

**SALES TAX SHARING AGREEMENT
PHASE II
WINDFALL GROUP**

This Sales Tax Sharing Agreement (“Agreement”) is entered into this _____ day of _____, 2021, by and between the **CITY OF AURORA**, an Illinois municipal corporation, (the “**City**”) and **WINDFALL GROUP**, an Delaware limited liability company, (“**Windfall**”) (the City and Windfall may each be referred to as a “**Party**” and collectively referred to as “**Parties**”).

RECITALS

WHEREAS, the City is a home rule municipality pursuant to Article VII, Section 6(a) of the Illinois Constitution of 1970 and may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, the City has the authority, pursuant to the laws of the State of Illinois, to promote the health, safety, and welfare of the City and its residents, to prevent the spread of blight, to encourage private development to enhance the local tax base, to increase employment, and to enter into contractual agreements with developers and redevelopers for the purpose of achieving such objectives; and

WHEREAS, the City is authorized under the provisions of Art. VII, Section 10 of the Illinois Constitution of 1970 to contract and otherwise associate with individuals, associations, and corporations in any manner not prohibited by law; and

WHEREAS, the City is authorized under the provisions of Art. VIII of the State of Illinois Constitution to use public funds for public purposes; and

WHEREAS, the City is additionally authorized by 65 ILCS 5/8-11-20 to grant sales tax rebates under certain circumstances; and

WHEREAS, PACIFIC SQUARE DE, LLC (“Pacific”), a related entity of Windfall, has undertaken the renovation, reposition and expansion of the former Yorkshire Plaza shopping center located on New York Street and State Route 59 (the “Center”); and

WHEREAS, on February 27, 2010, the City, through its corporate authorities, approved a three-tiered incentive package upon the passage of Resolution No. R18-048; and

WHEREAS, pursuant to Resolution No. R19-065, the City and Pacific previously entered into a sales tax reimbursement agreement associated with Pacific’s Phase I renovations of the Center, as amended by that certain amendment to the sales tax agreement approved by Resolution No. R20-072 on October 13, 2020; and

WHEREAS, Windfall is now proposing to redevelop a second portion of the Center to include an additional 48,000 square feet (the “Minimum Footprint”) of retail space (the “Project”); and

WHEREAS, the additional retail space is located the northwest corner of Route 59 and New York Street, legally described on **Exhibit A** and depicted on **Exhibit B** (hereinafter referred to as the “Phase II Retail Space” or the “Property” with the intended use of the Phase II Retail Space to be 48,000 square feet of retail space the “Intended Use”); and

WHEREAS, Windfall intends to or has entered into lease agreements with new tenants to occupy the Phase II Retail Space; and

WHEREAS, Windfall has agreed to invest no less than \$Forty-Million and No/100 U.S. Dollars (\$40,000,000.00) in the development of the Phase II Retail Space (the “Project Budget”); and

WHEREAS, the maximum reimbursement incentive Windfall shall be eligible to receive pursuant to the terms of this Agreement is Two Million Five Hundred Thousand and No/100 U.S. Dollars (\$2,500,000.00); and

WHEREAS, the City has determined that the development of retail operations such as those contemplated herein is a highly competitive endeavor, and that the successful completion of the Project at the Property at this time necessitates the use of a variety of incentives and approvals, including, but not limited to, the payment of retailers’ occupation tax incentives permitted by 65 ILCS 5/8-11-20; and

WHEREAS, Windfall cannot successfully undertake the Project or any substantially and functionally equivalent development of the Phase II Retail Space without the ability to obtain retailers’ occupation tax incentives pursuant to the City’s municipal home rule powers; and

WHEREAS, after due and careful consideration, the City has determined that it is in the best interests of the City to enter into this Agreement to provide economic incentives to Windfall for the Project pursuant to its authority as a home rule unit of local government and pursuant to the terms and conditions hereinafter set forth.

WHEREAS, the City, through its corporate authorities, finds:

- (a) That the Phase II Retail Space is currently vacant land; and
- (b) That the Project is expected to create or retain job opportunities within the City;
and
- (c) That the Project will serve to further the development of adjacent areas; and
- (d) That without this Agreement and the incentives provided herein, the Project would not be possible; and
- (e) That Windfall has submitted documentation to the City proving its credit worthiness; and
- (f) That the Project will strengthen the commercial sector of the City; and
- (g) That the Project will enhance the tax base of the City; and
- (h) That this Agreement is made in the best interest of the City.

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinafter set forth, the receipt and sufficiency of which are hereby mutually acknowledged by the Parties, the City and Windfall hereby agree as follows:

1. Recitals. The foregoing recitals are hereby incorporated into this Agreement as if fully set forth herein. The City specifically makes the following findings of fact:

A. The Project on the Phase II Retail Space is an important development to meet the overall objectives of the City, thereby implementing and bringing to completion a significant planned development.

B. The City has complied with all notice procedures and requirements with respect to entering into this Agreement.

C. To the extent the City is permitted by Law, the City desires to have the Phase II Retail Space developed in accordance with and pursuant to this Agreement to cure the blight existing thereon, to promote the health, safety, and welfare of the City and its residents, to prevent the spread of the blighted conditions and characteristics, to encourage further private investment and development, to enhance the City's tax base, to increase employment opportunities for City residents, and to enhance the future tax revenues for those overlying taxing bodies that levy taxes on the Property and within the area.

D. Windfall has represented to the City that, but for the financial contribution from the City provided for herein, the Project is not economically feasible, and Windfall would not undertake the Project.

E. The terms of this Agreement are binding on Windfall and any related or successor entity having any financial interest in the Project. Where circumstances warrant, reference to Windfall herein shall apply to Windfall or any related agent, successor or assignee of Windfall.

2. Mutual Assistance.

A. Documents. The Parties agree to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications, as well as the adoption of such ordinances and resolutions as may be necessary or appropriate, from time to time, to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out such terms, provisions and intent.

B. Approvals. The Parties shall cooperate fully with each other in completing the Project and in seeking and obtaining from any or all appropriate governmental bodies (whether federal, state, county or local) any necessary permits, entitlements and approvals, required or useful for the improvement of the Property and construction of the Project in and on the Property, or for the provision of services to the Property. However, this paragraph shall not create any additional obligations or costs to either Party not otherwise specifically contemplated in this Agreement.

C. City Approvals. The City shall issue all permits and approvals necessary for Windfall's undertaking of the Project including, without limitation, preliminary plat, building and other permits and certificates of occupancy, provided that Windfall submits all petitions and applications for such permits and approvals and pays all fees required under the Laws as defined below, including, but without limitation, all applicable City ordinances, standards, rules, and regulations. To the extent the City is permitted by Law, the Parties agree to execute all documents and other instruments reasonably required by Windfall's lender in connection with the financing of the Project and construction of the Project, provided the same create no additional material obligations upon the City.

3. Windfall Obligations.

A. Development. Windfall, as a material inducement to the City to provide Incentive Revenue (defined below), shall undertake the Project. The Project shall be undertaken and conditioned (as applicable) upon the following:

- i. Notwithstanding anything to the contrary in this Agreement, Windfall shall construct, install and establish the Project on the Property in substantial compliance with the zoning, site plans, architectural plans and elevations, engineering plan, and plats, as appropriate, submitted to and approved by all necessary City commissions, boards, and departments. Windfall shall at all times operate and maintain the Project building in conformance with all

applicable City, state, and federal laws, statutes, ordinances, codes, rules, and regulations, including, without limitation, all applicable zoning ordinances, building codes, environmental codes, and life safety codes of the City (“Laws”).

- ii. Windfall shall complete the Project in accordance with the site-plan as set forth in **Exhibit C**. The Parties agree that from time to time the site-plan for the Phase II Retail Space may be revised and updated in a manner consistent with the terms of this Agreement and provided the parameters established of the Minimum Footprint and the Intended Use are satisfied and provided that the aforesaid conditions are satisfied, the revised site plan shall replace current Exhibit C. The replacement of Exhibit C as contemplated herein is prohibited unless the parameters set forth in the Minimum Footprint and the Intended Use are satisfied. Full Project completion is not required for the commencement of payment of the Incentive Revenue.
- iii. Windfall shall provide the City with the documents set forth below to demonstrate that Windfall expended no less than the Project Budget to complete the Project. Windfall shall minimally provide the following documentation to the City to evidence that it has satisfied this condition: (a) sworn statements and lien waivers for any material, fixtures, apparatus, machinery, services, or labor provided by any contractor, subcontractor, or other person or entity entitled to file a lien under the Mechanics Lien Act, 770 ILCS 60/1, et seq.; (b) bills, contracts, and invoices relative to the costs of the Project; and (c) such other reasonable documentation, at the written request of the City’s Chief Finance Officer to allow the City to determine that Windfall satisfied the Project Budget requirement (the “Supporting Documentation”). Said submission shall also contain a copy of all certificates of occupancy for any occupied buildings in the Phase II Retail Space (as applicable). Windfall represents and warrants that all such documentation produced to the City pursuant to this provision and the further provisions of this Agreement are and will be at all times in the future true and accurate and agrees that the City may rely on the truth and accuracy of said information as a basis for making required payments under the terms of this Agreement. To the extent permitted by Law, the City agrees to keep the Supporting Documentation confidential as financial information that is proprietary to Windfall and the Phase II Retail Space.
- iv. The Parties acknowledge that aspects of the Project may be undertaken by tenants of the Phase II Retail Space pursuant to Lease agreements with Windfall, and that such expenditures by tenants of the Phase II Retail Space for the Project constitute sums reimbursable to Windfall under this Agreement, if such tenants generate (a) sales tax, (b) food and beverage tax and/or (c) ad valorem real property taxes. The Parties further acknowledge that the tenants will not be entitled to any independent incentive for the work being performed that is the basis for a reimbursement submission made by Windfall.

- v. The determination of the satisfaction of the foregoing shall be made by the City in accordance with the terms of this Agreement and in its reasonable discretion.

B. Construction Permits. No construction, improvement, or development of any kind shall be permitted on any portion of the Property unless and until Windfall has received approval from all necessary City commissions, boards and departments, and has been issued valid and binding building permits and otherwise in accordance with the Laws. Further, no business operation or occupancy of the Property may occur prior to the issuance of a valid and binding certificate of occupancy.

C. Fees and Expenses. Windfall shall pay all standard fees assessed on a uniform basis to the City for the Project, including permit, inspection review and tap-on fees, as provided by ordinance.

D. Successors or Assigns. Windfall, prior to completion of the Project, shall not make any assignment of its rights, benefits or obligations under the Agreement without the prior written consent of the City, which the City shall condition, withhold or grant in its reasonable discretion. Windfall, after the completion of the Project, may assign this Agreement to a bona fide purchaser of the Phase II Retail Space, provided that: (a) the proposed assignment does not violate the Laws; (b) Windfall provides written notice of such assignment to the City (upon which the City can and will rely); and (c) the assignee agrees to be bound by all of the terms, conditions and provisions of this Agreement. Notwithstanding the foregoing, upon written notice to the City of a transfer of ownership of the Phase II Retail Space to any mortgagee or other third party by foreclosure or deed in lieu of foreclosure, together with reasonable evidence of such transfer, such party shall succeed to the rights and obligations of Windfall under this Agreement. Notwithstanding anything herein to the contrary, Windfall may perform a collateral assignment for its construction and financing of the Project. This Agreement shall be binding upon and inure to the benefit of the City and Windfall and their respective successors and permitted assigns. The City shall be free from any liability related to the assignment or transfer of this Agreement or any rights hereunder.

E. Payment of Real Estate Taxes. Windfall hereby covenants and agrees to promptly pay, or cause to be paid before becoming delinquent, subject to any appeal rights, any and all real estate taxes and governmental charges of general applicability that may at any time be lawfully finally assessed with respect to the Property. Windfall further covenants and agrees that in the event the Project becomes part of a Redevelopment Project Area, as defined by Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1, et seq., as from time to time amended, to not appeal any property taxes assessed with respect to the Property.

F. Windfall Authority. Windfall hereby represents and warrants that it is a limited liability company authorized to do business in, and in good standing with the State of Illinois. Windfall further represents and warrants that all actions necessary to make Windfall's obligations hereunder enforceable against Windfall have been taken, and that no further approvals or actions are required. Upon request of the City, Windfall agrees to submit to the City a current copy of Windfall's "Certificate of Good Standing" from the Illinois Secretary of State.

4. Sales Tax Rebate.

A. Reimbursement to Windfall.

- i. Incentive Provided. Upon Windfall's full satisfaction of its conditions precedent to payment in this Agreement, and provided that Windfall is not in uncured default of the terms of this Agreement, the City shall reimburse Windfall bi-annually (every six (6) months) (the "Revenue Sharing Term"), subject to the provisions of Section 4.D below and otherwise in this Agreement, a sum equal to the sales taxes received by the City from the IDOR in the manner as set forth in the provisions set forth below. The bi-annual payments to Windfall by the City, to discharge the aforesaid obligation, shall be made within forty-five (45) days after the end of each six (6) months of the Revenue Sharing Term, and shall be subject to all of the terms and conditions contained in this Agreement. The bi-annual payments to Windfall by the City shall be paid by wire transfer to the account specified in **Exhibit D**. The failure of Windfall to receive its incentive payment due to the inaccuracy or incompleteness of information on Exhibit D shall not be deemed a breach of this Agreement. The total amount of reimbursements that may be made pursuant to this Agreement to Windfall shall not exceed the sum of Two Million Five Hundred Thousand, and No/100 Dollars (\$2,500,000.00) (the "Maximum Reimbursement Amount") or a payment term not to exceed fifteen (15) years, whichever occurs first. No interest payments are contemplated in this Agreement. In the event Windfall fails to satisfy its conditions precedent to payment as set forth hereunder the City shall be under no obligation to pay Windfall the Incentive Revenue. Windfall
- ii. Scope of Incentive. "Incentive Revenue" means the Total Sales Tax, less penalties and interest which are paid to the City from the Local Government Tax Fund, as created by the Retailers' Occupation Tax Act, 35 ILCS 120/3, as amended, on sales by retailers and servicemen on the Phase II Retail Space. In no event shall Incentive Revenue be construed to include any of the taxes imposed by the City pursuant to Chapter 44, Article 44-XI of the City of Aurora Code of Ordinances.
- iii. State Limitation. If the State of Illinois's statutory mechanism for the levy and collection of sales tax revenue becomes inconsistent with this Agreement, then the City shall consult with Windfall and make all reasonable efforts to substitute a mechanism to accomplish the intent of this Agreement within its powers as a home-rule municipality.
- iv. No Further Action Needed. Payments shall be made by the City pursuant to this Section without the necessity of any further action by the corporate authorities of the City.
- v. **THE PAYMENT OF THE INCENTIVE UNDER THIS AGREEMENT SHALL NOT BE A GENERAL DEBT OR OBLIGATION DUE AND**

OWING FROM THE CITY OR CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWERS, BUT SHALL BE PAYABLE SOLELY OUT OF THE MUNICIPAL SALES TAXES AFTER COLLECTION OF THE SAME AS SET FORTH HEREIN AS GENERATED BY THE PROJECT. THE MAXIMUM REIMBURSEMENT AMOUNT IS THE MAXIMUM SUM THAT THE CITY SHALL PAY TO WINDFALL UNDER THIS AGREEMENT.

B. Sales Tax Information; Confidentiality.

- i. Forms; Submission of Required Information. Windfall shall cause the preparation and submission of such form(s) as may be required from time to time by the Illinois Department of Revenue in order to release all gross revenue and sales tax information to the City or directly prepare and submit the same (as applicable). Windfall shall require each tenant in the Phase II Retail Space to provide written consent to the City obtaining the relevant sales and Sales Tax information from the State. City acknowledges that Windfall has no direct access to sales and Sales Tax information from which Windfall can make representations or warranties. City shall use the information provided by each tenant in the Phase II Retail Space and/or the State to calculate the payments to be provided to Windfall. Windfall hereby acknowledges that the City shall have no obligation to refund any sales tax under this Agreement unless it can verify the appropriate amount to be refunded, pursuant to the information to be supplied to the City under this Agreement. The failure of the City to pay any incentive under this Agreement due to the failure of Windfall to discharge its duties hereunder, including requiring its tenants in the Phase II Retail Space to provide the necessary consent to the City to obtain the information that it needs to perform its calculations hereunder, shall not be deemed a breach of this Agreement by the City.
- ii. Summary of Sales Tax Information. The City, to the extent permitted by law, upon receipt of said sales tax information (documentation), shall provide Windfall with a summary of that information, and bi-annually a calculation of the payments to Windfall for each year of the Term. Windfall (as applicable) shall provide any sales and/or sales tax information that it receives to the City within five (5) business days of receipt of the same. The City shall deliver reports to Windfall on a quarterly basis before the ninetieth (90th) day following the end of the period for which the City is reporting.
- iii. Confidential Information. The City acknowledges and agrees that the sales tax information to be provided or caused to be provided by Windfall hereunder is proprietary and valuable information and that any disclosure or unauthorized

use thereof will cause irreparable harm to Windfall. To the extent permitted by law, the City agrees to hold in confidence all sales figures and other information provided by Windfall or obtained from records in connection with this Agreement. The provisions of this Section shall survive the termination of this Agreement for a period of one (1) calendar year. Windfall agrees that the City's compliance with any court order or other enactment of Law to produce information shall not subject the City to any liability hereunder for the release of information. The City shall provide Windfall prompt written notice of any such attempt to gain access to the sales and sales tax information and cooperate with either or both should either or both elect to challenge any such attempt to secure this information. At all times during the Term, the City shall have the right to review Windfall's records relative to the Project and the Property after written direction of the City to Windfall that it will be undertaking such a review.

C. Term. Subject to the terms of this Agreement, the City hereby agrees to pay the Incentive Revenue by bi-annual payments over a maximum of a fifteen (15) year period commencing on the first day of the month following the final Certificate of Occupancy as issued by the City (the "Commencement Date") or earlier if the Maximum Reimbursement Amount is paid prior to the expiration of the aforesaid fifteen-year period (the "Term"). Upon the expiration of the Term, the City's obligations under this Agreement shall be deemed satisfied and fully discharged. Windfall's failure to satisfy the Conditions shall neither toll nor extend the Term. The initial Revenue Sharing Term shall commence on the Commencement Date. Each subsequent Revenue Sharing Term shall begin on the first (1st) day of the month following the end of the previous Revenue Sharing Term (as applicable, the "Term Commencement Date"). The bi-annual payments to Windfall by the City, to discharge the aforesaid obligation, shall be made within forty-five (45) days after the end of each Revenue Sharing Term, and shall be subject to all of the terms and conditions contained in this Agreement. Together with each payment made by the City, the City shall provide its calculation for determining such payment, which shall be solely based on information provided to the City from Windfall that was previously generated from State of Illinois calculations regarding the same. In the event the City received inaccurate information to support the aforementioned calculations, the City shall not be deemed to be in default of this Agreement.

D. Conditions Precedent to the City's Payment Obligation. Notwithstanding and superseding anything herein to the contrary, the right of Windfall to receive its Incentive Revenue payments contemplated in this Agreement, as well as the related obligation of the City to make any such payments, shall be subject to and conditioned upon the satisfaction of the following conditions precedent to payment (the "Conditions") as determined by the City in its reasonable discretion:

- i. Windfall shall, as and when applicable, obtain all permits and approvals necessary for Windfall's completion of the Project for which at that time it seeks the subsidy set forth herein, including, without limitation all building and other permits and certificates of occupancy, (which permits and approvals shall not be unreasonably withheld by the City and in all instances in accordance with all

Laws) and submit all petitions and applications for such permits and approvals and pay all fees required under applicable Law;

- ii. the Project plans are consistent with Exhibit C;
- iii. The City's receipt of Supporting Documentation for the Revenue Sharing Term for which Windfall is or will be requesting Incentive Revenue;
- iv. The City's determination that the Supporting Documentation submitted by Windfall satisfies the Project Budget requirement (which shall be made by the City a reasonable time after receipt of the same);
- v. The City's receipt of the Incentive Revenue from the State;
- vi. Windfall caused to be submitted (or independently submitted) all appropriate documentation to the IDOR and the City for the City to receive sales tax receipt information for the Property; and
- vii. This Agreement is still in effect and Windfall is not in violation of any Law, otherwise in material breach of this Agreement, or in arrears of any payment to the City.

5. Default; Right to Cure; Prohibition on Payments.

A. Cure. No Party shall be deemed in default under this Agreement until such Party (the "Breaching Party" for purposes of this paragraph) has failed to cure such default within thirty (30) days of receipt of written notice of default from the non-Breaching Party in the case of a monetary default or within thirty (30) days of receipt of written notice of default from the non-Breaching Party in the case of a nonmonetary default. Provided, however, if the nature of such nonmonetary default is such that it cannot reasonably be cured within such thirty (30)-day period, then the Breaching Party shall not be deemed in default if the Breaching Party commences to cure such default within the thirty (30)-day period and thereafter diligently pursues such cure to completion.

B. Available Remedies. In the event of a default by the City, subject to the terms and limitations of this Agreement, Windfall may solely pursue the specific performance of this Agreement, but notwithstanding the foregoing, any award provided to Windfall, inclusive of attorneys costs and fees, pursuant to the terms of this Agreement shall be limited to One and No/100 Dollars (\$1.00) in excess of the incentive payment. Windfall will not be entitled to any other monetary damages in excess of the aforesaid from the City and hereby expressly waives any claim for additional monetary damages. In the event of a default by Windfall, the City shall have the right to pursue all remedies at law for the enforcement of this Agreement, including the termination of this Agreement and cessation of all payments to be set forth above. The City is prohibited from making any payment to Windfall hereunder in the event that Windfall has failed to satisfy the Conditions or has an uncured default of this Agreement.

C. Force Majeure. If the performance of any covenant or obligation to be performed under this Agreement by a Party is delayed as a result of circumstances beyond the reasonable control of such Party (which circumstances may include acts of God, war, acts of civil disobedience, the failure of a third party to fulfill a contractual obligation, strikes or other similar acts) the time for performance and the term of this Agreement shall be extended by the amount of time of such delay. Force Majeure shall not include economic hardship, failure of Windfall to lease the Property, unavailability of materials, or the failure of performance by a contractor.

6. Miscellaneous.

A. Notice. Any notice or communication required or permitted to be given under this Agreement shall be in writing and shall be delivered (i) personally or (ii) by a reputable overnight courier. Unless otherwise provided in this Agreement, notices shall be deemed received after the first to occur of (i) the date of actual receipt; or (ii) the date that is one (1) business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (iii) the date that is three (3) business days after deposit in the U.S. mail, as evidenced by a return receipt. By notice complying with the requirements of this Section 6.A., each Party to this Agreement shall have the right to change the address or the addressee, or both, for all future notices and communications to them, but no notice of a change of addressee or address shall be effective until actually received.

Notices and communications shall be addressed to, and delivered at, the following address:

If to City: Richard J. Veenstra, Esq.
Corporation Counsel
City of Aurora
44 East Downer Place
Aurora, Illinois 60507

With a copy to: Chris Minick
Chief Financial Officer
City of Aurora
44 East Downer Place
Aurora, Illinois 60507

and: David Dibo
Executive Director, Economic Development
City of Aurora
44 East Downer Place
Aurora, Illinois 60507

and: Del Galdo Law Group, LLC
Attn: Michael Muthleb, Esq.
1441 South Harlem Ave.
Berwyn, Illinois 60402

If to Developer: Windfall Group

Attn: Eddie Ni
3403 E. Galloway Drive
Richfield, Ohio 44286

With a copy to: Schain Banks
Attn: James R. Griffin, Esq.
70 West Madison Street, Suite 5300
Chicago, Illinois 60602

B. Time is of the Essence. Time is of the essence in the performance of this Agreement.

C. Rights Cumulative. Unless expressly provided to the contrary in this Agreement, each and every one of the rights, remedies, and benefits provided by this Agreement shall be cumulative and shall not be exclusive of any other rights, remedies, and benefits allowed by law. Provided, however, no recourse under or upon any obligation or covenant of this Agreement or for any claim based thereof shall be made personally against the City's Mayor or Aldermen or the City's employees, officers, agents, contractors and consultants or Windfall directors, managers, employees, agents, contractors and consultants.

D. Non-Waiver. Neither Party shall be obligated to exercise any of the rights granted to it in this Agreement. The failure of either Party to exercise at any time any right granted to such Party shall not be deemed or construed to be a waiver of that right, nor shall the failure void or affect such Party's right to enforce that right or any other right.

E. Governing Law. This Agreement shall be governed by, and enforced in accordance with, the internal laws of the State of Illinois.

F. Severability. It is hereby expressed to be the intent of the Parties that should any provision, covenant, agreement, or portion of this Agreement or its application to any person or property be held invalid by a court of competent jurisdiction, the remaining provisions of this Agreement and the validity, enforceability, and application to any person or property shall not be impaired thereby, but the remaining provisions shall be interpreted, applied, and enforced so as to achieve, as near as may be, the purpose and intent of this Agreement to the greatest extent permitted by applicable law.

G. Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes any and all prior agreements and negotiations between the Parties, whether written or oral, relating to the subject matter of this Agreement.

H. Interpretation. This Agreement shall be construed without regard to the identity of the Party who drafted the various provisions of this Agreement. Moreover, each and every provision of this Agreement shall be construed as though all Parties to this Agreement participated equally in the drafting of this Agreement. As a result of the foregoing, any rule or construction that a document is to be construed against the drafting Party shall not be applicable to this Agreement.

I. Exhibits. All Exhibits attached to this Agreement are, by this reference, incorporated herein, and made a part of this Agreement. In the event of a conflict between an exhibit and the text of this Agreement, the text of this Agreement shall control.

J. Amendments and Modifications. No amendment or modification to this Agreement shall be effective until it is reduced to writing and approved and executed by all parties to this Agreement in accordance with all applicable statutory procedures.

K. Authority to Execute. The individuals executing this Agreement represent and warrant that they have the power and authority to do so, and to bind the Parties for whom they are executing the Agreement. In addition, the City hereby represents and warrants that it has full constitutional and lawful right, power and authority, under current applicable law, to execute and deliver and perform the terms and obligations of this Agreement and the foregoing have been or will be, upon adoption of ordinances authorizing the execution of this Agreement, duly and validly authorized and approved by all necessary City proceedings, findings and actions. Accordingly, this Agreement constitutes the legal, valid and binding obligation of the City, enforceable in accordance with its terms.

L. No Third-Party Beneficiaries. No claim as a third-party beneficiary under this Agreement by any person shall be made, or be valid, against the City or Windfall.

M. Counterparts. This Agreement may be executed in counterpart, each of which shall constitute an original document, which together shall constitute one and the same instrument.

N. Police Power. Nothing in this Agreement shall limit the standard police power functions and protections of the City or the City's right to enforce the same.

O. Notice to Mortgagee. The term "Mortgage" as used herein shall mean any mortgage of an interest in the Center given primarily to secure the repayment of money owed by the mortgagor. The term "Mortgagee" as used herein shall mean the Mortgagee from time to time under any such Mortgage. If a Mortgagee shall have delivered to the City a written notice specifying the name and address of such Mortgagee, such Mortgagee shall be given a copy of each notice required to be given by one Party to the other at the same time as and whenever such notice shall thereafter be given by one Party to the other, at the address last furnished by such Mortgagee. This notice obligation shall be in addition to the notice provisions set forth above. The address of the existing Mortgagee is as follows:

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their proper officers duly authorized to execute the same, the day and year first above written.

THE CITY OF AURORA,
An Illinois municipal corporation,

By: _____

Its: _____

WINDFALL GROUP
A Delaware limited liability company

By: _____

Its: _____

ACKNOWLEDGMENT

State of Illinois)
) SS
County of _____)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that _____ and _____, personally known to me to be the Mayor and City Clerk of the City of Aurora, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Mayor and City Clerk, they signed and delivered the said instrument and caused the corporate seal of said municipal corporation to be affixed thereto, pursuant to authority given by the City Council of said Illinois home rule municipal corporation, as their free and voluntary acts, and as the free and voluntary act and deed of said Illinois home rule municipal corporation, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this _____ day of _____, 2021.

Notary Public

ACKNOWLEDGMENT

State of _____)
) SS
 County of _____)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that _____, personally known to me to be the _____ of Windfall Group, an Delaware limited liability company authorized to do business in the State of Illinois (the “Company”), and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that, as such _____, he/she signed and delivered the said instrument as his/her free and voluntary act, and as the free and voluntary act and deed of said Company, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this _____ day of _____, 2021.

Notary Public

EXHIBIT A
LEGAL DESCRIPTION

EXHIBIT "A"

Legal Description

PARCEL 1:

LOT 1, EXCEPT THAT PART OF LOT 1, IN YORKSHIRE PLAZA, BEING A SUBDIVISION OF PART OF THE NORTHEAST QUARTER OF SECTION 21, TOWNSHIP 38 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 13, 1985 AS DOCUMENT R85-109544 AND RE-RECORDED JULY 7, 1985 AS DOCUMENT R86-71755, IN DUPAGE COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF LOT 2 IN SAID YORKSHIRE PLAZA; THENCE NORTHERLY ALONG THE WESTERN MOST LINE OF SAID LOT 1, 108.28 FEET; THENCE EASTERLY ALONG A LINE WHICH FORMS AN ANGLE OF 85° 10'25" WITH THE LAST DESCRIBED COURSE, MEASURED COUNTER-CLOCKWISE THEREFROM, 54.55 FEET FOR A POINT OF BEGINNING; THENCE SOUTHERLY AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 40.33 FEET; THENCE EASTERLY AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 250 FEET; THENCE NORTHERLY AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 150 FEET; THENCE WESTERLY AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 250 FEET; THENCE SOUTHERLY AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 109.57 FEET TO THE POINT OF BEGINNING IN THE CITY OF AURORA, DUPAGE COUNTY, ILLINOIS; AND LOTS 2, 6 AND 10 IN YORKSHIRE PLAZA, BEING A SUBDIVISION OF PART OF THE NORTHEAST QUARTER OF SECTION 21, TOWNSHIP 38 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 13, 1985 AS DOCUMENT R85-109544 AND RE-RECORDED JULY 7, 1985 AS DOCUMENT R86-71755, IN DUPAGE COUNTY, ILLINOIS.

PARCEL 1A:

THAT PART OF LOT 1 IN YORKSHIRE PLAZA, BEING A SUBDIVISION OF PART OF THE NORTHEAST QUARTER OF SECTION 21, TOWNSHIP 38 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 13, 1985 AS DOCUMENT R85-109544 AND RE-RECORDED JULY 7, 1985 AS DOCUMENT R86-71755, IN DUPAGE COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF LOT 2 IN SAID YORKSHIRE PLAZA; THENCE NORTHERLY ALONG THE WESTERN MOST LINE OF SAID LOT 1, 108.28 FEET; THENCE EASTERLY ALONG A LINE WHICH FORMS AN ANGLE OF 85° 10'25" WITH THE LAST DESCRIBED COURSE, MEASURED COUNTER-CLOCKWISE THEREFROM, 54.66 FEET FOR A POINT OF BEGINNING; THENCE SOUTHERLY AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 40.33 FEET; THENCE EASTERLY AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 250 FEET; THENCE NORTHERLY AT RIGHT

ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 150 FEET; THENCE WESTERLY AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 250 FEET; THENCE SOUTHERLY AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 109.57 FEET TO THE POINT OF BEGINNING IN THE CITY OF AURORA, DUPAGE COUNTY, ILLINOIS.

PARCEL 2:

EASEMENTS FOR THE BENEFIT OF PARCEL 1: 1) FOR USE OF COMMON AREA, 2) FOR UTILITIES AND 3) FOR PARKING AND FOR VEHICULAR AND PEDESTRIAN ACCESS, AS CREATED BY RECIPROCAL EASEMENT AGREEMENT MADE BY AND BETWEEN AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AS TRUSTEE UNDER TRUST AGREEMENT DATED AUGUST 25, 1985 AND KNOWN AS TRUST NUMBER 65221 AND UNDER TRUST AGREEMENT DATED MARCH 2, 1987 KNOWN AS TRUST NUMBER 10144004 DATED APRIL 1, 1987 AND RECORDED APRIL 8, 1987 AS DOCUMENT R87-048499, OVER, THROUGH AND ACROSS LOTS 4, 5, 7, 8 AND 9 IN YORKSHIRE PLAZA.

PARCEL 3:

EASEMENTS FOR THE BENEFIT OF PARCEL 1: 1) FOR USE OF COMMON AREA, 2) FOR UTILITIES AND 3) PARKING AND FOR VEHICULAR AND PEDESTRIAN ACCESS, AS CREATED BY RECIPROCAL EASEMENT AGREEMENT MADE BY AND BETWEEN AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AS TRUSTEE UNDER TRUST AGREEMENT DATED AUGUST 25, 1985 AND KNOWN AS TRUST NUMBER 65221 AND RR RESTAURANTS 1985-1, A CALIFORNIA LIMITED PARTNERSHIP, DATED MAY 30, 1985 AND RECORDED JUNE 15, 1985 AS DOCUMENT R85-61143 OVER, THROUGH AND ACROSS LOT 3 IN YORKSHIRE PLAZA.

PARCEL 4:

EASEMENTS FOR THE BENEFIT OF PARCEL 1: 1) FOR INGRESS AND EGRESS 2) PARKING 3) MECHANICAL AND OTHER BUILDING EQUIPMENT 4) PARTY WALL, AND 5) WATER, SEWER, ELECTRICAL, CABLE, FIBER OPTIC LINES, AND OTHER UTILITIES, AS CREATED BY EASEMENT AGREEMENT DATED APRIL 10, 2000, AND RECORDED APRIL 12, 2000, AS DOCUMENT NUMBER R2000-052471, BY AND BETWEEN YORKSHIRE CENTER, LLC AND YORKSHIRE KRU, LLC.

PARCEL 5:

NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1 FOR PARKING AS CREATED BY PLAT OF YORKSHIRE PLAZA RECORDED AS DOCUMENT R86-71755.

PARCEL 6:

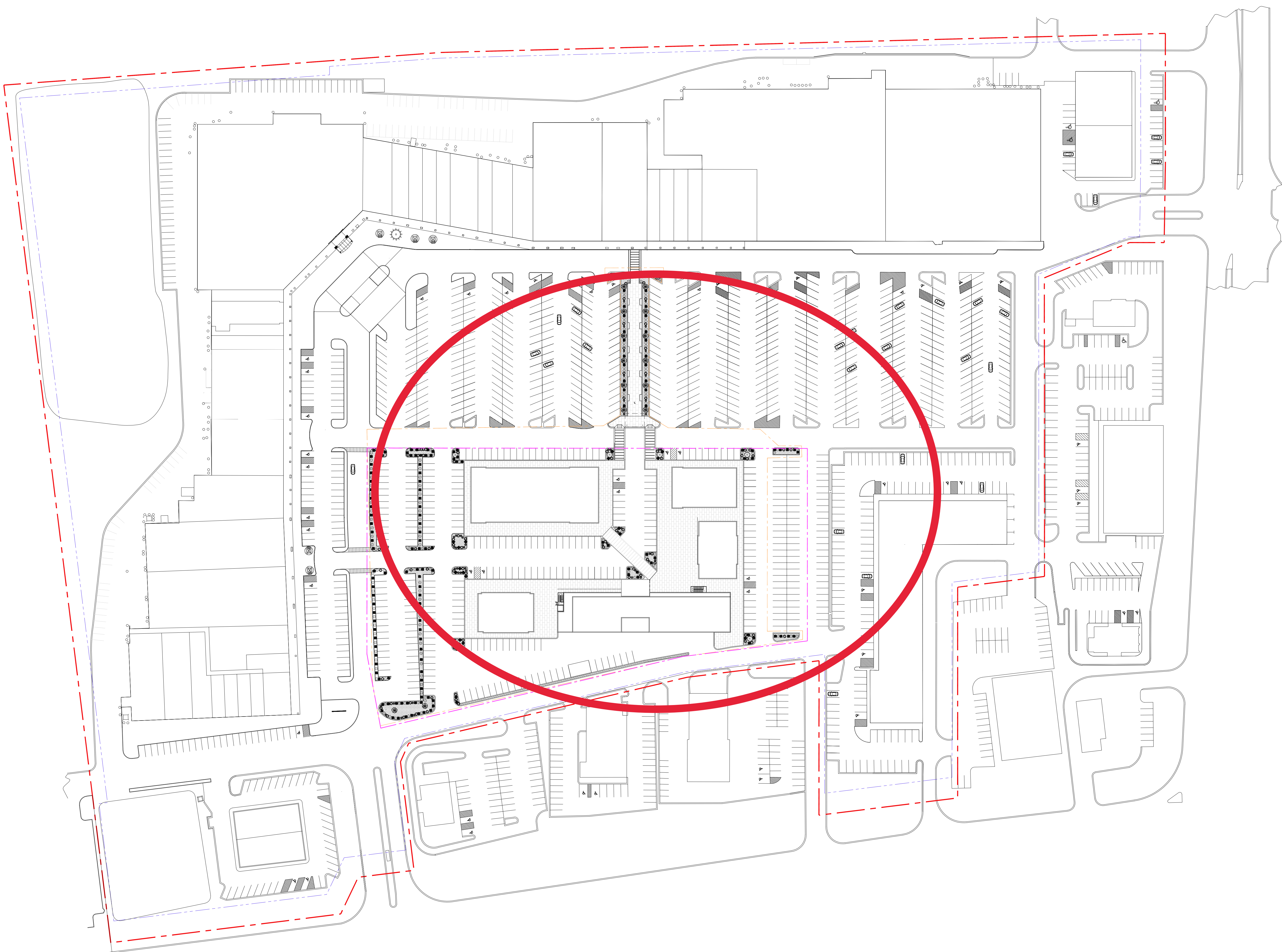
NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1 FOR ACCESS OVER A 30 FOOT STRIP OF LAND OVER THE EAST HALF OF LOT 5 AS CREATED BY PLAT OF YORKSHIRE PLAZA RECORDED AS DOCUMENT R86-71755.

EXHIBIT B
PROPERTY DEPICTION

Exhibit B: Property Depiction



EXHIBIT C
DEVELOPMENT SITE PLAN



1 OVERALL SITE PLAN
1/64"=1'-0"

SCOPE OF PHASE 2
LOT 3

OVERALL PROPERTY LINE
SETBACK LINE

ISSUE FOR
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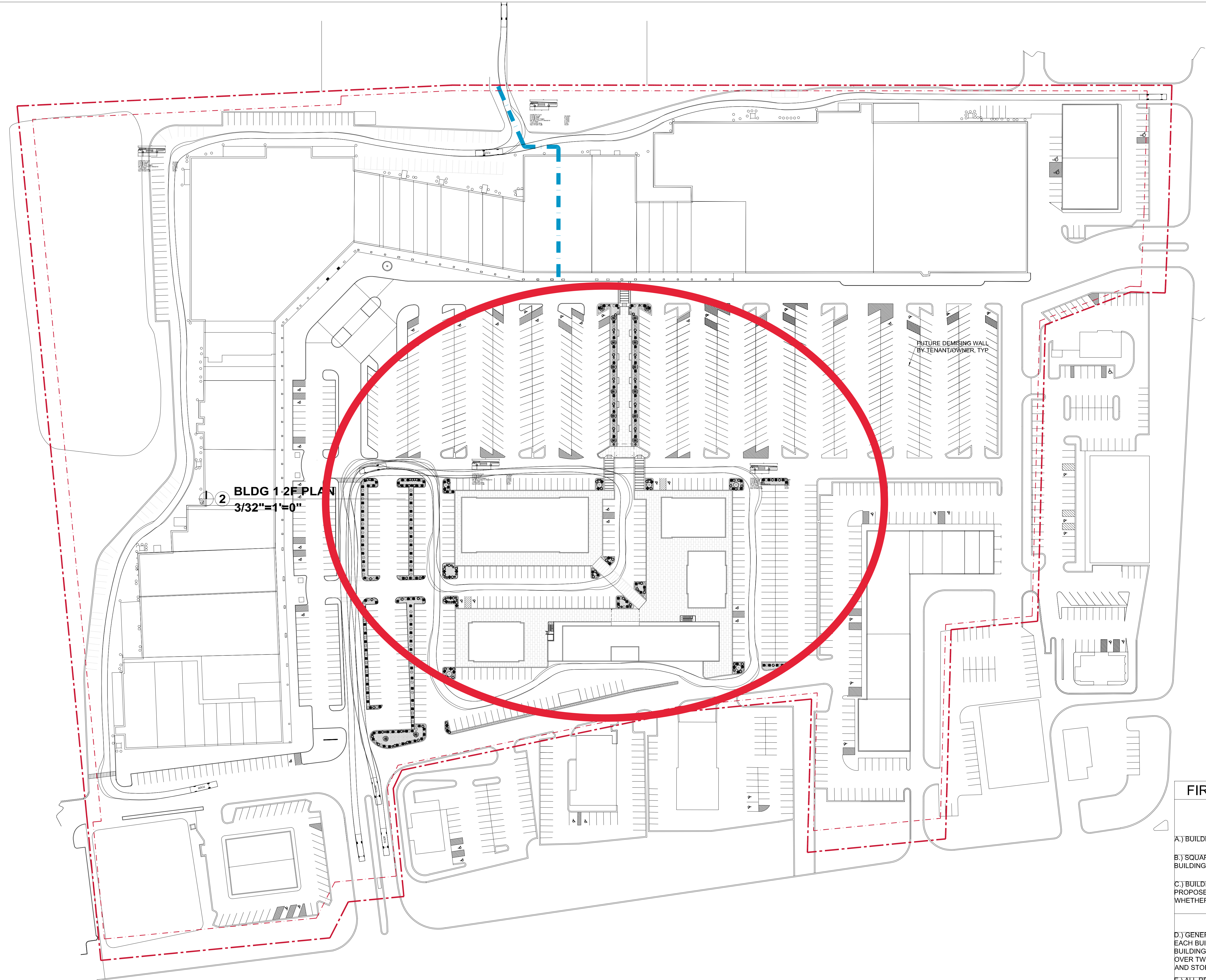
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Job No:
Date:

OVERALL SITE PLAN

A-001

PACIFICA SQUARE PHASE 2
NOT FOR CONSTRUCTION



1 PHASE 2 VEHICLE TRACKING DIAGRAM
1/64"=1'-0"

FIRE ACCESS PLAN DATA TABLE

DESCRIPTION	VALUE	UNIT
A.) BUILDING HEIGHT	32'-8"	FT
B.) SQUARE FOOTAGE OF EACH BUILDING	52,356	SQ FT
C.) BUILDING FIRE SUPPRESSION INFORMATION INCLUDING ANY PROPOSED USE OF SPRINKLER SYSTEMS, FIRE ALARM SYSTEMS, WHETHER FIRE EXTINGUISHERS ARE NEEDED:		
D.) GENERAL DESCRIPTION OF BUSINESS TO BE CONDUCTED WITHIN EACH BUILDING INCLUDING: WILL THERE BE RACK STORAGE IN THE BUILDING. WILL THERE BE STORAGE OF COMBUSTIBLE MATERIALS OVER TWELVE FEET IN HEIGHT, CLEARANCE OF SPRINKLER HEADS AND STORED MATERIALS (18 INCH MINIMUM):		
E.) ALL RETAILS HAVE MINOR STORAGE AREA AS ACCESSORY USE ONLY. ALL STORAGE SHELVES SHALL BE LIMITED TO 12' HIGH AND MAINTAIN MIN. 18" BELOW THE SPRINKLER HEADS.		



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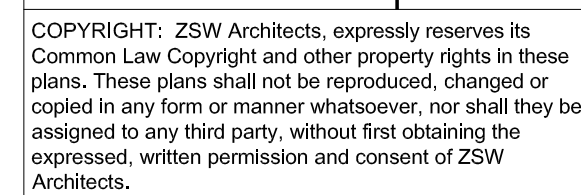
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Job No:
Date:

VEHICLE TRACKING
DIAGRAM

A-002

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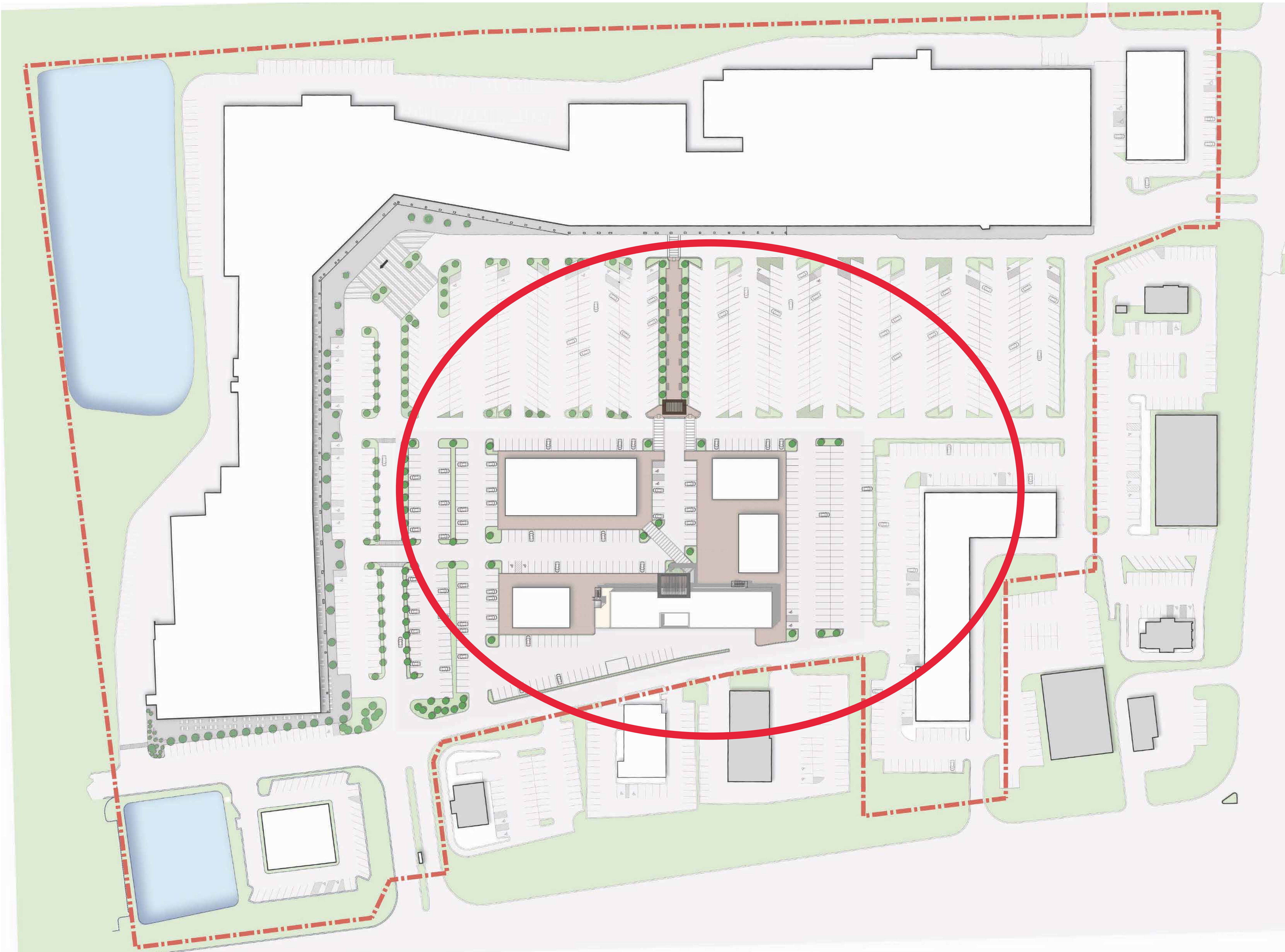
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Job No:	6E 2 SECTION
Date:	

PHASE 2 SITE PLAN

A-003

PACIFICA SQUARE PHASE 2
NOT FOR CONSTRUCTION



1 COLORED OVERALL SITE PLAN
1/64"=1'-0"

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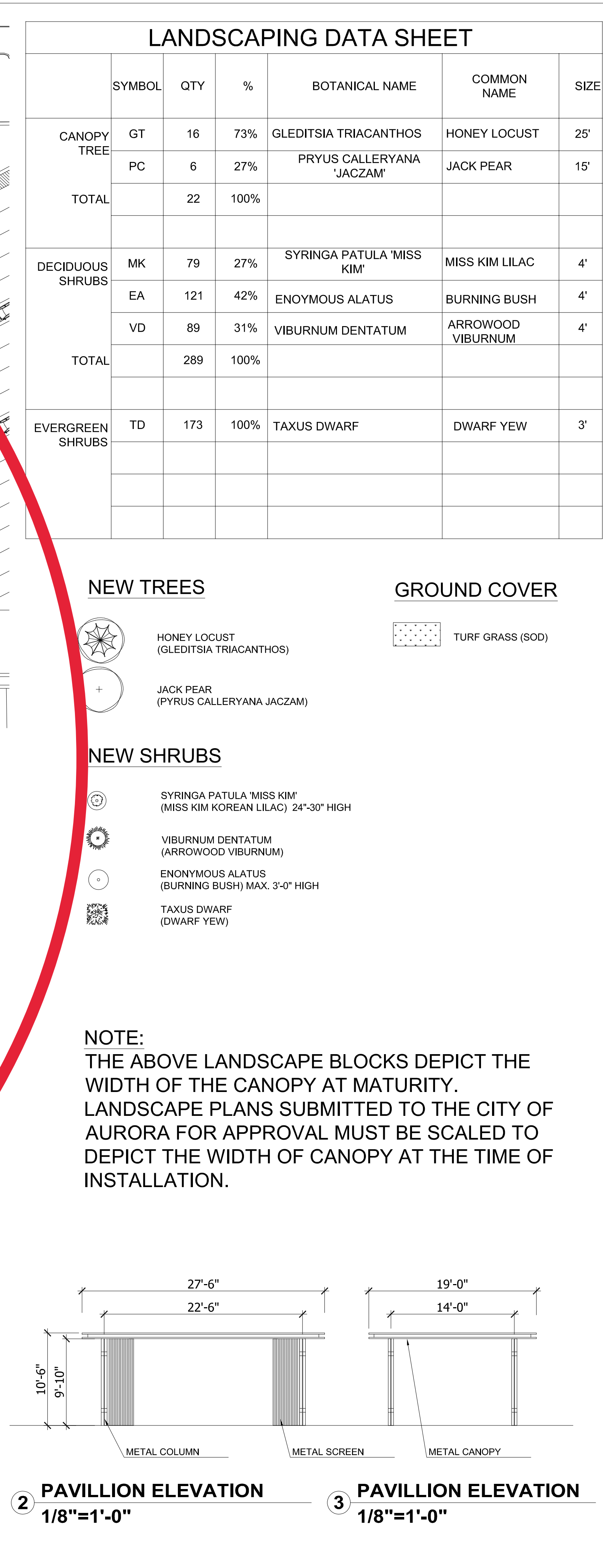
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Job No:
Date:

COLORED SITE
PLAN

A-004

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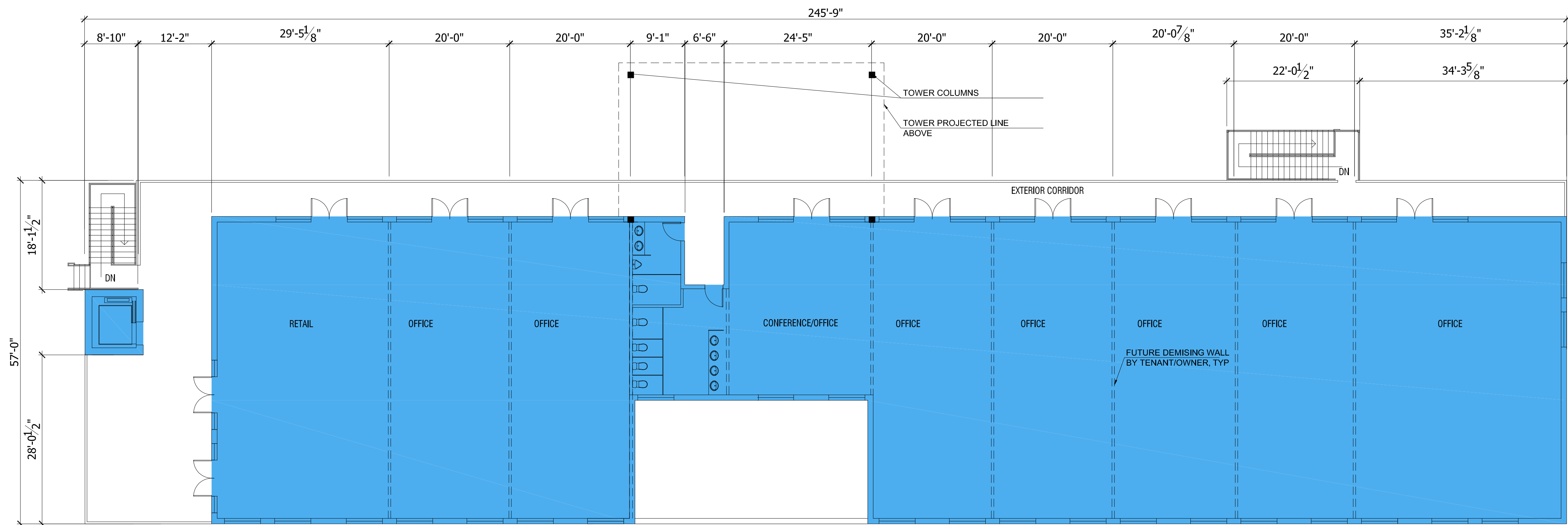
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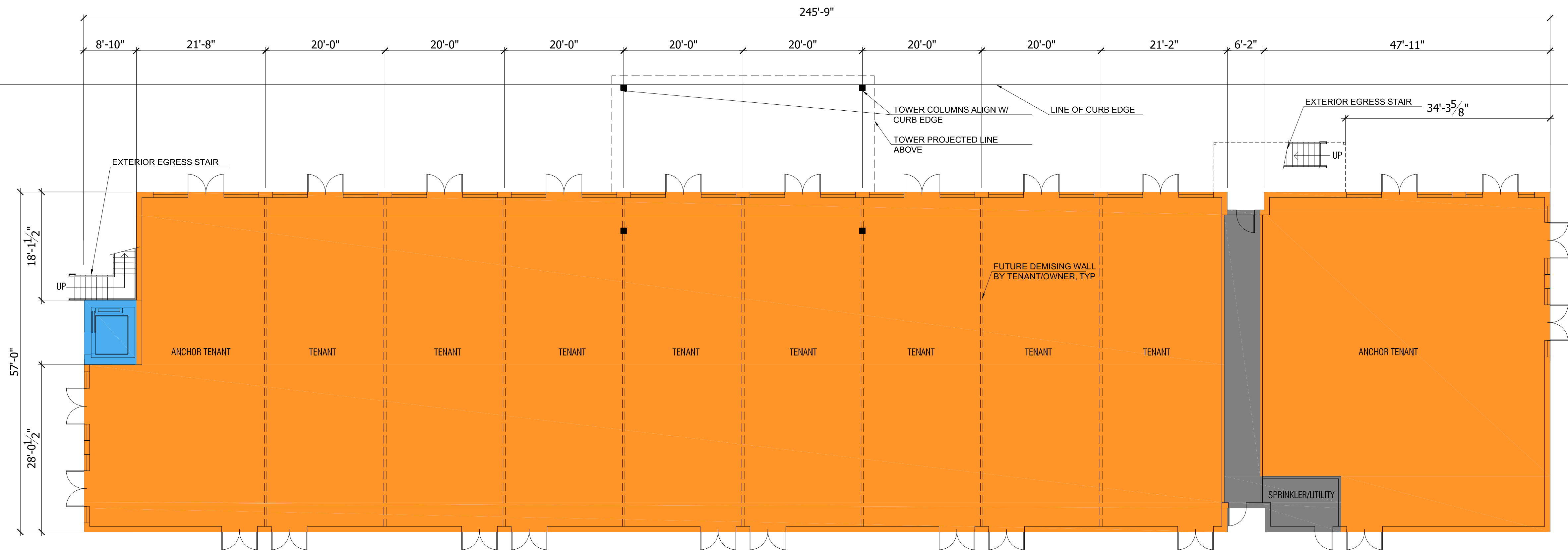
PACIFICA SQUARE PHASE 2
NOT FOR CONSTRUCTION

LANDSCAPE PLAN

A-005



2 BLDG 1 2F PLAN
3/32"=1'-0"



1 BLDG 1 FIRST FLOOR PLAN
3/32"=1'-0"

LEGEND

RETAIL

OFFICE

SERVICE



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Job No:
Date:

BLDG 1
ELEVATIONS

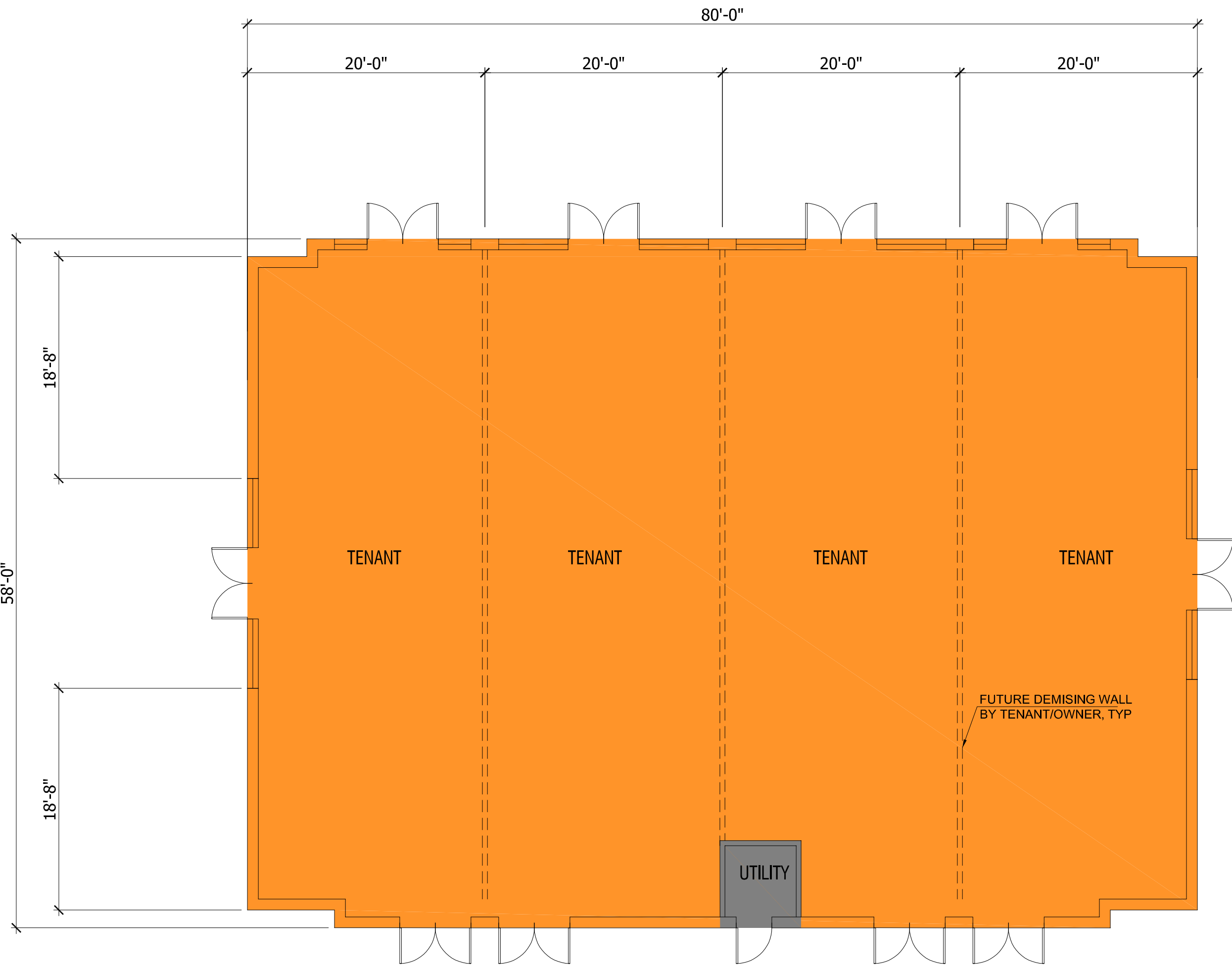
A-101

PACIFICA SQUARE PHASE 2
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⊕ 1 BLDG 2 FIRST FLOOR PLAN
1/8"=1'-0"

LEGEND

RETAIL

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GENERAL NOTES:

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Job No:
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**BLDG 1
ELEVATIONS**

A-102

PACIFICA SQUARE PHASE 2
NOT FOR CONSTRUCTION

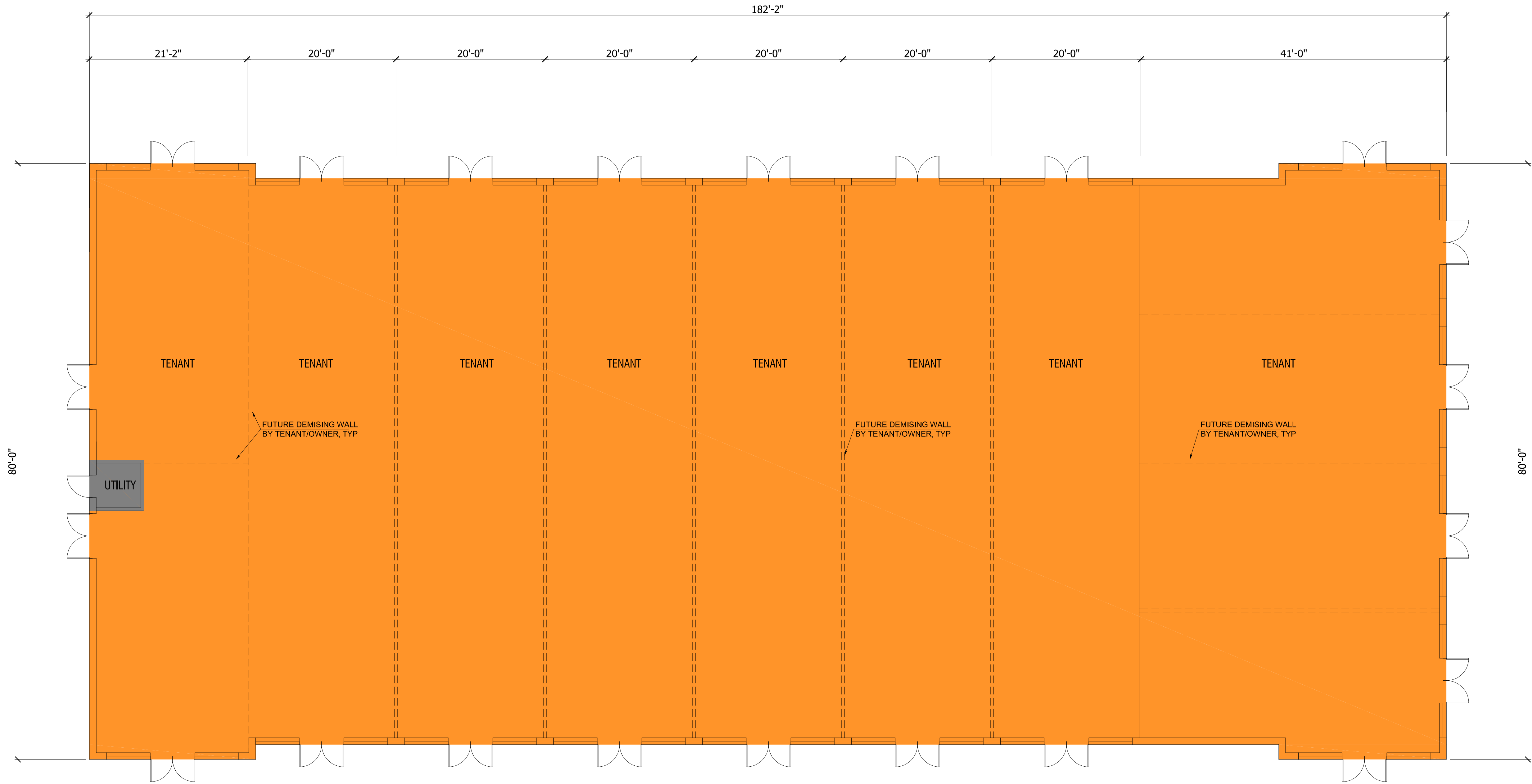


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GENERAL NOTES:



1 BLDG 3 FIRST FLOOR PLAN
1/8"=1'-0"

LEGEND

- RETAIL
- OFFICE
- SERVICE

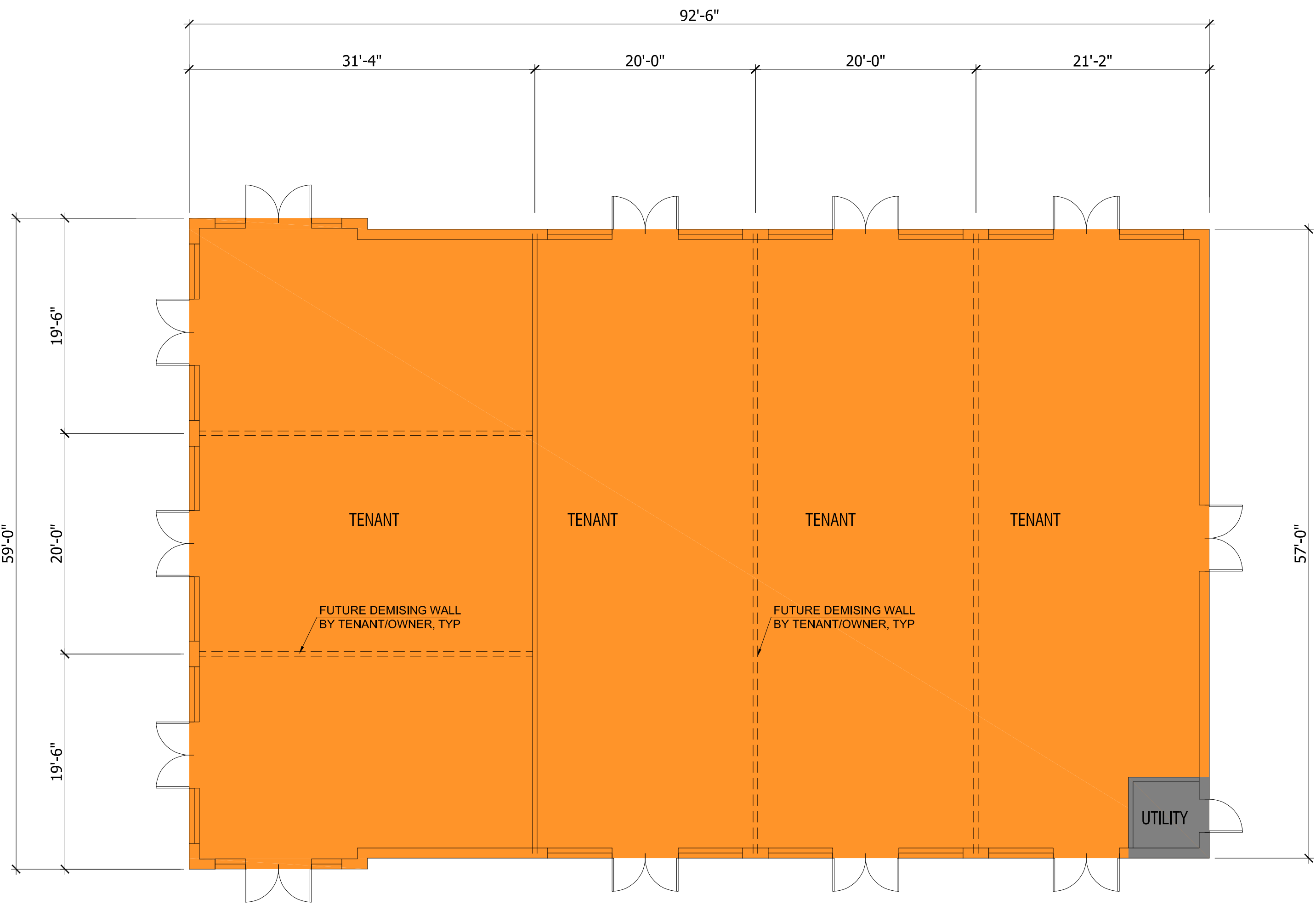
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BLDG 3
ELEVATIONS

A-103

PACIFICA SQUARE PHASE 2
NOT FOR CONSTRUCTION



1 BLDG 4 FIRST FLOOR PLAN
1/8"=1'-0"

LEGEND

RETAIL

OFFICE

SERVICE

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CRISTAL HAO
ZHENG
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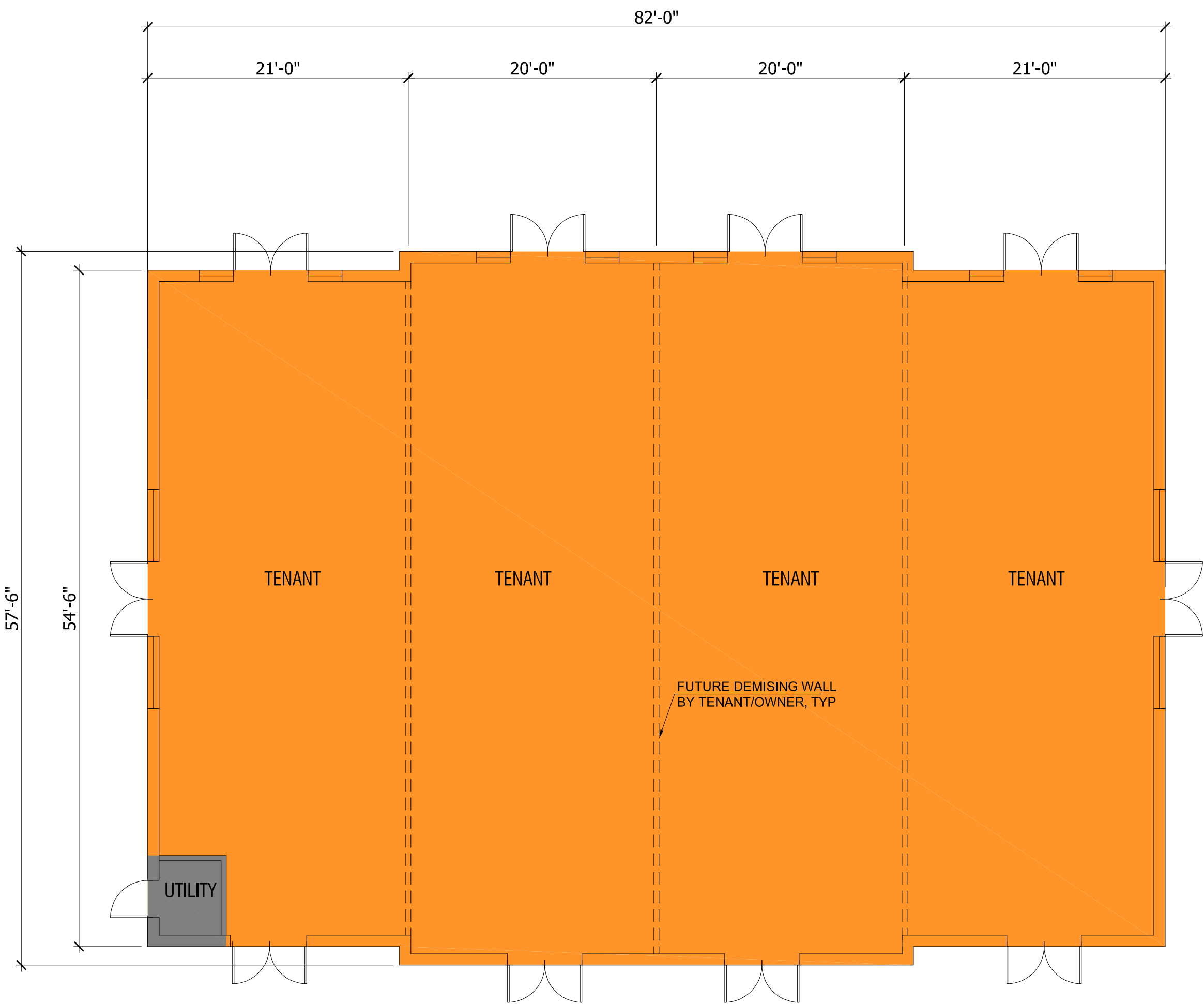
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BLDG 3
ELEVATIONS

A-104

PACIFICA SQUARE PHASE 2
NOT FOR CONSTRUCTION



BLDG 5 FIRST FLOOR PLAN
1/8"=1'-0"

LEGEND

RETAIL

OFFICE

SERVICE

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STATE OF ILLINOIS

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GENERAL NOTES:

No.	Description	Date
△		
		SEE DATE

Job No:

Date:

BLDG 3
ELEVATIONS

A-105

PACIFICA SQUARE PHASE 2
NOT FOR CONSTRUCTION



1 OVERALL SITE SOUTH ELEVATION
1/16"=1'-0"



1 OVERALL SITE NORTH ELEVATION
1/16"=1'-0"

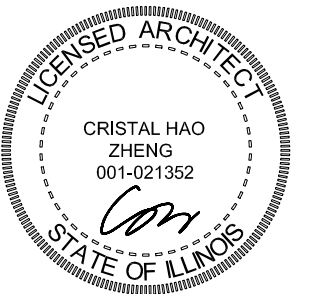


1 OVERALL SITE WEST ELEVATION
1/16"=1'-0"



1 OVERALL SITE EAST ELEVATION
1/16"=1'-0"

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GENERAL NOTES:

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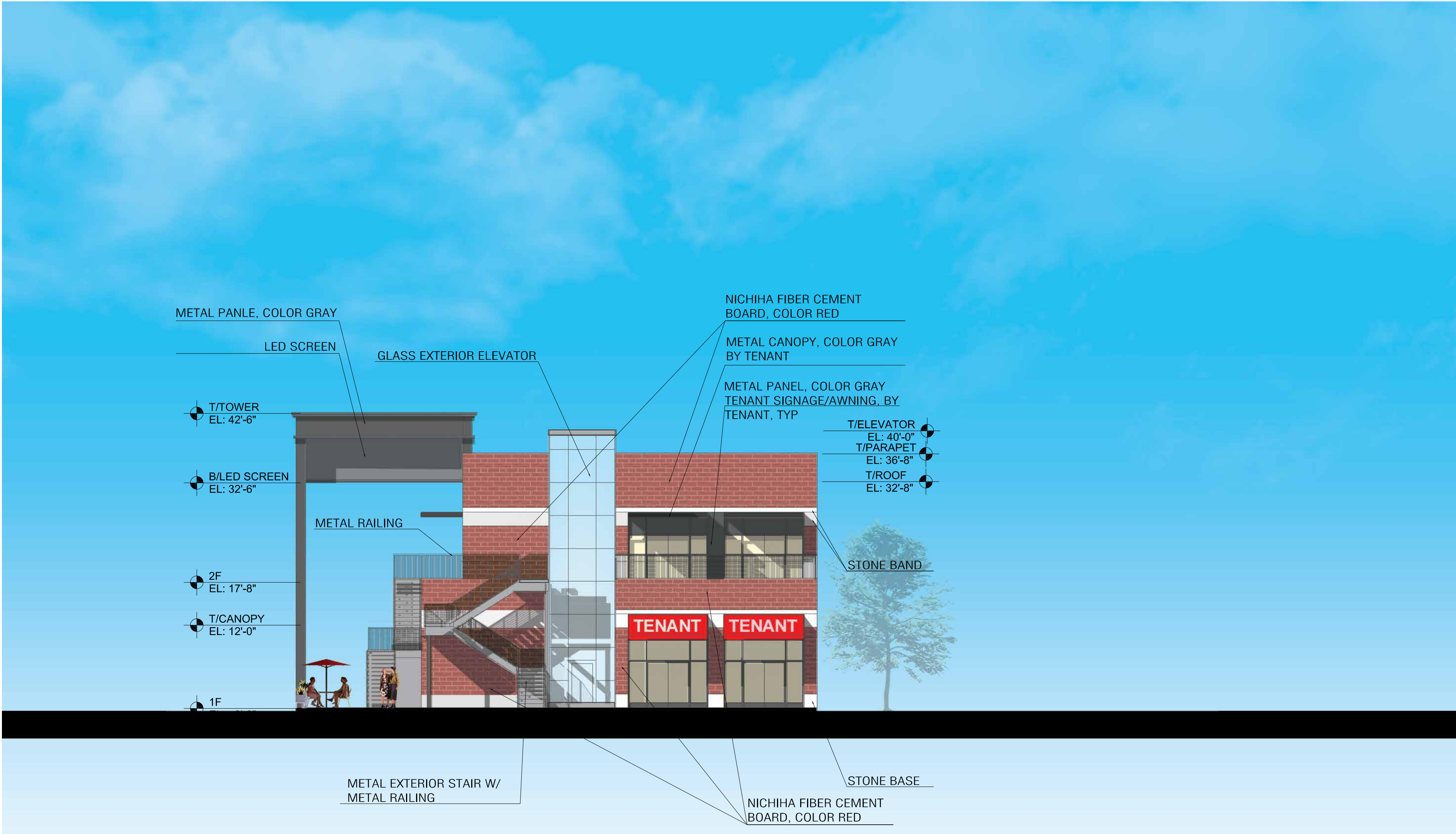
OVERALL ELEVATIONS

A-200

PACIFICA SQUARE PHASE 2
NOT FOR CONSTRUCTION



2 BLDG 1 EAST ELEVATION
3/32"=1'-0"



1 BLDG 1 WEST ELEVATION
3/32"=1'-0"

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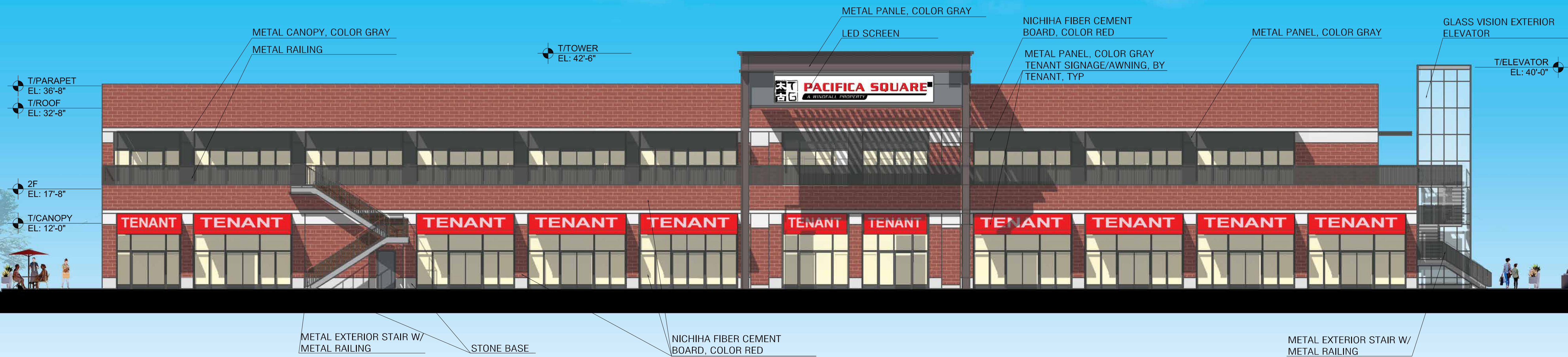
BLDG 1
ELEVATIONS

A-201

PACIFICA SQUARE PHASE 2
NOT FOR CONSTRUCTION

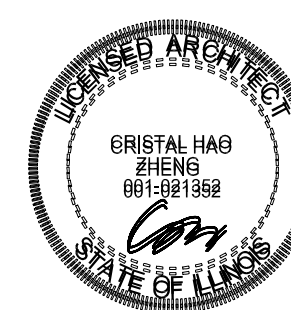


2 BLDG 1 SO
3/32"=1'-0"



1 BLDG 1 NO
3/32"=1'-0"

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PERMIT**



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GENERAL NOTES:

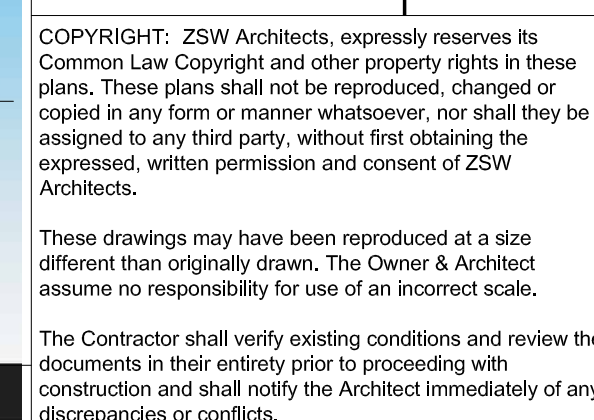
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Job No:
Date:

BLDG 1
ELEVATIONS

A-202

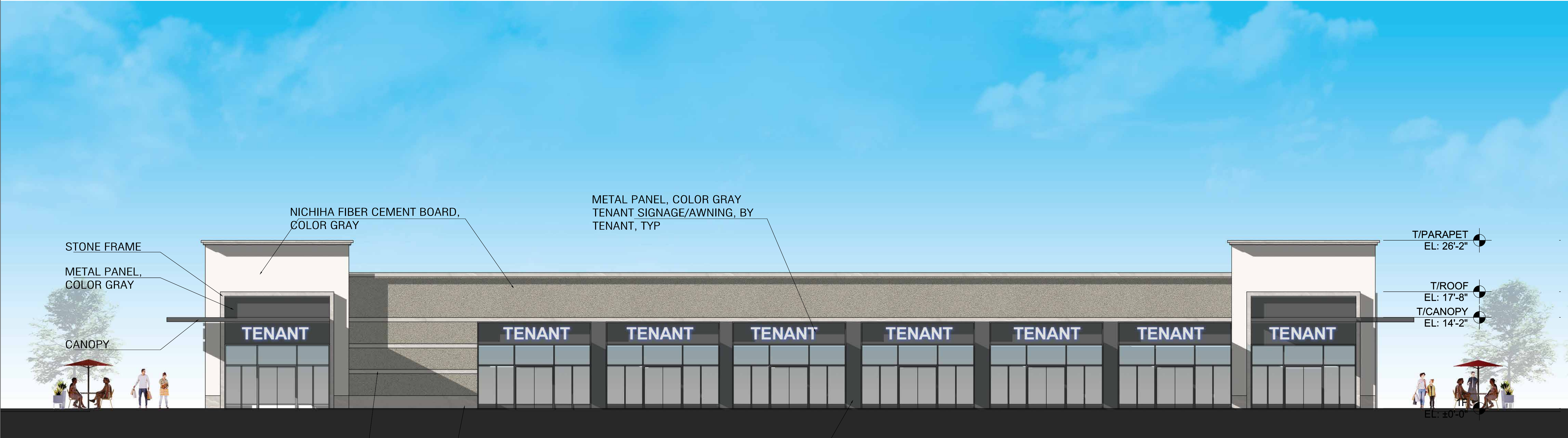
PACIFICA SQUARE PHASE 2
NOT FOR CONSTRUCTION

[illegible]

A-203

PACIFICA SQUARE PHASE 2
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② **BLDG 3 NORTH ELEVATION**
1/8"=1'-0"



① **BLDG 3 SOUTH ELEVATION**
1/8"=1'-0"

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No.	Description	Date
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Job No:
Date:

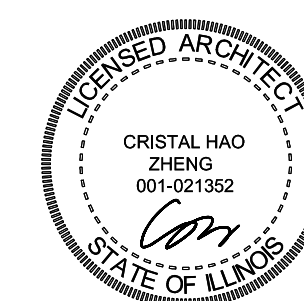
**BLDG 3
ELEVATIONS**

A-204

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GENERAL NOTES:

[illegible]

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BLDG 3
ELEVATIONS

A-205

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[illegible]

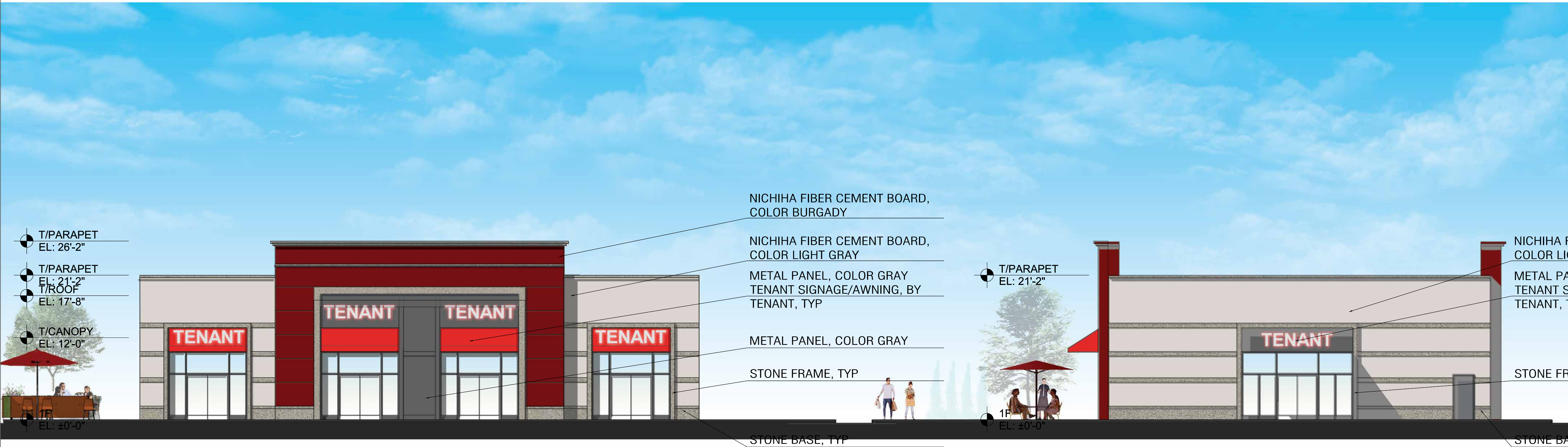
Job No:
Date:

BLDG 4
ELEVATIONS

A-206

PACIFICA SQUARE PHASE 2
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3 BLDG 5 WEST ELEVATION
1/8"=1'-0"

4 BLDG 5 SOUTH ELEVATION
1/8"=1'-0"



1 BLDG 5 EAST ELEVATION
1/8"=1'-0"

2 BLDG 5 NORTH ELEVATION
1/8"=1'-0"

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BLDG 5
ELEVATIONS

A-207

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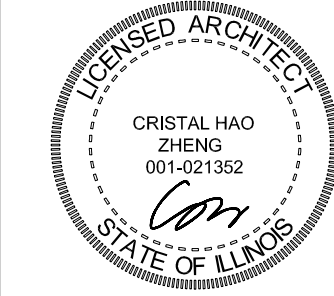
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RENDERINGS

PACIFICA SQUARE PHASE 2
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EXHIBIT D
WIRE INSTRUCTIONS



PACIFICA SQUARE

A WINDFALL PROPERTY

4360 EAST NEW YORK STREET. AURORA, IL 60605 | 630.670.1793 | PM@WINDFALLUSA.COM

WIRE INSTRUCTION

RE: PACIFIC SQUARE LLC

BANK: CITIZENS BANK

BANK ADDRESS: 5775 CHEVROLET BLVD. PARMA, OH 44130. USA

ABA ROUTING #: 241070417

ACCOUNT #: 4531181912

CREDIT TO: PACIFIC SQUARE LLC

ADDRESS: 3403 EAST GALLOWAY DRIVE. RICHFIELD, OH 44286. USA