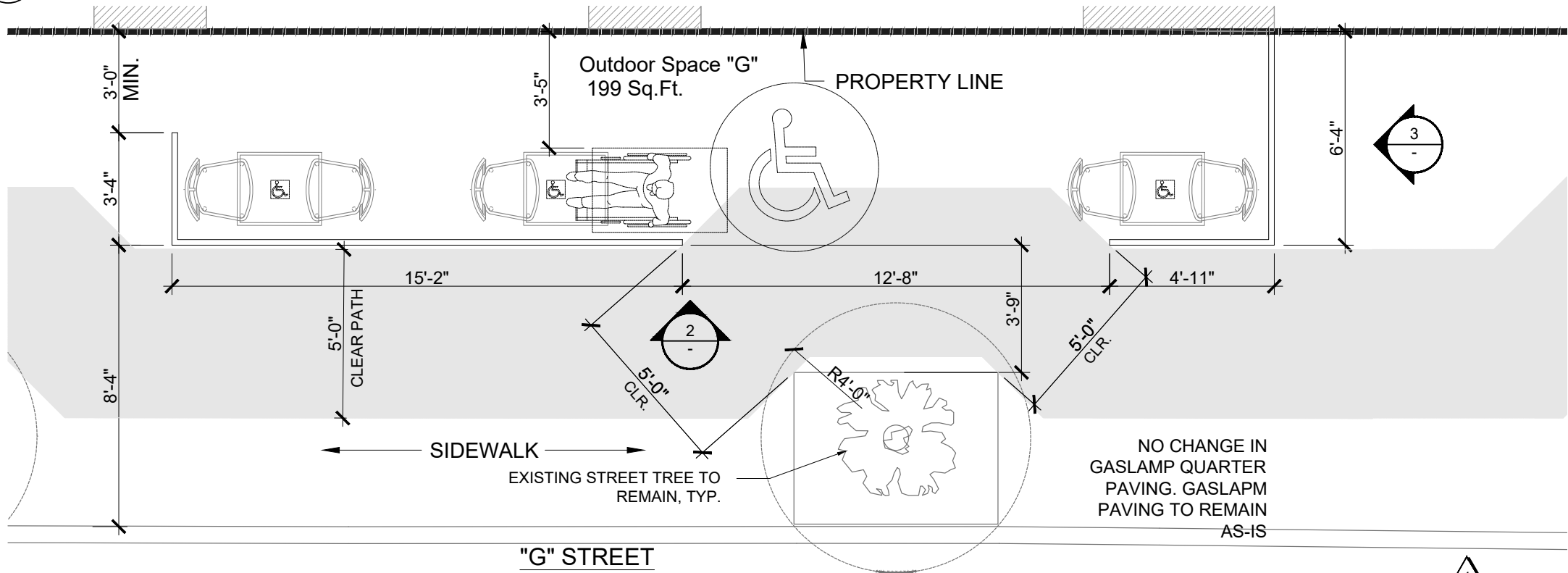
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2 OUTDOOR SPACE "G" ELEVATION
SCALE: 1/4" = 1'-0"



3 OUTDOOR SPACE "G" ELEVATION
SCALE: 1/4" = 1'-0"

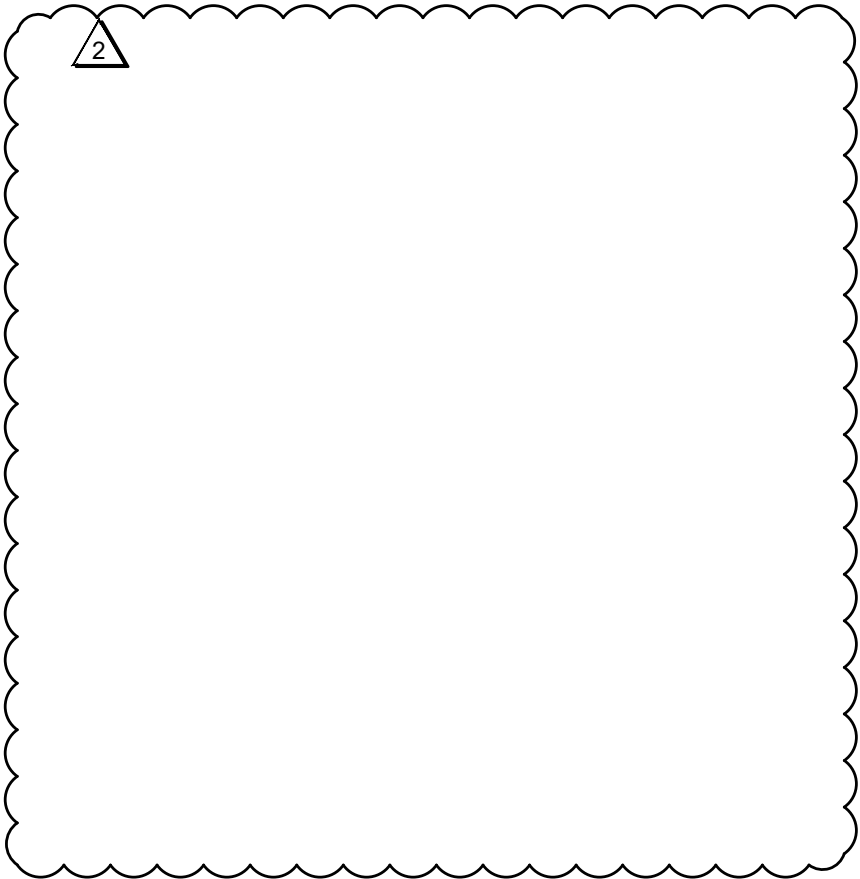


1 OUTDOOR SPACE "G" FLOOR PLAN
SCALE: 1/4" = 1'-0"





3 5TH AVE EXISTING FACADE
- SCALE: N.T.S.



OPENINGS UNDER TENANT
IMPROVEMENT PERMIT #655375



1 5TH AVE RENDERING
- SCALE: N.T.S.

JOB# 19-1538.1
STORE#:



PROJECT ARCHITECT
**RETAIL
AMP
DESIGN**

801 BOWSPRIT ROAD
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SHEET NAME
**5TH AVE
RENDERING**

SHEET NUMBER
A11



3 6TH AVE EXISTING FACADE
- SCALE: N.T.S.



OPENINGS UNDER TENANT
IMPROVEMENT PERMIT #655375

1 6TH AVE RENDERING
- SCALE: N.T.S.

JOB# 19-1538.1
STORE#



PROJECT ARCHITECT
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SHEET NAME

6TH AVE
RENDERING

SHEET NUMBER

A12



EXISTING FACADE TO REMAIN AS-IS



JOB# 19-1538.1
STORE#



PROJECT ARCHITECT
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SHEET NAME

"G" STREET
FACADE

SHEET NUMBER

A13

JOB#: 19-1538.1
STORE#:



PROJECT ARCHITECT

RETAIL
AMP
DESIGN

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REVISIONS

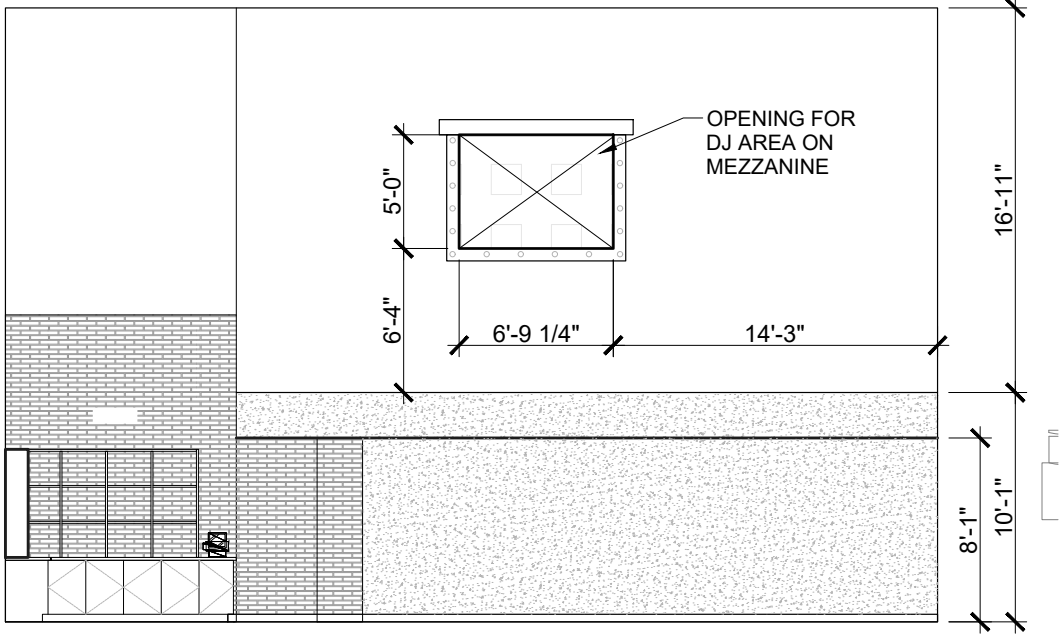
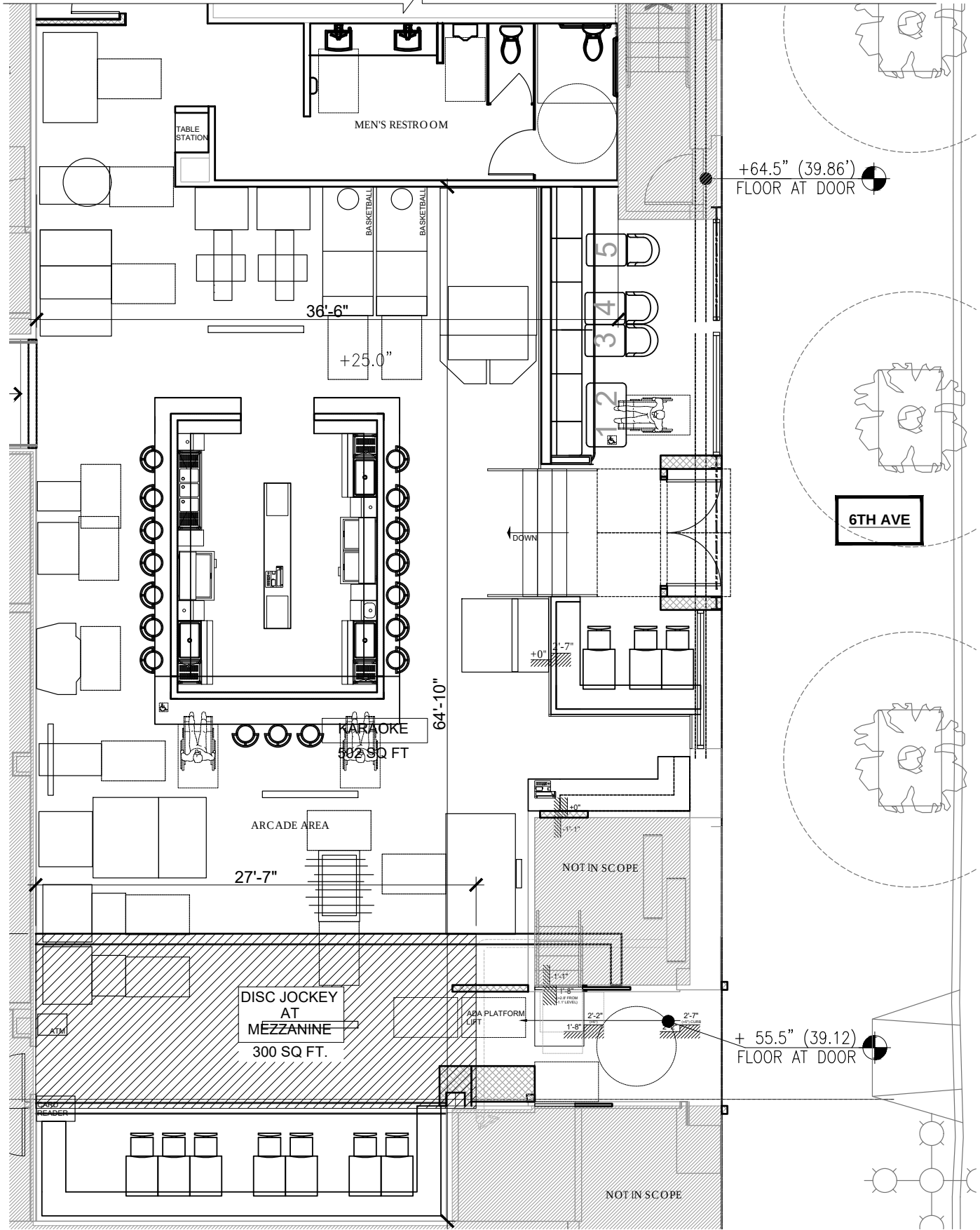
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SHEET NAME

ARCADE /
RESTAURANT

SHEET NUMBER

A15



2 ARCADE / RESTAURANT FLOOR PLAN

SCALE: 1/8" = 1'-0"

1 ARCADE / RESTAURANT ELEVATION

SCALE: 1/8" = 1'-0"

JOB# 19-1538.1
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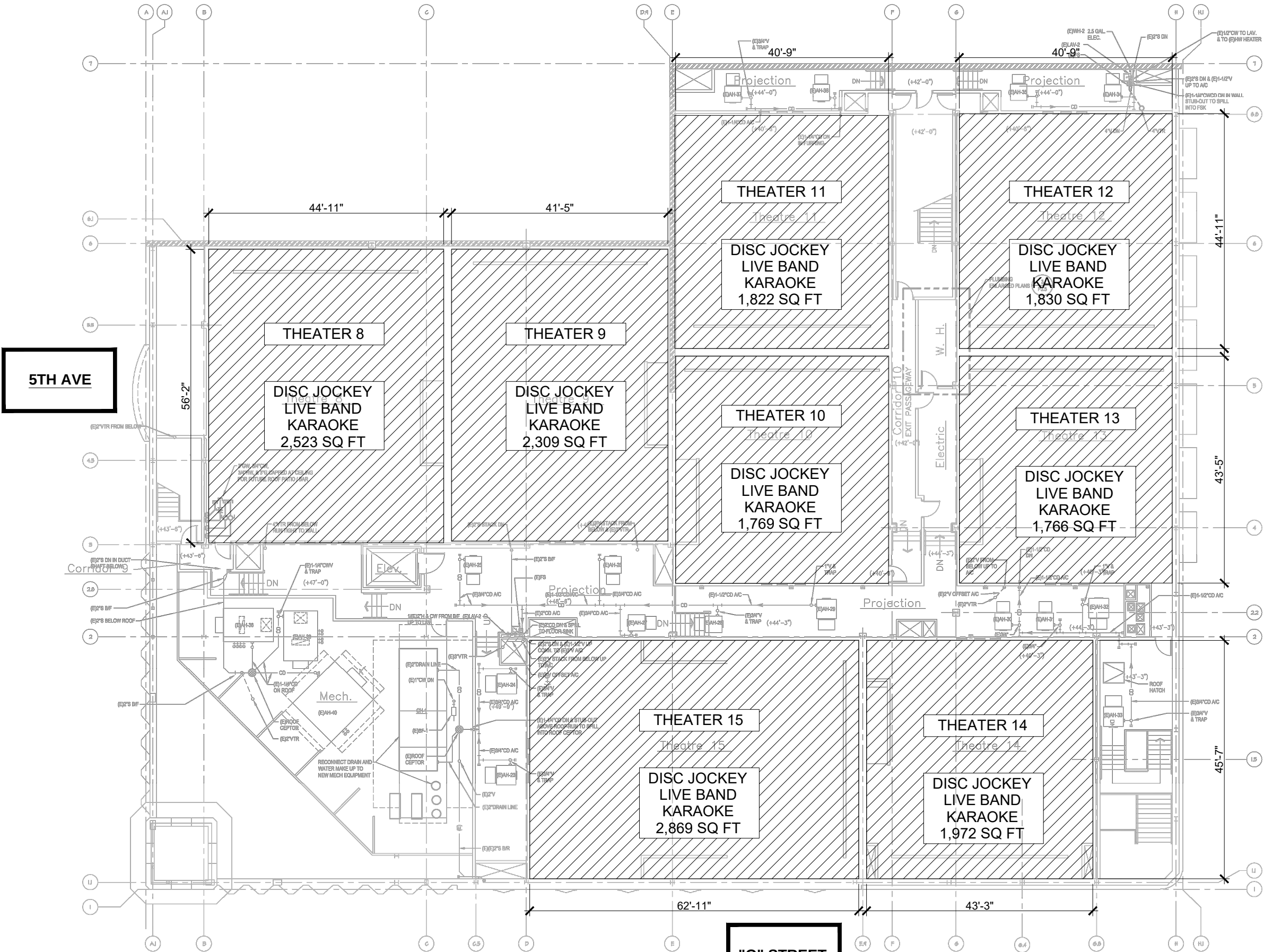
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N.U.P. PRELIM:	01.13.2020
N.U.P. PRELIMINARY:	03.02.2020
N.U.P. SUBMITTAL:	04.03.2020
N.U.P. DELTA 1:	09.20.2021
N.U.P. DELTA 2:	11.12.2021

SHEET NAME

SECOND FLOOR

SHEET NUMBER

A16



JOB# 19-1538.1
STORE#



PROJECT ARCHITECT
**RETAIL
AMP
DESIGN**

801 BOWSPRIT ROAD
CHULA VISTA, CA 91914
PH: (619) 215-1677

DISCRETIONARY PERMIT FOR
SUGAR FACTORY BUILDING
701 FIFTH AVENUE
SAN DIEGO, CA 92101

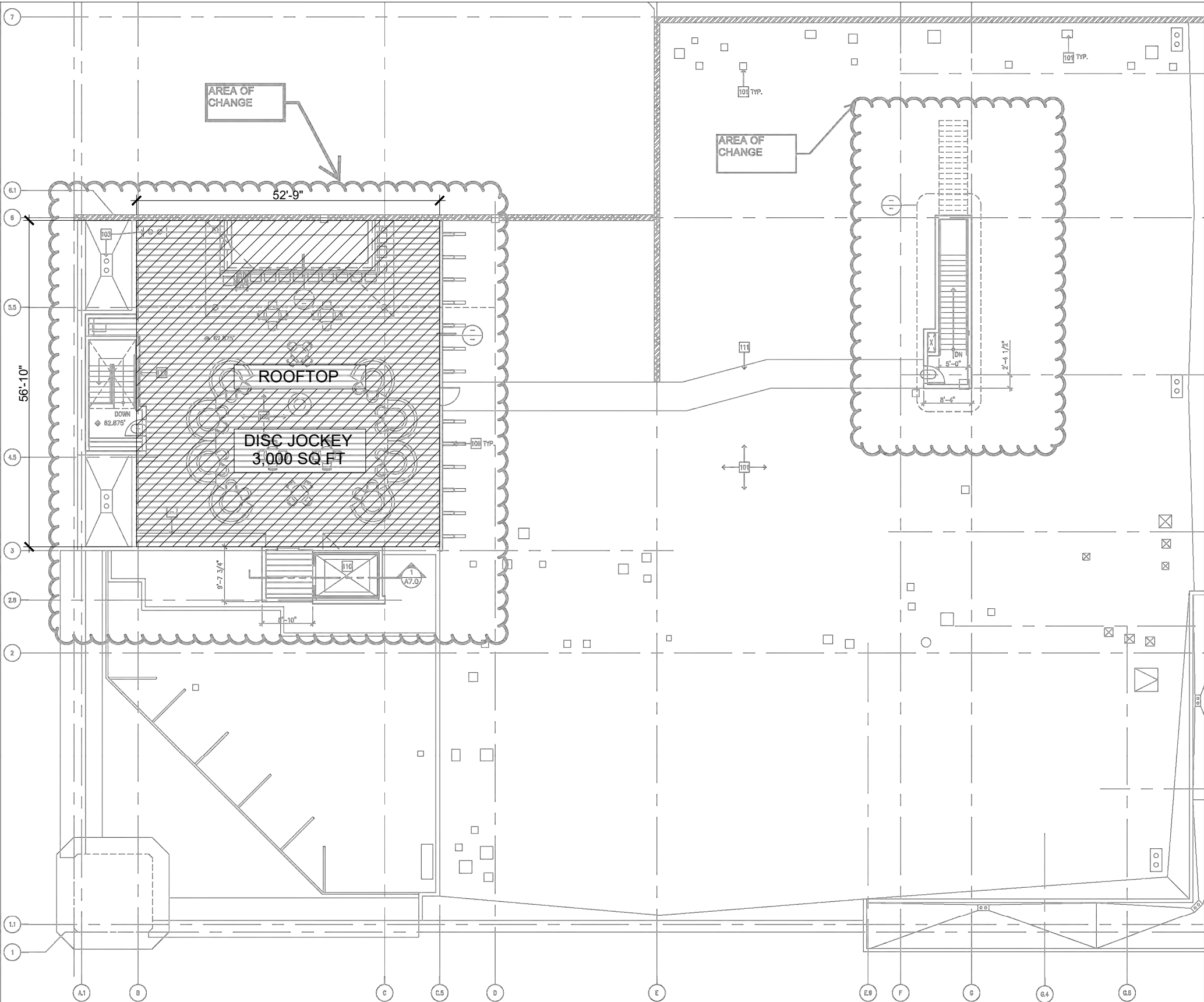
REVISIONS	
N.U.P. PRELIM:	01.13.2020
N.U.P. PRELIMINARY:	03.02.2020
N.U.P. SUBMITTAL:	04.03.2020
N.U.P. DELTA 1:	09.20.2021
N.U.P. DELTA 2:	11.12.2021

SHEET NAME

ROOFTOP

SHEET NUMBER

A17



JOB# 19-1538.1
STORE#



PROJECT ARCHITECT
**RETAIL
AMP
DESIGN**

801 BOWSPRIT ROAD
CHULA VISTA, CA 91914
PH: (619) 215-1677

DISCRETIONARY PERMIT FOR
SUGAR FACTORY BUILDING
701 FIFTH AVENUE
SAN DIEGO, CA 92101

REVISIONS	
N.U.P. PRELIM:	01.13.2020
N.U.P. PRELIMINARY:	03.02.2020
N.U.P. SUBMITTAL:	04.03.2020
N.U.P. DELTA 1:	09.20.2021
N.U.P. DELTA 2:	11.12.2021

SHEET NAME
**DIRECTIONAL
CURB**
SHEET NUMBER

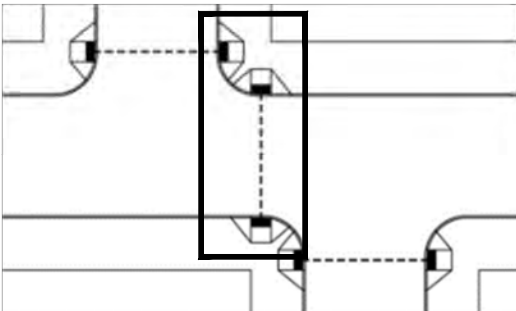
A18
1



CURB RAMP DESIGN GUIDELINES (V1.0-09.10.20)

CURB RAMP PLACEMENT

With the approval of a DCE, it is acceptable for offset T-intersections to share one crossing:



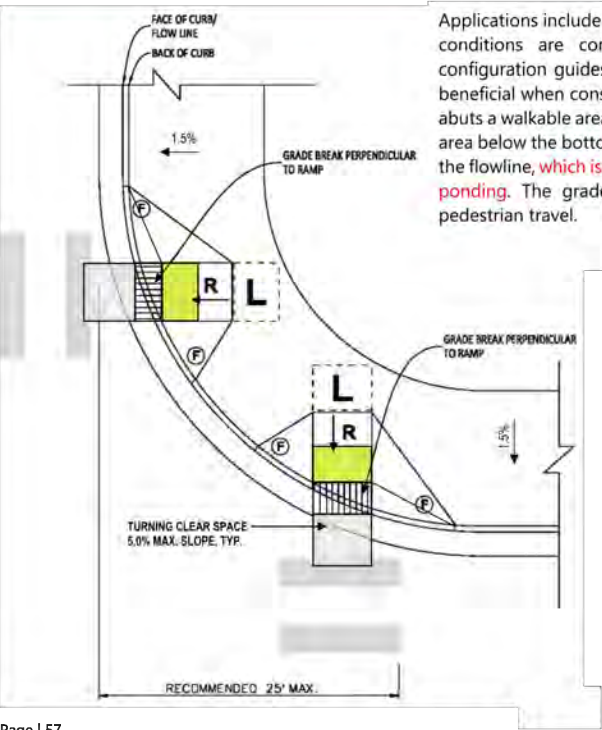
Option: Share One Crossing Between Offset Intersections

- d. Notes:
- The following conditions shall be prioritized for curb ramp improvements:
 - Any marked pedestrian crossings without curb ramps at existing intersections and midblock crossings with sidewalks.
 - Any existing marked pedestrian crossings without curb ramps at signalized intersections with no sidewalks.
 - Any existing marked or unmarked pedestrian crossings with no curb ramps at intersections with no sidewalks where pedestrian trails are established.
 - A Deviation from Standards Form must be submitted if curb ramp construction is not feasible at any location within an intersection.
 - Pedestrian barricades may be required if a diagonal curb ramp is used at a corner that serves a single pedestrian crossing.
 - The placement of crosswalk markings shall be determined by the City's Traffic Engineer.



CURB RAMP DESIGN GUIDELINES (V1.0-09.10.20)

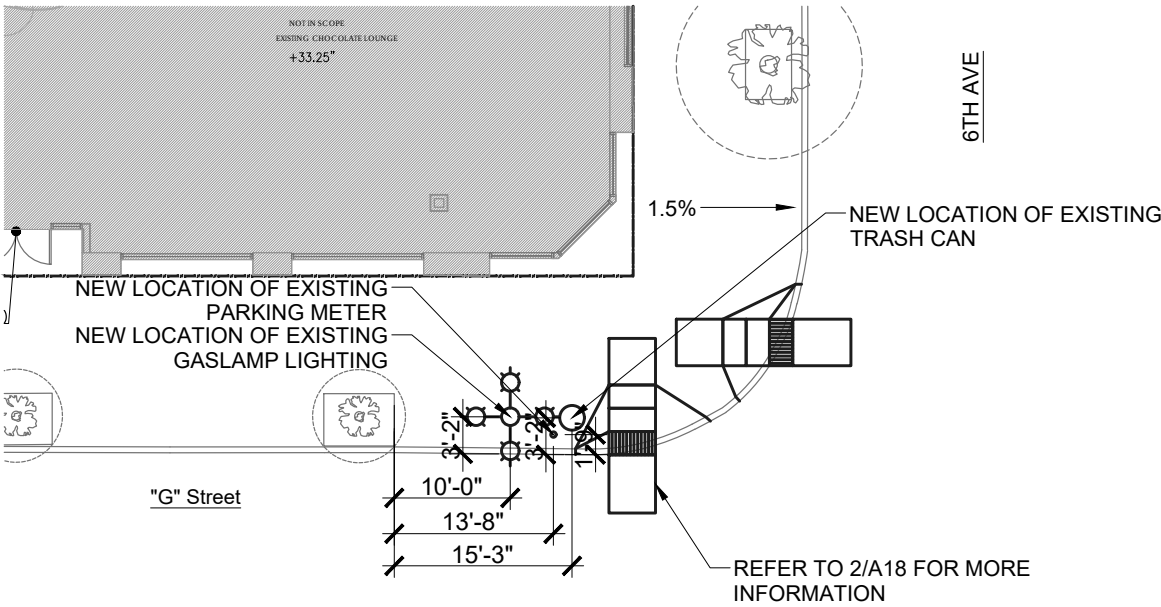
**PERPENDICULAR CURB RAMPS
DIRECTIONAL CURB RAMPS ON A LARGE RADIUS CORNER**



Applications include intersections with large corner radii and wide sidewalks. These conditions are common on arterial roadways in suburban settings. This configuration guides pedestrians in the direction of the street crossing, which is beneficial when constructed properly. Flared sides must be provided when a ramp abuts a walkable area. Level landings must be provided at the top of the ramps. The area below the bottom of the ramps should be sloped at no more than 2% towards the flowline, **which is often a challenge to transition to the gutter slopes and prevent ponding.** The grade breaks must be perpendicular to the ramp/direction of pedestrian travel.

LEGEND:	
L	LANDING/TURNING SPACE 4' X 4' MIN. (5' X 5' PREFERRED) AND MAX 2.0% SLOPE IN ALL DIRECTIONS. PREFERRED DESIGN VALUE = 1.5%
R	RAMP SURFACE SLOPE SHALL BE LESS THAN 8.33% MAX IN THE DIRECTION SHOWN. THE CROSS SLOPE SHALL NOT EXCEED 2.0%. PREFERRED DESIGN VALUES = 7.5% AND 1.5%.
	DETECTABLE WARNING SURFACE SEE DTL 3/A19
	GRADE BREAK 1.5% NOT TO EXCEED 2.0% SLOPE IN FRONT OF GRADE BREAK. DRAIN TO FLOW LINE.
F	RAMP FLARE SLOPE SHALL BE LESS THAN 10.00% MAX. FLARES MUST BE PRESENT WHEN RAMP ABUTS A WALKABLE SURFACE

2 **DIRECTIONAL CURB**
SCALE: N.T.S.



1 **"G" Street and 6TH Ave Intersection**
SCALE: 1/16" = 1'-0"

JOB# 19-1538.1
STORE#



PROJECT ARCHITECT
RETAIL AMP DESIGN

801 BOWSPRIT ROAD
CHULA VISTA, CA 91914
PH: (619) 215-1677

DISCRETIONARY PERMIT FOR
SUGAR FACTORY BUILDING
701 FIFTH AVENUE
SAN DIEGO, CA 92101

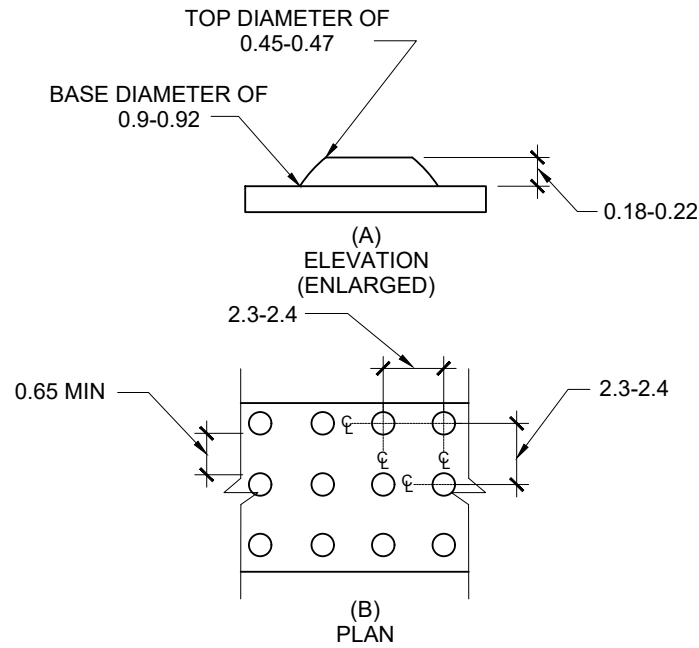
REVISIONS	
N.U.P. PRELIM:	01.13.2020
N.U.P. PRELIMINARY:	03.02.2020
N.U.P. SUBMITTAL:	04.03.2020
N.U.P. DELTA 1:	09.20.2021
N.U.P. DELTA 2:	11.12.2021

SHEET NAME

DIAGONAL CURB

SHEET NUMBER

A19



3 TRUNCATED DOMES
SCALE: 1/16" = 1'-0"

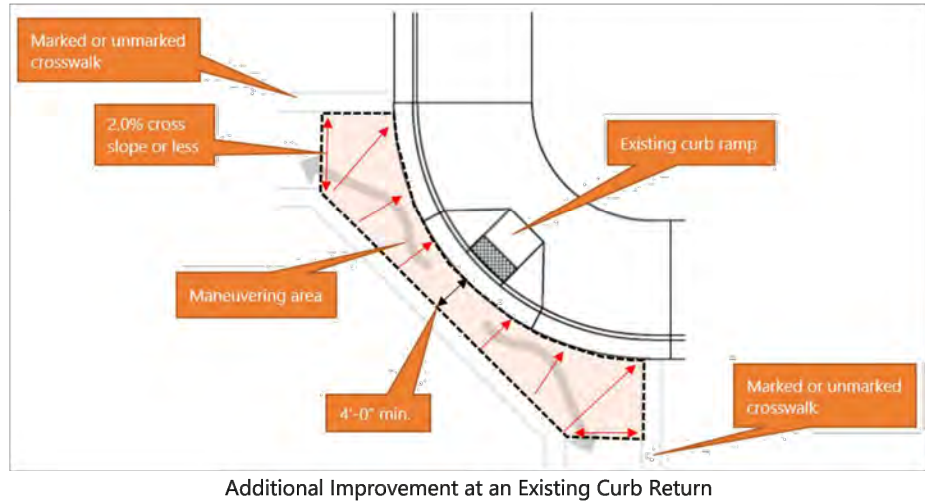


CURB RAMP DESIGN GUIDELINES (V1.0-09.10.20)

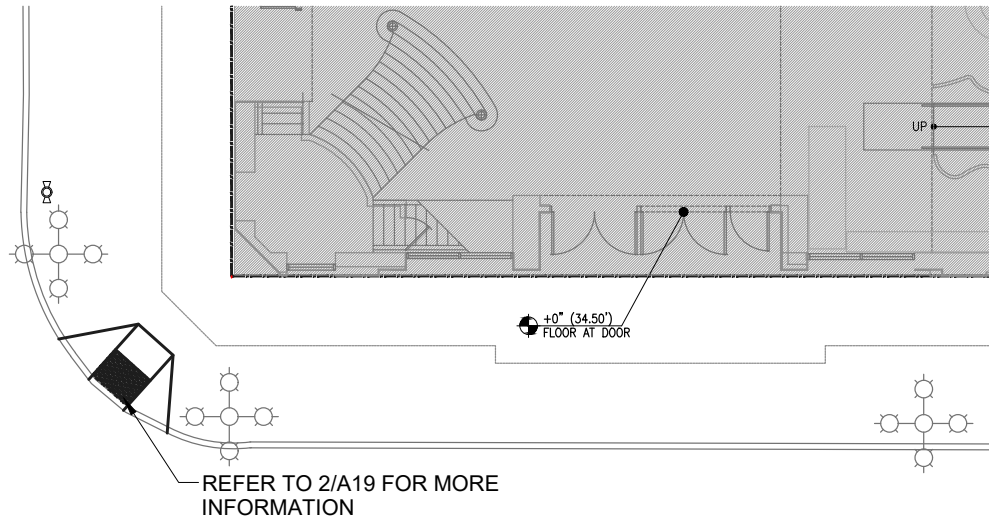
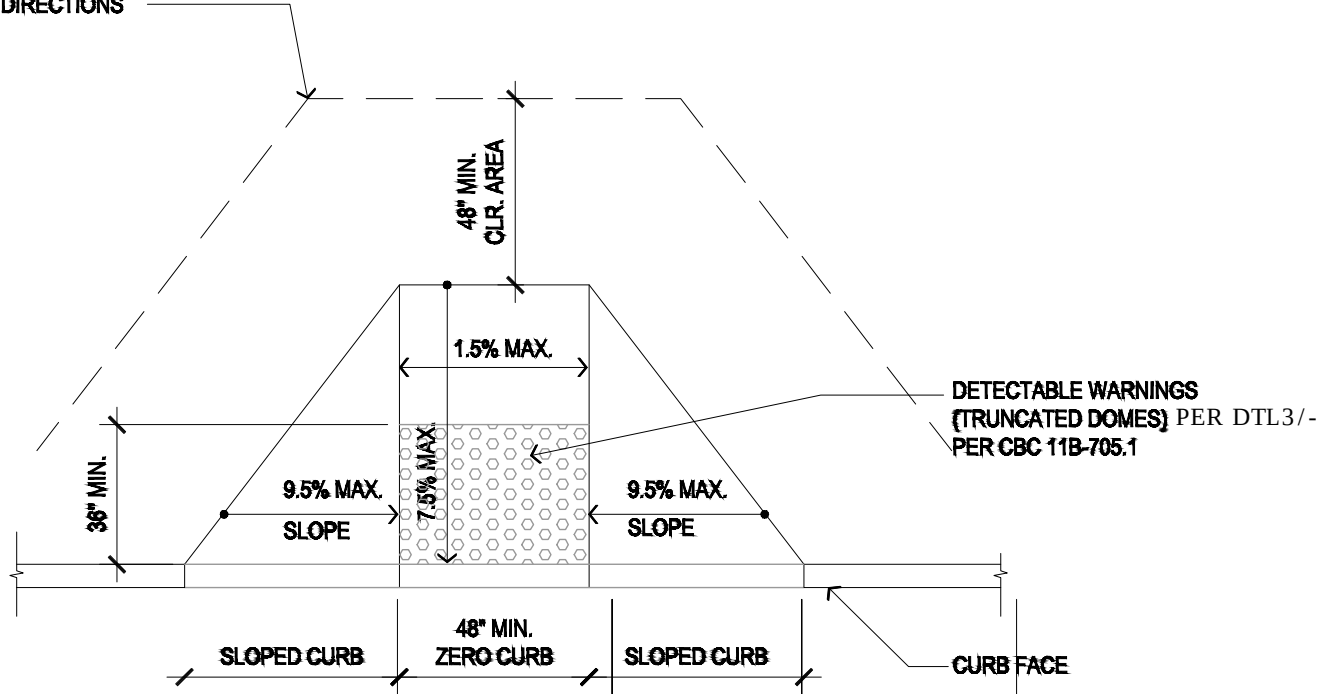
REQUIREMENTS

In **alterations** where existing physical constraints prevent the installation of a curb ramp at each pedestrian crossing (**CBC § 11B-206.2.19** and **PROWAG § R207.1**), a single diagonal curb ramp shall be permitted to serve both pedestrian street crossings. **PROWAG § R207.2 Alterations.**

- Missing or damaged sidewalk panels within the curb return, including 10 linear feet leading up to the curb return, shall be installed/replaced per the most current City Standards.
- Resurface the maneuvering area in front of the curb ramp to 2.0% cross slope without creating ponding at the corner. See figure illustration below.



LIMIT OF REQUIRED CONC.
SIDEWALK LEVEL CLEAR AREA W/
1.5% MAX. SLOPE. IN ANY
DIRECTIONS



1 "G" Street and 5TH Ave Intersection
SCALE: 1/16" = 1'-0"

2 DIAGONAL CURB
SCALE: N.T.S.

JOB# 19-1538.1
STORE#



PROJECT ARCHITECT
**RETAIL
AMP
DESIGN**

801 BOWSPRIT ROAD
CHULA VISTA, CA 91914
PH: (619) 215-1677

DISCRETIONARY PERMIT FOR
SUGAR FACTORY BUILDING
701 FIFTH AVENUE
SAN DIEGO, CA 92101

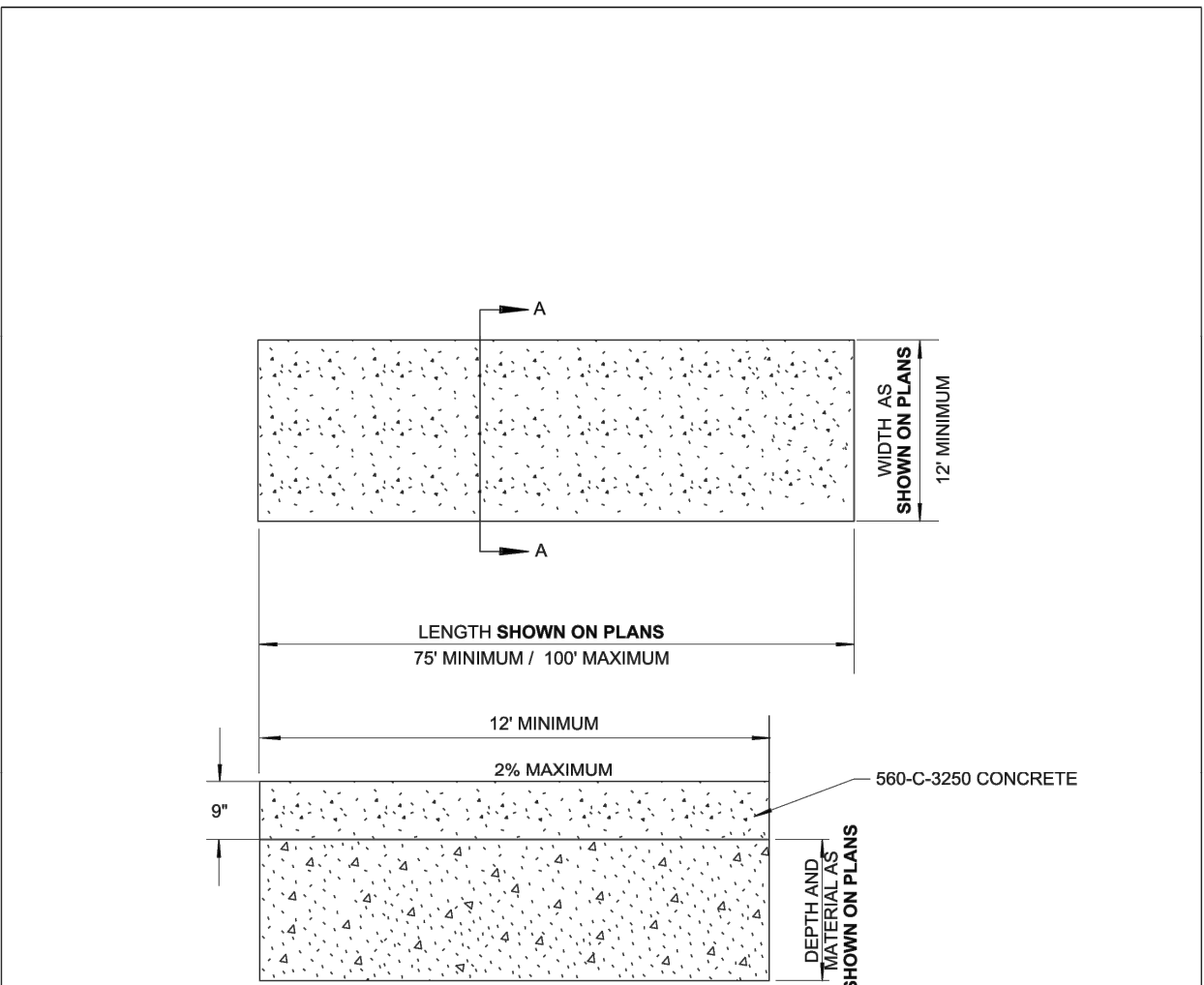
REVISIONS	
N.U.P. PRELIM:	01.13.2020
N.U.P. PRELIMINARY:	03.02.2020
N.U.P. SUBMITTAL:	04.03.2020
N.U.P. DELTA 1:	09.20.2021
N.U.P. DELTA 2:	11.12.2021

SHEET NAME

BUS PAD

SHEET NUMBER

A20

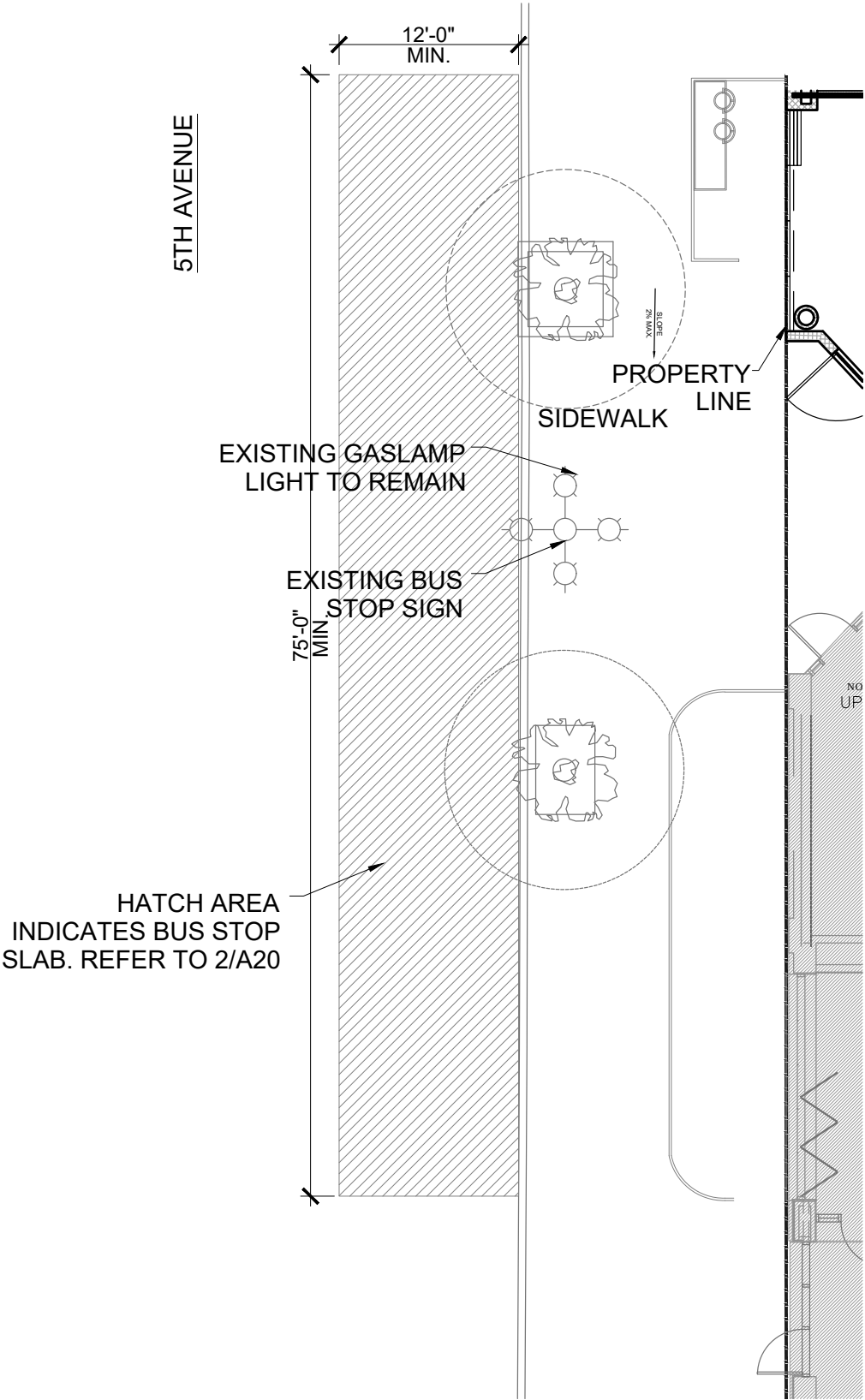


SECTION A-A

NOTE
1. BROOM FINISH PARALLEL WITH TRAFFIC.

REVISION	BY	APPROVED	DATE	CITY OF SAN DIEGO – STANDARD DRAWING	RECOMMENDED BY THE CITY OF SAN DIEGO STANDARDS COMMITTEE
ORIGINAL		G. PARKINSON	0580		
REVISION		J. CASEY	0683		
DRAWING	LC	A. OSKOU	0694		
MAX	GP	F. BELOCK	496		
UPDATED	KA	J. NAGELVOORT	01/12	BUS STOP SLAB	COORDINATOR <i>Chung</i> R.C.E. 56523 DATE 9/4/18
REDRAFTED	CD	J. NAGELVOORT	0918		
				DRAWING NUMBER	SDG-102

5TH AVENUE



HATCH AREA
INDICATES BUS STOP
SLAB. REFER TO 2/A20



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: 701 5TH AVE, LLC E-mail: mauricio@theatrebox.com

Address: 701 5TH AVENUE City: SAN DIEGO State: CA Zip Code: 92101 Telephone:

3. Project Name:

701 5th AVE CUP / NUP

4. Project Information

Permit/Environmental Determination & Permit/Document No.: #656544 Date of Decision/Determination: DECEMBER 15, 2021 City Project Manager: NICOLE PARE

Decision(Describe the permit/approval decision):

HEARING OFFICER APPROVED CUP REQUEST FOR LIVE ENTERTAINMENT IN THE INTERIOR BUT DENIED LIVE ENTERTAINMENT TO THE EXTERIOR / ROOFTOP.

HEARING OFFICER APPROVED NUP FOR SIDEWALK CAFE.

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.)

Staff mistook / misrepresented Applicants interest in building mitigation measures as required by acoustical study.

The San Diego Police Department (SDPD) inaccurately stated that they were not present at the Downtown Community Planning Group (DCPG) meeting on October 20, 2021, when they were in fact present & spoke at the meeting. DCPG eventually voted 10-1-1 to support Applicant's request for rooftop live entertainment until 12:00am.

Lastly, members of the public who made adverse allegations against the Applicant's request did not accurately identify themselves and their addresses as required. Furthermore, they did not demonstrate definitive evidence to support their claims other than opinion.

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

Signature: 

Date: December 27, 2021

Note: Faxed appeals are not accepted.

Clear Form

PLANNING COMMISSION RESOLUTION NO. ____
CONDITIONAL USE PERMIT NO. 2412192
NEIGHBORHOOD USE PERMIT NO. 2412193
701 5th AVENUE CUP/NUP - PROJECT NO. 656544

WHEREAS, Oliver McMillan Gaslamp Theaters LLC, Owner, and 701 Fifth Ave. LLC, Permittee, filed an application with the City of San Diego for a Conditional Use Permit to allow indoor live entertainment and a Neighborhood Use Permit (NUP) to allow sidewalk café dining areas within the public right-of-way on G Street and a street-level outdoor use area on private property along Sixth Avenue ("Project"), as described in and by reference to the approved Exhibits "A" and corresponding conditions of approval for the associated Conditional Use Permit No. 2412192 and Neighborhood Use Permit No. 2412193, on portions of a 0.26-acre site;

WHEREAS, the Project site is located on the north side of G Street between Fifth and Sixth avenues in the Gaslamp Quarter Planned District (GQPD) and the Gaslamp/Horton neighborhood of the Downtown Community Plan (DCP) ("Downtown") area;

WHEREAS, the Project site is legally described as: South ½ of Lot D, Lots E, F, G, H and I in Block 70 of Horton's Addition, in the City of San Diego, County of San Diego, State of California, according to Map thereof, on file in the Office of the County Recorder of San Diego County;

WHEREAS, the Environmental Analysis Section (ESA) of the Development Services Department completed a California Environmental Quality Act (CEQA) review for the Project and determined that the Project is consistent with the previously certified City of San Diego Downtown Environmental Impact Report (SCH# 2003041001). Development within the Downtown Community Planning area is covered under the following documents, all referred to as the "Downtown FEIR": Final Environmental Impact Report (FEIR) for the San Diego Downtown Community Plan, Centre City Planned District Ordinance, and 10th Amendment to the Centre City Redevelopment Plan, certified by the former Redevelopment Agency ("Former Agency") and the City Council on March 14, 2006

(Resolutions R-04001 and R-301265, respectively); subsequent addenda to the FEIR certified by the Former Agency on August 3, 2007 (Former Agency Resolution R-04193), April 21, 2010 (Former Agency Resolution R-04510), and August 3, 2010 (Former Agency Resolution R-04544), and certified by the City Council on February 12, 2014 (City Council Resolution R-308724) and July 14, 2014 (City Council Resolution R-309115); and, the Final Supplemental Environmental Impact Report for the Downtown San Diego Mobility Plan certified by the City Council on June 21, 2016 (Resolution R-310561). Development within the DCP area is also covered under the following documents, all referred to as the "CAP FEIR": FEIR for the City of San Diego Climate Action Plan (CAP), certified by the City Council on December 15, 2015 (City Council Resolution R310176), and the Addendum to the CAP, certified by the City Council on July 12, 2016 (City Council Resolution R-310595). Development within the DCP area is also consistent with the FEIR for Complete Communities: Housing Solutions and Mobility Choices (SCH No. 2019060003) certified by the San Diego City Council on November 9, 2020 (Resolution R313279). The Downtown FEIR, CAP FEIR, and Complete Communities FEIR are "Program EIRs" prepared in compliance with California Environmental Quality Act (CEQA) Guidelines Section 15168. The information contained in the Downtown FEIR, CAP FEIR, and Complete Communities FEIR reflects the independent judgement of the City of San Diego as the Lead Agency. The environmental impacts of the Project were adequately addressed in the Downtown FEIR, CAP FEIR, and Complete Communities FEIR; the Project is within the scope of the development program described in the Downtown FEIR, CAP FEIR, and Complete Communities FEIR and are adequately described within each document for the purposes of CEQA; and, none of the conditions listed in CEQA Guidelines Section 15162 exist. Therefore, no further environmental documentation is required under CEQA.

WHEREAS, on February 24, 2022, the Planning Commission of the City of San Diego considered Conditional Use Permit No. 2412192 and Neighborhood Use Permit No. 2412193 pursuant to the Land Development Code of the City of San Diego; NOW, THEREFORE,

BE IT RESOLVED by the Planning Commission of the City of San Diego, that it adopts the following findings with respect to Conditional Use Permit No. 2412192 and Neighborhood Use Permit No. 2412193:

A. CONDITIONAL USE PERMIT San Diego Municipal Code [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 proposed development consists of a Conditional Use Permit (CUP) request to allow indoor live entertainment on the ground floor in two vacant tenant spaces (a 3,968 square foot (SF) tenant space for a new restaurant/nightclub and a 3,463 SF tenant space for a new arcade/restaurant) and on the 2nd floor within the eight-auditorium movie theater totaling approximately 16,860 SF. The Project site is located on the north side of G Street between Fifth and Sixth avenues in the GQPD, Transit Priority Area, Transit Priority Area Overlay Zone, Airport Influence Area (San Diego International Airport - Review Area 2), and the Federal Aviation Administration (FAA) Part 77 Noticing Area within the Gaslamp neighborhood of the Downtown Community Plan (DCP) area.

Per the DCP, the Gaslamp neighborhood is envisioned as one which serves both downtown residents and employees and the region at large, as well as downtown's significant numbers of tourists and conventioners. Downtown's continued attractiveness to visitors in part relies on sustaining the spark, intrigue, and entertainment qualities of Horton/Gaslamp neighborhood. Planning for these two districts revolves around maintaining high activity levels, refining circulation, rejuvenating open spaces, and protecting Gaslamp's historic qualities.

The uses within the building offer a variety of commercial services to the surrounding neighborhood. The primary use of the building is a movie theater and an existing theater lobby, retail area, and two restaurant venues are located on the ground floor. The two vacant tenant spaces on the ground floor are proposed as a restaurant/nightclub and a new arcade/restaurant with live entertainment which will provide an additional mix of uses and contribute to the diversity of commercial service uses in the Gaslamp neighborhood. Additionally, the Sixth Avenue tenant space has been vacant since the building was remodeled in 2018, and a new arcade/restaurant venue will activate the west side of Sixth Avenue between Fifth

and Sixth avenues with a high-activity use, an arcade and restaurant venue to access to the movie theater and retail shop.

Live entertainment is permitted in the GQPD with approval of a CUP, pursuant to the Gaslamp Quarter Planned District Ordinance (GQPDO) (SDMC Chapter 15, Article 7, divisions 1-3). The GQPDO provides Separately Regulated Use Regulations for establishments providing live entertainment. Per the Separately Regulated Use Regulations, SDMC 157.0305(a)(3)), all entertainment establishments are required to obtain and comply with all applicable permits, including a City of San Diego Police Permit; and sound and amplification equipment associated with live entertainment must conform to the noise abatement and control regulations of Chapter 5, Article 9.5 of the SDMC ("Noise Ordinance").

The proposed live entertainment on the ground floor and 2nd floor of the existing 66,180-square-foot Theater Box building provides additional variety to the commercial service uses offerings within the building. The conditions of approval require a Police Entertainment Permit be obtained as applicable per Chapter 3, Article 3, Division 15 of the SDMC. Additionally, the Applicant is proposing all doors and windows to remain closed during live entertainment as is noted on the approved Exhibit "A" which will reduce adverse off-site noise impacts and ensure compliance with the GQPDO Separately Regulated Use Regulations and Noise Ordinance.

In addition, the proposed indoor live entertainment is consistent with the DCP goals and policies aimed at providing an overall balance of uses (3.1-G-2), foster a rich mix of uses in the Gaslamp neighborhood (3.5-G-2), and maintain the Gaslamp Quarter as the entertainment and shopping district, with a broad mix of uses, high activity, and wide-ranging appeal (6.4-G-1) because the Project proposed two new uses within the building: a street-level restaurant/nightclub on Fifth Avenue and arcade/restaurant venue on Sixth Avenue.

The addition of the commercial restaurant and entertainment uses adds to the already diverse mix of commercial services uses currently occupying the building (movie theater and existing street-level restaurants). The additional uses coupled with existing movie theater retail, and restaurant uses, are consistent with the DCPs goal of providing a wide range of uses which appeal to residents, visitors, and employees of Downtown and a wide range of age groups. For example, the movie theater rooms, with the approval of the requested CUP, could be repurposed as is proposed, as karaoke rooms for private events or for special performances by nationally recognized musical and performance artists.

Live entertainment is permitted with the approval of a CUP in the GQPD. The Project is consistent with the land use goals and policies for the Gaslamp neighborhood per the DCP as the multi-use commercial venues will contribute to the wide variety of commercial land uses in the Gaslamp Quarter; therefore, the proposed use 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 proposed development consists of a CUP request to allow indoor live entertainment on the ground floor in two vacant tenant spaces (a 3,968 SF for a new restaurant/nightclub and a 3,463 SF tenant space for a new arcade/restaurant) and on the 2nd floor within the eight-auditorium movie theater totaling approximately 16,860 SF, will not be detrimental to the public health, safety and welfare of the community when operated with the recommended conditions of approval. Some of the recommended conditions of approval to protect the public health, safety and welfare of the community include a restriction on the live entertainment from 11:00 a.m. to 1:30 a.m., seven days a week. The conditioned hours are consistent with other live entertainment venues in the Project's vicinity. Additionally, the permit conditions require all doors and windows to remain closed during live entertainment and require made-to-order food to be available at all three of the interior tenant spaces where live entertainment is proposed. A condition of approval also requires a noise study prior to commencement of live entertainment to ensure that sound levels during live entertainment do not negatively impact adjacent land uses, including residential.

The San Diego Police Department reviewed the proposed live entertainment and recommended conditions aimed to address potential adverse impacts of the use on the health, safety, and welfare of the neighborhood which are included in the permit. These conditions include restricting live entertainment to within the enclosed building only, limiting live entertainment to the venues permanent sound system and prohibiting supplemental speakers or amplification equipment, restricting hours for indoor live entertainment, and requiring a second acoustical study prior to commencement of live entertainment on the premises.

Other standard conditions for live entertainment CUPs have been included in the permit including requiring security guards during live entertainment events, safe practice training for alcoholic beverage services, prohibiting loitering in the public right-of-way and requiring compliance with the Noise Ordinance. When operated in compliance with the recommended conditions of approval the proposed development will not be detrimental to the public health, safety, and welfare. The conditions of approval provide a revocation process in the event the Permittee is found in violation of the conditions of approval.

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 proposed development consists of a CUP request to allow indoor live entertainment on the ground floor in two vacant tenant spaces (a 3,968 SF for a new restaurant/nightclub and a 3,463 SF tenant space for a new arcade/restaurant) and on the 2nd floor within the eight-auditorium movie theater totaling approximately 16,860 SF. The proposed development was reviewed by a multiple-discipline review

team for compliance with GQPDO and applicable sections of the Land Development Code (LDC). The development was found in compliance with the LDC regulations, when operated in compliance with the conditions of approval and no deviations are proposed. Therefore, the proposed indoor live entertainment at the specified locations within the building, will comply with the regulations of the LDC including any allowable deviations pursuant to the LDC.

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

The proposed development consists of a CUP request to allow indoor live entertainment on the ground floor in two vacant tenant spaces (a 3,968 SF for a new restaurant/nightclub and a 3,463 SF tenant space for a new arcade/restaurant) and on the 2nd floor within the eight-auditorium movie theater (totaling approximately 16,860 SF) at an existing two-story plus mezzanine movie theater and restaurant building commonly known as the Theater Box. The building is located at 701 Fifth Avenue (north side of G Street between Fifth and Sixth avenues) in the GQPD, Transit Priority Area, and is within the Horton/Gaslamp neighborhood of the DCP area.

The GQPD is a mixed-use commercial district. A broad mix of high activity uses are permitted within the district, such as the active commercial uses proposed on the ground floor and the existing movie theater, are permitted by right in the GQPD.

The DCP envisions the Gaslamp/Horton neighborhood as Downtown's premier entertainment and nightlife district. Live entertainment associated with bona-fide eating and drinking establishments, as is proposed on the ground floor and 2nd floor, are permitted in the GQPD, subject to the approval of a CUP. The Project site is surrounded by low to mid-rise commercial restaurant and retail buildings to the north, south, and west. Existing land uses east of the Project site on the east side of Sixth Avenue include a mix of one-story and two-story restaurants as well as a four-story residential apartment building and a seven-story residential condominium with street-level restaurant space.

The proposed live entertainment use is permitted within the GQPD with approval of a CUP, and additionally, Gaslamp District is Downtown's premier entertainment district per the DCP, and the proposed indoor live entertainment is consistent with land use approvals for live entertainment within the Project's vicinity. Therefore, when operated in compliance with the conditions of approval, the proposed indoor live entertainment use is appropriate at the proposed location.

B. NEIGHBORHOOD USE PERMIT San Diego Municipal Code [SDMC section 126.0205]:

1. Findings for all Neighborhood Use Permits:

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

The proposed development includes a Neighborhood Use Permit (NUP) for a 300 SF street-level dining area on private property along Sixth Avenue and 845 SF of sidewalk café dining area within the public right-of-way on G Street.

Eating and drinking establishments with Outdoor Use Areas (outdoor dining on private property) and Sidewalk Cafes (outdoor dining within the public right-of-way) are allowed within the GQPDO with approval of an NUP. The GQPD is San Diego's prime entertainment and celebration destination and is intended to provide for a variety of uses including restaurants, retail shops, cafes, and nightclubs, as well as uses that support business, professional and personal needs.

The proposed sidewalk café area on G Street and street-level outdoor dining area on private property along Sixth Avenue is consistent with the following DCP goals and policies:

- 4.1-P-15: Encourage the position of outdoor seating and/or cafes where appropriate.
- 3.5-G-2: Foster a rich mix of uses in all neighborhoods, while allowing differences in emphasis on uses to distinguish between them.
- 3.1-G-2 Provide for an overall balance of uses—employment, residential, cultural, government, and destination—as well as a full compendium of amenities and services.

The street-level outdoor dining areas contribute to the overall balance of uses within the neighborhood as the outdoor dining areas provide a street-level dining experience for the building's restaurant tenant spaces including a new arcade/restaurant on Sixth Avenue. The sidewalk café dining areas on G Street will be used for grab-and-go food and beverage purchases. Made-to-order food and beverage items will be available during all hours the street-level outdoor dining areas are occupied and the multiple commercial uses in the building contribute to fostering a rich mix of uses in the GQPD.

Deviations from the Sidewalk Café Regulations, including the hours of use and occupancy of sidewalk café areas, is allowed through the approval of an NUP, and the requested hours for the occupancy of the sidewalk café dining areas on G Street are until 12:00 a.m. seven days a week, which is consistent with other NUPs granted for sidewalk café dining areas within the GQPD. In addition, Gaslamp is Downtown's premier entertainment district as described by the DCP, thereby accommodating a wide variety of uses and activity, including outdoor dining. The proposed sidewalk café barrier provides an adequate clear path and is compliant with the Sidewalk Café and GQPDO requirement that the encroachment is no more than one-half of the existing sidewalk width, per GQPD requirements. The sidewalk café on G Street maintains a five-foot clear direct path of travel and is eight feet clear of the existing street tree, street tree grate, and decorative street lights on G Street. Therefore, the proposed development will not adversely affect the applicable land use plan.

b. The proposed development will not be detrimental to the public health,

safety, and welfare; and

The proposed sidewalk café dining area on G Street and street-level outdoor dining area on private property along Sixth Avenue will not be detrimental to the public health, safety, and welfare of the community when operated with the recommended conditions of approval, which include requirements regarding noise, hours of operation, and additional standard conditions to ensure that the use is compatible with the surrounding neighborhood.

The conditions of approval also require public improvement upgrades surrounding the Project site in order to bring the site up to current City standards, including requiring installation of one (1) City standard bus pad on Fifth Avenue and the reconstruction of the existing curb ramps at the intersections fronting the property line with current City Standard curb ramps with truncated domes per Standard Drawing SDG-130 and SDG-132, satisfactory to the City Engineer.

In addition, the sidewalk café dining area on G Street is conditioned to comply with the GQPDO requirement that any encroachment shall be no more than one-half of the existing sidewalk width, provides the required five-foot minimum direct clear path of pedestrian travel per the Sidewalk Café Regulations, and is conditioned with the same hours for the sidewalk café dining area that were permitted on Fifth Avenue under the previously approved NUP No. 2017-42.

The 300 SF street-level outdoor dining area along Sixth Avenue is proposed completely within the property line boundary and does not encroach into the right-of-way. The proposed hours of this outdoor dining area of until 12:00 a.m. seven days per week are consistent with all other proposed outdoor dining areas in the Project vicinity.

The proposed development, including a sidewalk café area on G Street and a street-level outdoor dining area on private property along Sixth Avenue is conditioned to comply with the pedestrian clear path requirements found in the GQPDO and City's Sidewalk Café Regulations. The Project is proposing to install a bus pad and upgraded directional curbs at the two intersections fronting the property. The Project has been reviewed by all required disciplines and all issues have been addressed. Therefore, when operated in compliance with the conditions of approval, the proposed sidewalk café and outdoor use area 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 proposed development including sidewalk café dining areas in the right-of-way on G Street and an outdoor use area within the property line along Sixth Avenue, will comply to the maximum extent feasible with the regulations of the GQPDO and LDC with the approval of an NUP including the requested deviation from SDMC

Section 141.0621(a)(3)(F) which limits the hours of operation of a sidewalk café and restricts alcohol, food, or beverages service within the sidewalk café to no later than 10:00 p.m. Sunday through Thursday and after 11:00 p.m. Friday through Saturday for sidewalk cafes permitted as a Limited Use . Per SDMC Section 141.0621(b), deviations from the Sidewalk Café design and operational requirements are allowed through the approval of an NUP if the decision maker finds that the sidewalk café with the proposed deviation is a suitable use for the proposed site and will not infringe on use of the public right-of-way by pedestrians.

Per SDMC Section 141,0621(b)(2), in making the determination to approve a proposed deviation from the Sidewalk Café operational requirements, the decision maker shall consider: 1.) the width of the sidewalk; 2.) the design and relationship of the sidewalk café to other existing or planned uses in the vicinity; 3.) the amount of pedestrian use and impact of sidewalk café location on pedestrian activities; and, 4.) the sidewalk café's ability to fit the character of the area, create an outdoor pedestrian plaza, intensify pedestrian activity, and make the street activity more attractive. The requested hours for the sidewalk café and outdoor use area are until 12:00 a.m., seven days a week. The proposed outdoor use area on Sixth Avenue is not subject to the sidewalk café regulations because the outdoor use area is located on private property. The sidewalk café dining areas proposed within the public right-of-way on G Street are subject to the Sidewalk Café Regulations. The G Street sidewalk cafes provides a 5-foot-wide clear path of pedestrian travel as required per the Sidewalk Café Regulations. The Gaslamp Quarter is a neighborhood with a high-level of pedestrian activity; however, pedestrian traffic tends to be on north-south streets, whereas the sidewalk café area is proposed on G Street between Fifth and Sixth Avenue which is currently not activated with pedestrians due to street level vacancies at the subject premises. The proposed sidewalk café including the deviation from the limited use hours for sidewalk cafes, fits the character of the Gaslamp Quarter (Downtown's entertainment and nightlife venue), and will activate the public right-of-way on the north side of G Street between Fifth and Sixth Avenue.

In addition, the requested hours are consistent with NUPs granted for sidewalk café approvals in Gaslamp and the proposed sidewalk café dining areas in the public right-of-way on G Street and an outdoor use area along Sixth Avenue within the property line boundary were reviewed by a multiple discipline review team and all Project issues have been addressed. For example, the width of the sidewalk on G Street is 14 feet and the proposed sidewalk café barriers encroaches 6 feet and 12 inches maximum into the public right-of-way which is less than one half of the sidewalk width consistent with the GQPDO, SDMC Section 157.0304(f). The deviation from the sidewalk café hours is allowed with the approval of an NUP pursuant to SDMC Section 141.0621(b) and the sidewalk cafés on Sixth Avenue complies with all other limited use requirements for sidewalk cafes found in SDMC Section 141.0621. The sidewalk cafes barriers provide the required 5-foot-wide clear path of travel, provide accessible seating and clearance for wheelchair seating, and provide the minimum required clearances from adjacent commercial establishments. The sidewalk café dining areas are also consistent with the Gaslamp Quarter Planned District Design Guidelines for the historic district which include the material of the

railing, height of the railing, and a requirement that the sidewalk café shall encroach no more than one half of the sidewalk width. For example, the proposed sidewalk café barriers are painted black metal. Therefore, the proposed sidewalk café and outdoor use areas will comply with the LDC, including any allowable deviations pursuant to the LDC.

BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the Planning Commission, Conditional Use Permit No. 2412192 and Neighborhood Use Permit No. 2412193 are hereby GRANTED by the Planning Commission to the referenced Owner/Permittee, in the form, exhibits, terms and conditions as set forth in Permit No. 2412192 and 2412193, a copy of which is attached hereto and made a part hereof.

Nicole Paré
Associate Planner
Development Services

Adopted on: February 24, 2022

IO#: 24008563

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: 24008563

SPACE ABOVE THIS LINE FOR RECORDER'S USE

CONDITIONAL USE PERMIT NO. 2412192
NEIGHBORHOOD USE PERMIT NO. 2412193
701 5th AVENUE CUP/NUP - PROJECT NO. 656544
PLANNING COMMISSION

This Conditional Use Permit No. 2412192 and Neighborhood Use Permit No. 2412193 is granted by the Planning Commission of the City of San Diego ("City") to Oliver McMillian Gaslamp Theatres, LLC, Owner, and 701 5th Ave., LLC, Permittee, pursuant to San Diego Municipal Code (SDMC) sections 126.0305 and 126.0205. The 0.26-acre site is located at 701 Fifth Avenue in the Gaslamp Quarter Planned District and within the Gaslamp neighborhood of the Downtown Community Plan area. The Project site is legally described as: South ½ of Lot D, Lots E, F, G, H and I in Block 70 of Horton's Addition, in the City of San Diego, County of San Diego, State of California, according to Map thereof, on file in the Office of the County Recorder of San Diego County.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/Permittee to allow indoor live entertainment and sidewalk café and street-level outdoor dining as described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] stamped approved February 24, 2021, on file in the Development Services Department.

The Project shall include:

- a. Indoor live entertainment on the ground level within the 3,320 SF restaurant/nightclub tenant space and the 2,270 square foot (SF) arcade restaurant/bar tenant space and on the second level within the eight auditoriums of the movie theater.
- b. A 300 SF street-level outdoor use area along 6th Avenue on private property.
- c. 845 SF of sidewalk café dining areas along G Street within the public right-of-way.
- d. Installation of City Standard public improvements including a bus pad adjacent to the site on Fifth Avenue, curb ramp with truncated domes at the corner of Fifth Avenue and G Street, and directional curb ramps with truncated domes at the corner of 6th Avenue.

- e. 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 30, 2024.
2. 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.
3. 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.
4. 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.
5. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.
6. Issuance of this Permit by the City does not authorize the Owner/Permittee for this Permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).
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.

10. 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.

11. 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.

ENVIRONMENTAL/MITIGATION REQUIREMENTS:

12. The Owner/Permittee shall comply with the Mitigation, Monitoring, and Reporting Program (MMRP) as specified in ENVIRONMENTAL IMPACT REPORT NO. 2003041001, to the satisfaction of the Development Services Department and the City Engineer.

CLIMATE ACTION PLAN REQUIREMENTS:

13. Owner/Permittee shall comply with the Climate Action Plan (CAP) Consistency Checklist stamped as Exhibit "A." Prior to issuance of any construction permit, all CAP strategies shall be noted

within the first three (3) sheets of the construction plans under the heading "Climate Action Plan Requirements" and shall be enforced and implemented to the satisfaction of the Development Services Department.

ENGINEERING REQUIREMENTS:

14. Prior to the issuance of any building permit, the Owner/Permittee shall assure by permit and bond the construction of one (1) City standard Bus Pad, adjacent to the site on Fifth Avenue as shown on Exhibit A, satisfactory to the City Engineer.
15. Prior to the issuance of any building permit, the Owner/Permittee shall assure, by permit and bond, the reconstruction of existing curb ramp at the corner of Fifth Avenue and G Street, with a current City Standard curb ramp with truncated domes per Standard Drawing SDG-130 and SDG-132, satisfactory to the City Engineer.
16. Prior to the issuance of any building permit, the Owner/Permittee shall assure, by permit and bond, the reconstruction of existing curb ramp at the corner of 6th Avenue and G Street, with current City Standard Directional curb ramps with truncated domes per Standard Drawing SDG-130 and SDG-132, satisfactory to the City Engineer.
17. Prior to the issuance of any building permit, the Owner/Permittee shall obtain a Sidewalk Café Permit, satisfactory to the City Engineer.
18. Prior to the issuance of any building permit, the Owner/Permittee shall obtain an Encroachment Maintenance Removal Agreement for tree grates, brick pavers, sidewalk cafe and removable private outdoor furniture located in the City's right-of-way, satisfactory to the City Engineer.
19. Prior to the issuance of any building permit, the Owner/Permittee shall obtain an Encroachment Maintenance Agreement for existing canopies, lights, and marquee encroaching in the City's right-of-way, satisfactory to the City Engineer.
20. Prior to the issuance of any building permit, the Owner/Permittee shall incorporate any construction Best Management Practices necessary to comply with Chapter 14, Article 2, Division 1 (Grading Regulations) of the SDMC, into the construction plans or specifications.
21. Prior to the issuance of any building 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.

LANDSCAPE REQUIREMENTS:

22. Prior to issuance of construction permits for public right-of-way improvements, the Permittee or Subsequent Owner shall submit complete landscape construction documents for right-of-way improvements to the Development Services Department for approval. Improvement plans shall take into account a 40 SF area around each tree which is unencumbered by utilities. Driveways, utilities,

drains, water and sewer laterals shall be designed so as not to prohibit the placement of street trees.

23. Prior to issuance of any building permit (including shell), the Owner/Permittee shall submit complete landscape and irrigation construction documents, which are consistent with the Landscape Standards, to the Development Services Department for approval. The construction documents shall be in substantial conformance with Exhibit "A," Landscape Development Plan, on file in the Development Services Department. Construction plans shall provide a 40-square-foot area around each tree that is unencumbered by hardscape and utilities unless otherwise approved per §142.0403(b)(6).

24. The Owner/Permittee shall be responsible for the maintenance of all landscape improvements shown on the approved plans, including in the right-of-way, unless long-term maintenance of said landscaping will be the responsibility of another entity approved by the Development Services Department. All required landscape shall be maintained consistent with the Landscape Standards in a disease, weed, and litter free condition at all times. Severe pruning or "topping" of trees is not permitted.

25. If any required landscape (including existing or new plantings, hardscape, landscape features, etc.) indicated on the approved construction documents is damaged or removed, 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.

PLANNING/DESIGN REQUIREMENTS:

26. All private outdoor lighting shall be shaded and adjusted to fall on the same premises where such lights are located and in accordance with the applicable regulations in the SDMC.

Indoor Live Entertainment

27. Indoor live entertainment consisting of amplified and non-amplified live music from a disc jockey, live band, and karaoke performances shall be permitted on the ground floor tenant spaces (3,396 SF restaurant/nightclub and a 3,463 SF arcade/restaurant) and on the 2nd floor in the eight-auditorium movie theater (totaling approximately 16,860 SF), subject to the following conditions:

- a. Live entertainment shall be limited to between the hours of 11:00 a.m. and 1:30 a.m. seven days per week.
- b. All doors and windows shall remain closed during all times of live entertainment.
- c. Made to order food shall be available during all times of live entertainment.
- d. No formal dance floor shall be provided.
- e. Live entertainment outside of the enclosed building is not permitted at any time.

ATTACHMENT 4

28. The sound system shall include noise limiting equipment and shall be operated at all times in conformance with the recommended settings and speaker placement outlined in the acoustical study by Dr. Leslie E. Penzes dated July 23, 2021 on file at the Development Services Department.

29. No supplemental speakers or amplification equipment shall be used at any time. Any modifications to the sound system shall be submitted to the City's Development Services Department for approval prior to installation and an acoustical study will be required at that time to analyze the noise impacts on surrounding residences.

30. Prior to the commencement of live entertainment, another noise confirmation test by a certified acoustical engineer shall be conducted and submitted to the Development Services Department to ensure that the sound system and noise levels are adequate and are consistent with the acoustical study by Dr. Leslie E. Penzes dated July 23, 2021. The Permittee shall be in compliance with the City's Noise and Abatement Ordinance at all times.

31. All live entertainment must be conducted in compliance with all applicable SDMC permits and regulations. If required, San Diego Police Department regulatory permits shall be obtained.

32. Sound and amplification equipment shall be monitored during and after business hours to ensure that audible noise remains at acceptable levels. Noise levels shall be in conformance with the Noise Abatement Standards of the SDMC and the City's Noise Ordinance. In the event that a noise or vibration complaint is filed, the appropriate decision maker shall evaluate the complaints and if it is determined that the business is potentially creating a nuisance to the neighborhood, a duly noticed hearing shall be scheduled. After receiving public testimony, the City Hearing Officer may revoke or modify the permit.

33. During the hours of live entertainment, the Permittee shall employ one security officer for every fifty (50) patrons of the live entertainment venue(s). The security officers shall wear clothing that identifies them as security officers and shall be on duty from the time live entertainment and dancing begins until one-half hour after the live entertainment ceases. Their primary duty shall be to patrol the interior and the exterior of the premises in order to alleviate police problems, excessive noise, abusive behavior, disturbances, and any other violations of law that occur on or about the licensed premises.

34. Any queuing of patrons outside of the establishment shall be maintained in an orderly manner and shall be so situated as to allow a clear pedestrian path of at least eight (8) feet on all sidewalk areas. Any queuing may not obstruct access to any other business.

35. Patrons awaiting entrance as well as those leaving the establishment shall be monitored so as to not create a nuisance by obstructing the sidewalk in the area of the business or adjacent business or by being publicly inebriated, noisy, or rowdy.

36. No patron shall be permitted to remove a partially consumed bottle or drink of any type of alcoholic beverage from the premises.

ATTACHMENT 4

37. All servers and security employees shall be trained and certified in responsible alcoholic beverage service policies and practices. This is to include: strong I.D. checking procedures, not serving intoxicated patrons and responsible beverage pricing.

Sidewalk Café on G Street

38. The 845 SF of sidewalk café dining area within the public right-of-way on G Street shall be delineated by a black metal railing no more than three feet tall as shown on the approved Exhibit "A" and shall maintain an eight-foot clearance from any obstruction in the public right-of-way and a direct clear path of travel no less than five feet wide.

39. The hours of operation for the sidewalk café on G Street shall be limited to no later than 12:00 a.m. seven days a week.

40. The sidewalk café on G Street may exist only in conjunction with the street-level eating and drinking establishment at 701 5th Avenue. The sidewalk café on G Street shall only be used for dining, drinking, and circulation and utilized by patrons during the hours allowed under this permit.

41. The sidewalk café on G Street shall comply with the design and operational regulations of the Gaslamp Quarter Design Guidelines and applicable regulations of the municipal code.

Outdoor Use Area on G Street

42. This permit allows use and operation of a 300 SF outdoor use area on private property on Sixth Avenue for the adjacent eating and drinking establishment. The hours of operation for the street-level outdoor use area shall be limited to no later than 12:00 a.m. seven days a week.

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.

APPROVED by the Planning Commission of the City of San Diego on February 24, 2022 and PC-_____.

ATTACHMENT 4

Conditional Use Permit No.: 2412192
Neighborhood Use Permit No.: 2412193
Date of Approval: February 24, 2022

AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES DEPARTMENT

Nicole Paré
Associate Planner, Urban Division
Development Services Department

**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.

Oliver McMillan Gaslamp Theatre, LLC
Owner

By _____
NAME
TITLE

701 5th Ave., LLC
Owner/Permittee

By _____
NAME
TITLE

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



December 10, 2021

David Nisleit
Chief of Police
City of San Diego
1401 Broadway
San Diego, CA 92101

RE: SUPPORT FOR 701 5th AVE LLC (dba - SUGAR FACTORY/CHINESE THEATRE)

Dear Chief Nisleit:

I am writing to lend my support for 701 Fifth Ave LLC's (doing business as Sugar Factory/Chinese Theatre) request for a Conditional Use Permit for Live Entertainment and Neighborhood Use Permit for a Sidewalk Café with the city of San Diego's Development Services Department.

The Downtown San Diego Partnership (Downtown Partnership) represents over 300 member organizations and over 11,000 property owners in Downtown and is the principal voice to advance Downtown as the leading economic, cultural and governmental center of our region.

The Sugar Factory/Chinese Theatre is located at 701 5th Avenue, San Diego, CA 92101 and was purchased in 2018 with the goal of revitalizing a movie theater in the heart of the Gaslamp Quarter. It has since been transformed to incorporate a quality dining experience for the entire family, state-of-the-art movie theaters and various nightlife concepts.

The Downtown Partnership is also supportive of the Sugar Factory/Chinese Theatre utilizing their rooftop area for Live Entertainment until 1:00 a.m. as it will offer another amenity for local patrons and the convention visitors who come to enjoy the Downtown skyline.

The Sugar Factory/Chinese Theatre is a welcomed addition to Downtown and I believe their request will add ambiance and complement the community in which they are located.

Thank you for your consideration, if I can be of further assistance, please feel free to contact me directly or Director of Government Affairs Josh Coyne at jcoyne@downtownsandiego.org.

Respectfully,

A handwritten signature in blue ink that reads "Betsy Brennan". The signature is fluid and cursive.

Betsy Brennan
President & CEO
(619) 234-0201



December 14, 2021

Mr. David Nisleit
Chief of Police
City of San Diego
1401 Broadway
San Diego, CA 92101

RE: SUPPORT FOR 701 5th AVE LLC (dba - SUGAR FACTORY/CHINESE THEATRE)

Dear Chief Nisleit:

On behalf of the California Restaurant Association, San Diego County Chapter (CRA), I would like to take this opportunity to express our strong support 701 FIFTH AVE LLC'S (doing business as SUGAR FACTORY/CHINESE THEATRE) request for a Conditional Use Permit for Live Entertainment and Neighborhood Use Permit for a Sidewalk Café with Civic San Diego.

Purchased in 2018, The SUGAR FACTORY/CHINESE THEATRE has been transformed to incorporate a quality dining experience for the entire family, state of the art movie theaters and various nightlife concepts.

This state of the art dining and entertainment establishment is truly a welcomed addition to Downtown San Diego. CRA believes that SUGAR FACTORY/CHINESE THEATRE request will not only add greater ambience to the surrounding community but fully compliment the heart of the Gaslamp Quarter.

It is for these reasons, we respectfully request that the City of Sa Diego staff approve the request for a Conditional Use Permit for Live Entertainment and Neighborhood Use Permit for a Sidewalk Café with Civic San Diego. Thank you for your consideration, if I can be of further assistance, please feel free to contact me directly at (619) 517-6435.

Sincerely


Chris Duggan
Director of Local Government Affairs
California Restaurant Asscoaiton