



Office of the City Manager

REVISED AGENDA MATERIAL

Meeting Date: January 31, 2019

Item Number: 1

Item Description: ZAB Appeal: 2190 Shattuck Avenue

Supplemental/Revision Submitted By: Timothy Burroughs, Director, Planning and Development Department

“Good of the City” Analysis:

The analysis below must demonstrate how accepting this supplement/revision is for the “good of the City” and outweighs the lack of time for citizen review or evaluation by the Council.

The attached provides the correct version of Exhibit A, the Findings and Conditions for ZAB’s approval of the project at 2190 Shattuck Avenue. An incorrect version was inadvertently included in the original City Council meeting packet.

This correct version of Exhibit A to the proposed resolution for this appeal reflects ZAB’s action on October 25, 2018, approving the project. The following Conditions of Approval were left off the earlier submittal:

- # 57, regarding the Community Space Management Plan.
- # 66, regarding Transit Subsidies
- # 71, regarding Bicycle Access

Note that this correct version of the Findings and Conditions was also included in the City Council meeting packet, as part of the Notice of Decision issued following the ZAB action. It can be found in the Administrative Record for this appeal hearing.

Consideration of supplemental or revised agenda material is subject to approval by a two-thirds roll call vote of the City Council. (BMC 2.06.070)

A minimum of **42 copies** must be submitted to the City Clerk for distribution at the Council meeting. This completed cover page must accompany every copy.

Supplements or Revisions submitted pursuant to BMC § 2.06.070 may only be revisions of the original report included in the Agenda Packet.

ATTACHMENT 1, EXHIBIT A

FINDINGS AND CONDITIONS, AS REVISED

BY ZAB

OCTOBER 25, 2018

2190 Shattuck Avenue

Use Permit #ZP2016-0117 to redevelop a 19,967 square-foot (0.46-acre) site at the northwest corner of Shattuck Avenue and Allston Way with a proposed 18-story building with 274 residential units above approximately 10,000 square feet of ground floor retail space. One hundred and three (103) parking spaces would be provided in a two-level subterranean garage accessed from Allston Way.

PERMITS REQUIRED

- Use Permit for construction for demolition of a non-residential building, under BMC 23C.08.050.A
- Use Permit for construction of a new main building with mixed-use development, under BMC 23E.68.030;
- Use Permit for construction of >10,000 sq. ft. gross floor area, under BMC 23E.68.050
- Use Permit to allow a maximum height of up to 180 feet, under BMC 23E.68.070.B
- Use Permit to allow a reduction in the required 5 foot rear yard setback for the portion of the building between 20 and 75 feet in height, under BMC 23E.26.070.C
- Use Permit to allow that portion of the building over 120 feet to be greater than 120 feet in width when measured at the widest point on the diagonal in plan view, under BMC 23E.68.070.C
- Use Permit to allow a reduced vehicle parking space requirement, under BMC 23E.68.080.D
- Use Permit for reduction of required parking spaces through payment of an in-lieu fee to be used to provide enhanced transit services, under BMC 23E.68.080.D
- Administrative Use Permit to allow architectural projections (e.g. elevator enclosures) to exceed the height limit, under BMC 23E.04.020.C

I. FINDINGS FOR APPROVAL

1. As required by Section 23B.32.040.A of the Zoning Ordinance, the project, under the circumstances of this particular case existing at the time at which the application is granted, would not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City because:
 - A. The project is a higher-density development in proximity to regional transit, shops and amenities, consistent with the goals of the Downtown Area Plan (described in greater detail in section IV.). The project site is located within the Downtown Mixed Use District (C-DMU), Core Area, as identified in the DAP. It will provide 274 residential units and 10,000 square feet of retail commercial space. The project is adjacent to the Downtown Berkeley BART station and multiple AC Transit lines on Shattuck Avenue and Allston Way. Surrounding land uses include a hotel, retail commercial space, offices, restaurants, and parking. The project will add to surrounding commercial uses and add population to support these uses.
 - B. The project will contribute to Downtown as a thriving, livable, diverse residential neighborhood with a mix of supportive uses, and play a significant role in meeting Berkeley's

continuing need for additional housing. The project will provide 274 housing units, comprised of 57 micro units, 63 studio units, 93 one-bedroom units, and 61 two-bedroom units. In addition, the project is subject to the City's Affordable Housing Mitigation Fee (AHMF) Ordinance (BMC Section 22.20.065), which requires that the applicant either (1) pay an AHMF; (2) provide 55 below-market-rate (BMR) units in lieu of the AHMF; or (3) pay a reduced AHMF in combination with a reduced number of BMR units.

- C. Pursuant to BMC Section 23E.68.070.D, the project will enhance public open spaces and streets to benefit pedestrians, improve Downtown's livability, and foster a sense of place. Street improvements will strengthen Allston Way as a destination and enhance pedestrian experiences. Improvements within and facing the public right-of-way on Allston Way will include enhanced stone paving, trees, planters, and benches on the sidewalk, and art vitrines with glass display cases at the building's exterior. Sidewalks will be rebuilt consistent with the adopted Streets and Open Space Improvement Plan (SOSIP), and the project will pay its SOSIP fee, dedicated to public enhancement in the Downtown. In addition, the building will provide 21,952 square feet of private open space for residents, including rooftop terraces and gardens and private balconies.
- D. The project is designed to achieve a LEED Gold or equivalent rating, as required under BMC Section 23E.68.085.A, and will be in compliance with Title 24 of California's Building Standards Code. The project's sustainability features include: roof gardens to reduce the heat island effect and delay stormwater runoff; solar shading for residential units; low emissivity glass to minimize need for building cooling; hot water generated by solar thermal power; and Transportation Demand Management features including AC Transit passes for each residential household and commercial employee, five car share parking spaces, four electric vehicle charging stations, and secure bicycle parking. The project is consistent with the City's Climate Action Plan and General Plan Implementation Strategies.
- E. The 18-story project will result in new shading patterns; however, it will not be detrimental to the solar access of the surrounding buildings and general neighborhood. DAP Policy ES-3.15 directs that new structures in the plan area be designed and located in a manner that minimizes shading on public open spaces. Shadow studies of the project depicted increased shadowing during the summer and winter solstices. The building will not cast new shadows on Civic Center Park, open space and playing fields at Berkeley High School, or other public open spaces. During spring and fall afternoons, the building will increase existing shading of the BART plaza adjacent to the building's eastern façade. However, the stepped massing of the building, with upper stories receded from Shattuck Avenue, will minimize eastward shading during afternoon hours.
- F. The 18-story project will redirect winds; however, the project will not create detrimental wind impacts on surrounding streets and pedestrians. A Wind and Comfort Impact Analysis was completed and summarized in the Infill Environmental Checklist. Based on prevailing winds and the building's mass and location, and it was determined that the building will not significantly deflect downward drafts to ground level where pedestrian comfort could be affected. It should also be noted that the building's design in relation to wind is consistent with the Downtown Design Guidelines, which call for articulation and setbacks to reduce winds.

- G. The Final Environmental Impact Report prepared for the proposed project found that impacts related to Transportation/Traffic would be less than significant with Mitigation Measures. Project construction and operation will increase traffic. Project construction will result in reduced capacity, temporary closure of portions of Allston Way including sidewalks, and relocation of AC Transit bus stops. Construction-related traffic impacts will be less than significant with mitigation. The proposed driveway will result in new potential conflicts on Allston Way between vehicles accessing the site and pedestrians and AC Transit buses within the public right-of-way. Pedestrian safety impacts along Allston Way will be less than significant with mitigation. Commercial and passenger loading activity associated with the project also will introduce potential conflicts with other automobiles, buses, bicyclists, and pedestrians. Loading conflicts will be less than significant with mitigation.
- H. The Final Environmental Impact Report prepared for the proposed project found that impacts related to Noise would be less than significant with Mitigation Measures. Project construction and operation will affect the acoustic environment. Noise impacts were analyzed in the Environmental Impact Report. Construction of the project over a 27-month period will intermittently generate high noise levels on and adjacent to the project site, exceeding the City's standards for construction noise in commercial zones. Temporary construction noise will have a significant and unavoidable impact; nonetheless, this project-level impact is consistent with the finding of the Downtown Area Plan Environmental Impact Report for the Plan Area as a whole. New residential units also will be subject to noise levels in excess of the City of Berkeley noise compatibility guidelines. However, the exposure of new residents to ambient noise will be less than significant with mitigation.
- I. The Final Environmental Impact Report prepared for the proposed project found that impacts related to Air Quality would be less than significant with Mitigation Measures. Project construction and operation will affect air quality in the San Francisco Bay Area Air Quality basin; associated air pollutant emissions will be less than significant with mitigation.
- J. The Final Environmental Impact Report prepared for the proposed project found that impacts related to Cultural/Historic Resources would be less than significant. The project includes demolition of an existing commercial building on the project site. An evaluation of this building concluded that it is not a historical resource under CEQA. In addition, the project will not result in significant impacts to nearby historic resources in the proposed Shattuck Avenue Downtown Historic District. Consistent with mitigation measures CR-1a and CR-1b in the Final EIR, the applicant has modified the new building's design to include exterior materials that are more visually compatible with the adjacent, historic Shattuck Hotel (i.e., rectilinear wall systems below the seventh floor and wall rhythm modifications). These design features protect the Shattuck Hotel's integrity of setting. The new building also will partially obstruct scenic views of the Bay and the Golden Gate from the historic Campanile Way on the UC Berkeley campus. However, it will not have a direct material effect on the historic resource itself, and Campanile Way will substantially retain its integrity as a historic resource despite the view obstruction.
- K. The project is subject to the City's standard conditions of approval regarding construction noise and air quality, waste diversion, toxics, and stormwater requirements, thereby ensuring the project will not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood of such proposed use or

be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City.

III. DEMOLITION OF EXISTING BUILDINGS:

Pursuant to BMC Section 23C.08.050.D, the City finds that the proposed demolition of the existing building will not be materially detrimental to the financial needs of the neighborhood or the City, because the proposed project will provide replacement floor area on-site and that the demolition is required in order to allow the proposed new project to be built.

IV. OTHER REQUIRED FINDINGS:

- A. Pursuant to BMC Section 23E.68.090.B.1, the City finds that the proposed project is **consistent with the purposes of the C-DMU District**, because it is consistent with the goals and policies of the Downtown Area Plan as discussed in the project staff report dated October 25, 2018. The project is a higher-density, mixed-use development in proximity to regional transit, shops and amenities. The 274 dwelling units will improve options to increase access to Downtown on foot, by bicycle and via transit, and promote transit as an efficient and attractive choice. It will contribute to Downtown as a thriving, diverse residential neighborhood with a mix of supportive uses. It will enhance public open spaces and streets to benefit pedestrians, improve Downtown's livability, and foster an exceptional sense of place. The project will include 10,000 square feet of commercial space that will service the city and region, consistent with the Core Area of the C-DMU District.

- B. Pursuant to BMC Section 23E.68.090.B.2 and D, the City finds that the project design is **compatible with the surrounding uses and buildings** and is compatible with the visual character and form of the District. The project would maintain continuity with and respect for the surrounding urban environment. Street wall height, cornice lines, human-scaled openings, and material would complement downtown's traditional fabric. The building's wall treatments would complement those of the adjacent, historic Shattuck Hotel. The street-level scale of neighboring buildings would be respected, as the project would maintain a continuous street wall at the edge of the abutting streets up to where the building would step back toward the interior of the site. At a height of approximately 72 feet (seven stories) above street level, the building would step back 15 feet from Shattuck Avenue and Allston Way. Above the 12th floor, the building would step back an additional 65 feet from Shattuck Avenue. This stepped massing is intended to minimize sight lines of the proposed 18-story tower from the perspective of people on Shattuck Avenue. The project's proposed retail and multi-family residential uses also are already found in Downtown Berkeley. The proposed project, which received a favorable recommendation by the DRC, will be designed with ground-floor storefronts and continuous building street walls except for architectural expression at the site's southeast corner and for usable open space. These features would provide for greater compatibility with nearby historic buildings in the proposed Shattuck Avenue Downtown Historic District. In addition, implementation of Final EIR Mitigation Measures CR-1a and CR-1b would enhance the compatibility of the proposed building's wall treatments with the adjacent, historic Shattuck Hotel.

C. Pursuant to BMC Section 23E.68.090.E, the applicant proposed the following as Significant Community Benefits:

1. **Project Labor Agreement.** An agreement with all twenty eight member trades of the Alameda County Building Trades Council, without any trade or work exclusions. Value: \$5,547,020. Based on 5% of estimated construction costs, as per City Council Resolution 67,172 – N.S.
2. **Community Space.** A 677 square-foot community art space next to the residential lobby that would be available for community events.

Pursuant to BMC Section 23E.68.090.E, the City finds the Project Labor Agreement complies with the Council Resolution #67,172 N.S. In addition, the City finds that the provision of community space is above and beyond what would otherwise be required by the City because the Zoning Ordinance does not currently require such a benefit. Thus, both of the above **are Significant Community Benefits** and satisfy the finding to approve a building of 180 feet in height.

D. Pursuant to BMC Section 23E.68.090.F, the City finds that the **modified rear yard setback** for the portion of the building between 20 and 75 feet in height and to allow the portion of the building over 120 feet to be greater than 120 feet in width when measured at the widest point on the diagonal in plan view will not unreasonably limit solar access or create significant increases in wind experienced on the public sidewalk. Shadow diagrams presented in Appendix A of the Draft EIR indicate that the building will partially shade Allston Way at street level during summer mornings, while partially shading Allston Way, the north side of the Shattuck Hotel, and a retail commercial building east of the hotel during summer afternoons. Due to the minimal massing in the setback encroachments, they will have a minimal contribution to these shadows. Therefore, it would not unreasonably limit solar access. Additionally, the Wind and Comfort Impact Analysis prepared for the project found that wind accelerations generated by the building will be located over rooftops of adjacent buildings or at decks and terraces within the building itself. It is not expected that the building will significantly affect ground-level winds. Therefore, the building's extension beyond setback standards will not significantly increase winds on the public sidewalk.

E. Pursuant to BMC Section 23E.68.090.H, the City finds that the **reduced vehicle parking** spaces will not be detrimental to the neighborhood. The fee schedule adopted by the Council by resolution (66,178-N.S.) set the fee for reduced vehicle parking at \$15,000 per space for spaces 1-5 waived or reduced, \$20,000 per space for spaces 6-15 waived or reduced, \$25,000 per space for spaces 16-25 waived or reduced, and \$30,000 per space for spaces 26 and greater waived or reduced. A fee payment will be made to the City as a condition of this permit.

F. Pursuant to BMC Section 23E.04.020.C, the City finds that the **architectural projections** that exceed the height limit are permissible as they represent no more than 15% of the average floor area of all of the building's floors and no tower or similar structure will be used as habitable space or for any commercial purpose, other than that which may accommodate the mechanical needs of the building. Rooftop elevator and stairwell enclosures and a parapet will exceed the District height limit of 180 feet. The elevator and stairwell enclosures will exceed the height limit by up to approximately 10 feet, while the parapet will exceed this limit by up to 5 feet. In addition, solar hot water panels will be installed on top of the elevator enclosure and a stairwell enclosure. These panels will not substantially exceed the height of enclosures. The elevator extension and

stairwell enclosures are necessary to serve such a tall building. The solar hot water panels would reduce the building's energy demand and assist in attainment of LEED Gold certification.

V. STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS

The following conditions, as well as all other applicable provisions of the Zoning Ordinance, apply to this Permit:

- 1. Conditions and Mitigation Monitoring and Reporting Program Shall be Printed on Plans**
The conditions of this Permit shall be printed on the *second* sheet of each plan set submitted for a building permit pursuant to this Use Permit, under the title 'Use Permit Conditions.' *Additional sheets* may also be used if the *second* sheet is not of sufficient size to list all of the conditions. The sheet(s) containing the conditions shall be of the same size as those sheets containing the construction drawings; 8-1/2" by 11" sheets are not acceptable.
- 2. Applicant Responsible for Compliance with Conditions**
The applicant shall ensure compliance with all of the following conditions, including submittal to the project planner of required approval signatures at the times specified. Failure to comply with any condition may result in construction being stopped, issuance of a citation, and/or modification or revocation of the Use Permit.
- 3. Uses Approved Deemed to Exclude Other Uses (Section 23B.56.010)**
 - A. This Permit authorizes only those uses and activities actually proposed in the application, and excludes other uses and activities.
 - B. Except as expressly specified herein, this Permit terminates all other uses at the location subject to it.
- 4. Modification of Permits (Section 23B.56.020)**
No change in the use or structure for which this Permit is issued is permitted unless the Permit is modified by the Board, except that the Zoning Officer may approve changes that do not expand, intensify, or substantially change the use or building.

Changes in the plans for the construction of a building or structure, may be modified prior to the completion of construction, in accordance with Section 23B.56.030.D. The Zoning Officer may approve changes to plans approved by the Board, consistent with the Board's policy adopted on May 24, 1978, which reduce the size of the project.
- 5. Plans and Representations Become Conditions (Section 23B.56.030)**
Except as specified herein, the site plan, floor plans, building elevations and/or any additional information or representations, whether oral or written, indicating the proposed structure or manner of operation submitted with an application or during the approval process are deemed conditions of approval.
- 6. Subject to All Applicable Laws and Regulations (Section 23B.56.040)**
The approved use and/or construction is subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies. Prior to construction, the applicant shall identify and secure all applicable permits from the Building and Safety Division, Public Works Department and other affected City divisions and departments.
- 7. Exercised Permit for Use Survives Vacancy of Property (Section 23B.56.080)**
Once a Permit for a use is exercised and the use is established, that use is legally recognized, even if the property becomes vacant, except as set forth in Standard Condition #8, below.

8. Exercise and Lapse of Permits (Section 23B.56.100)

- A. A permit for the use of a building or a property is exercised when, if required, a valid City business license has been issued, and the permitted use has commenced on the property.
- B. A permit for the construction of a building or structure is deemed exercised when a valid City building permit, if required, is issued, and construction has lawfully commenced.
- C. A permit may be declared lapsed and of no further force and effect if it is not exercised within one year of its issuance, except that permits for construction or alteration of structures or buildings may not be declared lapsed if the permittee has: (1) applied for a building permit; or, (2) made substantial good faith efforts to obtain a building permit and begin construction, even if a building permit has not been issued and/or construction has not begun.

9. Indemnification Agreement

The applicant shall hold harmless, defend, and indemnify the City of Berkeley and its officers, agents, and employees against any and all liability, damages, claims, demands, judgments or other losses (including without limitation, attorney's fees, expert witness and consultant fees and other litigation expenses), referendum or initiative relating to, resulting from or caused by, or alleged to have resulted from, or caused by, any action or approval associated with the project. The indemnity includes without limitation, any legal or administrative challenge, referendum or initiative filed or prosecuted to overturn, set aside, stay or otherwise rescind any or all approvals granted in connection with the Project, any environmental determination made for the project and granting any permit issued in accordance with the project. This indemnity includes, without limitation, payment of all direct and indirect costs associated with any action specified herein. Direct and indirect costs shall include, without limitation, any attorney's fees, expert witness and consultant fees, court costs, and other litigation fees. City shall have the right to select counsel to represent the City at Applicant's expense in the defense of any action specified in this condition of approval. City shall take reasonable steps to promptly notify the Applicant of any claim, demand, or legal actions that may create a claim for indemnification under these conditions of approval.

VI. ADDITIONAL CONDITIONS

Pursuant to BMC 23B.32.040.D, the City attaches the following additional conditions to this Permit:

- 10.** Pursuant to Section 23E.68.070.B.3.b, a) the applicant shall submit an application for a building permit no later than 180 days after this Use Permit is approved, b) shall respond to all plan check comments no later than 30 days after they are issued, and c) shall pay all building permit-related fees promptly when due, and shall commence construction no later than 180 days after being notified of approval of the first building permit. Any extension of any deadline in this condition shall be subject to approval by the Zoning Officer, except that no deadline for payment of any fees may be extended.

Prior to Submittal of Any Building Permit:

11. Project Liaison. The applicant shall include in all building permit plans and post onsite the name and telephone number of an individual empowered to manage construction-related complaints generated from the project. The individual's name, telephone number, and responsibility for the project shall be posted at the project site for the duration of the project in a location easily visible to the public. The individual shall record all complaints received and actions taken in response, and submit written reports of such complaints and actions to the project planner on a weekly basis.
Please designate the name of this individual below:

Project Liaison _____
Name Phone #

12. Final Design Review. The Project requires approval of a Final Design Review application by the Design Review Committee.

13. Compliance with Conditions and Environmental Mitigations. The building permit application is subject to verification of compliance to the adopted **Mitigation Monitoring and Reporting Program (Attachment 1- Exhibit B)**. The applicant shall be responsible for demonstrating compliance with all conditions of approval and mitigation measures per the timeline set forth by this use permit. The applicant shall deposit \$10,000 with the City, or less with the approval of the Zoning Officer, to pay for the cost of monitoring compliance with these Conditions of Approval and other applicable conditions and regulations. Should compliance-monitoring expenses exceed the initial deposit, the applicant shall deposit additional funds to cover such additional expenses upon the request of the Zoning Officer; any unused deposit will be refunded to the applicant.

14. Address Assignment. The applicant shall file an "Address Assignment Request Application" with the Permit Service Center (1947 Center Street) for any address change or new address associated with this Use Permit. The new address(es) shall be assigned and entered into the City's database prior to the applicant's submittal of a building permit application.

15. Construction Noise Reduction Program. The applicant shall develop a site specific noise reduction program prepared by a qualified acoustical consultant to reduce construction noise impacts to the maximum extent feasible, subject to review and approval of the Zoning Officer. The noise reduction program shall include the time limits for construction listed above, as measures needed to ensure that construction complies with BMC Section 13.40.070. The noise reduction program should include, but shall not be limited to, the following available controls to reduce construction noise levels as low as practical:

- A. Construction equipment should be well maintained and used judiciously to be as quiet as practical.
- B. Equip all internal combustion engine-driven equipment with mufflers, which are in good condition and appropriate for the equipment.
- C. Utilize "quiet" models of air compressors and other stationary noise sources where technology exists. Select hydraulically or electrically powered equipment and avoid pneumatically powered equipment where feasible.
- D. Locate stationary noise-generating equipment as far as possible from sensitive receptors when adjoining construction sites. Construct temporary noise barriers or partial enclosures to acoustically shield such equipment where feasible.
- E. Prohibit unnecessary idling of internal combustion engines.

- F. If impact pile driving is required, pre-drill foundation pile holes to minimize the number of impacts required to seat the pile.
- G. Construct solid plywood fences around construction sites adjacent to operational business, residences or other noise-sensitive land uses where the noise control plan analysis determines that a barrier would be effective at reducing noise.
- H. Erect temporary noise control blanket barriers, if necessary, along building facades facing construction sites. This mitigation would only be necessary if conflicts occurred which were irresolvable by proper scheduling. Noise control blanket barriers can be rented and quickly erected.
- I. Route construction related traffic along major roadways and away from sensitive receptors where feasible.

- 16. Damage Due to Construction Vibration.** The project applicant shall submit screening level analysis prior to, or concurrent with demolition building permit. If a screening level analysis shows that the project has the potential to result in damage to structures, a structural engineer or other appropriate professional shall be retained to prepare a vibration impact assessment (assessment). The assessment shall take into account project specific information such as the composition of the structures, location of the various types of equipment used during each phase of the project, as well as the soil characteristics in the project area, in order to determine whether project construction may cause damage to any of the structures identified as potentially impacted in the screening level analysis. If the assessment finds that the project may cause damage to nearby structures, the structural engineer or other appropriate professional shall recommend design means and methods of construction that to avoid the potential damage, if feasible. The assessment and its recommendations shall be reviewed and approved by the Building and Safety Division and the Zoning Officer. If there are no feasible design means or methods to eliminate the potential for damage, the structural engineer or other appropriate professional shall undertake an existing conditions study (study) of any structures (or, in case of large buildings, of the portions of the structures) that may experience damage. This study shall
- establish the baseline condition of these structures, including, but not limited to, the location and extent of any visible cracks or spalls; and
 - include written descriptions and photographs.

The study shall be reviewed and approved by the Building and Safety Division and the Zoning Officer prior to issuance of a grading permit. Upon completion of the project, the structures (or, in case of large buildings, of the portions of the structures) previously inspected will be resurveyed, and any new cracks or other changes shall be compared to pre-construction conditions and a determination shall be made as to whether the proposed project caused the damage. The findings shall be submitted to the Building and Safety Division and the Zoning Officer for review. If it is determined that project construction has resulted in damage to the structure, the damage shall be repaired to the pre-existing condition by the project sponsor, provided that the property owner approves of the repair.

Prior to Issuance of Any Building Permit:

- 17. Significant Community Benefits:** As per City Council Resolution No. 67,172-N.S. all significant community benefits agreed to by the applicant, and approved by the City, shall be included as Conditions of Approval, and prior to issuance of a building permit, a community benefits agreement shall be recorded as a notice of limitation on the title for the property. The significant community benefits are as follows:

- A. Project Labor Agreement. An agreement with all twenty eight member trades of the Alameda County Building Trades Council, without any trade or work exclusions. Value: \$5,547,020. Based on 5% of estimated construction costs, as per City Council Resolution 67,172 – N.S.
 - B. Community Space. A 677 square-foot community art space next to the residential lobby that will be available for community events.
18. Percent for Public Art: Consistent with BMC §23C.23, the applicant shall either pay the required in-lieu fee or provide the equivalent amount in a financial guarantee to be released after installation of the On-Site Publicly Accessible Art.
19. Affordable Housing Mitigation Fee: Consistent with BMC §22.20.065, and fee resolution applicable to this project, the applicant provide a schedule, consistent with a schedule approved by the City Manager or her designee, outlining the timeframe for payment of the AHMF, and they shall pay this fee prior to certificate of occupancy.
20. Construction Noise Management - Public Notice Required. At least two weeks prior to initiating any construction activities at the site, the applicant shall provide notice to businesses and residents within **500 feet** of the project site. This notice shall at a minimum provide the following: (1) project description, (2) description of construction activities, (3) daily construction schedule (i.e., time of day) and expected duration (number of months), (4) the name and phone number of the Project Liaison for the project that is responsible for responding to any local complaints, (5) commitment to notify neighbors at least four days in advance of authorized extended work hours and the reason for extended hours, and (6) that construction work is about to commence. The liaison would determine the cause of all construction-related complaints (e.g., starting too early, bad muffler, worker parking, etc.) and institute reasonable measures to correct the problem. A copy of such notice and methodology for distributing the notice shall be provided in advance to the City for review and approval.
21. Interior Noise Levels. Prior to issuance of a building permit, the applicant shall submit a report to the Building and Safety Division and the Zoning Officer by a qualified acoustic engineer certifying that the interior residential portions of the project will achieve interior noise levels of no more than 45 Ldn (Average Day-Night Levels). If the adopted Building Code imposes a more restrictive standard for interior noise levels, the report shall certify compliance with this standard.
22. Construction Phases. The applicant shall provide the Zoning Officer with a schedule of major construction phases with start dates and expected duration, a description of the activities and anticipated noise levels of each phase, and the name(s) and phone number(s) of the individual(s) directly supervising each phase. The Zoning Officer or his/her designee shall have the authority to require an on-site meeting with these individuals as necessary to ensure compliance with these conditions. The applicant shall notify the Zoning Officer of any changes to this schedule as soon as possible.
23. Demolition. Demolition of the existing building cannot commence until a complete application is submitted for the replacement building. In addition, all plans presented to the City to obtain a permit to allow the demolition are subject to these conditions.
24. Parking In-Lieu Fee. Consistent with BMC 23E.28.080.D, the applicant shall pay a fee in lieu of providing each required vehicle parking. As set by the City Council, the graduated fee is as follows: \$15,000 for each space 1-5, \$20,000 for each space 6-15, \$25,000 for each space 16-25, and

\$30,000 for each space above 25. The in lieu fee will be deposited into a fund established by the City that provides enhanced transit services.

- 25. Streets and Open Space Improvement Plan: Street Frontage Improvements.** Streets and Open Space Improvement Plan: Street Frontage Improvements. Consistent with the Downtown Streets and Open Space Improvement Plan (SOSIP) (or subsequent iterations as adopted by the City), the developer shall construct improvements along Shattuck Avenue and Allston Way to the centerline. Such improvements shall be included with the building permit submittal, designed and constructed as directed by the Public Works and Fire Departments, and constructed prior to certificate of occupancy. At the discretion of the City Engineer, the developer may be required to pay a fee in lieu of certain improvements as specified in the SOSIP Impact Fee COA below.
- 26. Streets and Open Space Improvement Plan: Impact Fee:** As required by BMC Section 23E.68.075, the project shall pay an impact fee to implement the Streets and Open Space Improvement Plan (SOSIP) per the fee schedule adopted by the Council by resolution. The City shall deposit this payment into the Downtown Streets and Open Space Improvement Fund (SOSIF), or its equivalent, to pay for the design and construction of the SOSIP Major Projects. The fee shall apply to the project's "Gross Floor Area" as defined in BMC Section 23F.04.010, less any existing Gross Floor Area removed as part of the project.

At the City's discretion, the City Manager or her designee may reduce the required SOSIP Impact Fee, on a \$1 to \$1 ratio, as a credit for constructing all or a portion of a Major SOSIP Improvement Project beyond the frontage improvements already required by this Permit. The first half of this fee shall be paid prior to issuance of a building permit, and the second half shall be paid prior to issuance of a certificate of occupancy.

- 27. SOSIP Improvements:** At the discretion of the City Engineer, the developer shall make an in-lieu payment for roadway improvements which are not constructed as part of the project, with a maximum payment of \$400,000 for expected improvements. Maximum payment amount shall be increased annually (if applicable) based on the Engineering News Record's construction prices for the San Francisco Bay Area. The first half of these payments shall be made prior to issuance of a building permit, and the second half shall be made prior to issuance of a certificate of occupancy.
- 28. Green Building Certification.** The applicant shall submit documentation demonstrating that the building will attain LEED Gold or higher, or attain a building performance equivalent to this rating that has been approved by the Zoning Officer for this project. Documentation shall include proof of payment of the registration/application fee to the organization administering the green building certification system (e.g. USGBC/GBCI for LEED, Build It Green for GreenPoint Rated, etc.), a copy of the updated green building checklist that reflects anticipated points, and a statement from the appropriate project team professional (e.g. LEED Accredited Professional, GreenPoint Rater, etc.) verifying that the project is on track for certification at the required level or above. The submitted green building checklist must be a type that is appropriate for the project and a version that is being accepted by the organization granting the green building certification at the time of building permit application. Whenever applicable, measures from the green building checklist shall be incorporated and noted on site plans.
- 29. Electric Vehicle (EV) Charging.** At least 10% of the project parking spaces for residential parking and 3% of the parking spaces for non-residential parking shall be pre-wired to allow for future Level 2 (240 Volt/40 amp) plug-in electric vehicle (EV) charging system installation, as specified by the

Office of Energy and Sustainable Development. Any Level 2 EV charging systems installed at parking spaces will be counted toward the applicable pre-wiring requirement. Pre-wiring for EV charging and EV charging station installations shall be noted on site plans.

30. Recycling and Organics Collection. Applicant shall provide recycling and organics collection areas for occupants, clearly marked on site plans, which comply with the Alameda County Mandatory Recycling Ordinance (ACWMA Ordinance 2012-01).
31. Water Efficient Landscaping. Applicant shall provide an updated Bay-Friendly Basics Landscape Checklist that includes detailed notes of any measures that will not be fully met at the project. Landscape improvements shall be consistent with the current versions of the State's Water Efficient Landscape Ordinance (WELO) and the East Bay Municipal Utility District's Section 31: Water Efficiency Requirements.
32. Construction and Demolition. Applicant shall submit a Waste Diversion Form and Waste Diversion Plan that meet the diversion requirements of BMC Chapters 19.24 and 19.37.
33. Public Works ADA. Plans submitted for building permit shall include replacement of sidewalk, curb, gutter, and other streetscape improvements, as necessary to comply with current City of Berkeley standards for accessibility.
34. Parking for Disabled Persons. Per BMC Section 23E.28.040.D of the Zoning Ordinance, "Notwithstanding any reduction in off-street parking spaces that may be granted for mixed-use projects in non-residential districts listed in Sub-title 23E, the requirement for off-street parking spaces for disabled persons in the project shall be calculated as if there had been no reduction in total parking spaces."
35. Toxics. The applicant shall contact the Toxics Management Division (TMD) at 1947 Center Street or (510) 981-7470 to determine which of the following documents are required and timing for their submittal:
 - A. Environmental Site Assessments:
 - 1) Phase I & Phase II Environmental Site Assessments (latest ASTM 1527-13). A recent Phase I ESA (less than 6 months old*) shall be submitted to TMD for developments for:
 - All new commercial, industrial and mixed use developments and all large improvement projects.
 - All new residential buildings with 5 or more dwelling units located in the Environmental Management Area (or EMA).
 - EMA is available online at:
 - http://www.cityofberkeley.info/uploadedFiles/IT/Level_3_-_General/ema.pdf
 - 2) Phase II ESA is required to evaluate Recognized Environmental Conditions (REC) identified in the Phase I or other RECs identified by TMD staff. The TMD may require a third party toxicologist to review human or ecological health risks that may be identified. The applicant may apply to the appropriate state, regional or county cleanup agency to evaluate the risks.
 - 3) If the Phase I is over 6 months old, it will require a new site reconnaissance and interviews. If the facility was subject to regulation under Title 15 of the Berkeley Municipal Code since the last Phase I was conducted, a new records review must be performed.
 - B. Soil and Groundwater Management Plan:
 - 1) A Soil and Groundwater Management Plan (SGMP) shall be submitted to TMD for all non-residential projects, and residential or mixed-use projects with five or more dwelling units,

that: (1) are in the Environmental Management Area (EMA) and (2) propose any excavations deeper than 5 feet below grade. The SGMP shall be site specific and identify procedures for soil and groundwater management including identification of pollutants and disposal methods. The SGMP will identify permits required and comply with all applicable local, state and regional requirements.

- 2) The SGMP shall require notification to TMD of any hazardous materials found in soils and groundwater during development. The SGMP will provide guidance on managing odors during excavation. The SGMP will provide the name and phone number of the individual responsible for implementing the SGMP and post the name and phone number for the person responding to community questions and complaints.
- 3) TMD may impose additional conditions as deemed necessary. All requirements of the approved SGMP shall be deemed conditions of approval of this Use Permit.

C. Building Materials Survey:

- 1) Prior to approving any permit for partial or complete demolition and renovation activities involving the removal of 20 square or lineal feet of interior or exterior walls, a building materials survey shall be conducted by a qualified professional. The survey shall include, but not be limited to, identification of any lead-based paint, asbestos, polychlorinated biphenyl (PBC) containing equipment, hydraulic fluids in elevators or lifts, refrigeration systems, treated wood and mercury containing devices (including fluorescent light bulbs and mercury switches). The Survey shall include plans on hazardous waste or hazardous materials removal, reuse or disposal procedures to be implemented that fully comply state hazardous waste generator requirements (22 California Code of Regulations 66260 et seq). The Survey becomes a condition of any building or demolition permit for the project. Documentation evidencing disposal of hazardous waste in compliance with the survey shall be submitted to TMD within 30 days of the completion of the demolition. If asbestos is identified, Bay Area Air Quality Management District Regulation 11-2-401.3 a notification must be made and the J number must be made available to the City of Berkeley Permit Service Center.

D. Hazardous Materials Business Plan:

- 1) A Hazardous Materials Business Plan (HMBP) in compliance with BMC Section 15.12.040 shall be submitted electronically at <http://cers.calepa.ca.gov/> within 30 days if on-site hazardous materials exceed BMC 15.20.040. HMBP requirement can be found at <http://ci.berkeley.ca.us/hmr/>

Prior to Demolition or Start of Construction:

- 36. Construction Meeting.** The applicant shall request of the Zoning Officer an on-site meeting with City staff and key parties involved in the early phases of construction (e.g., applicant, general contractor, foundation subcontractors) to review these conditions and the construction schedule. The general contractor or applicant shall ensure that all subcontractors involved in subsequent phases of construction aware of the conditions of approval.

During Construction:

- 37. Construction Hours.** Construction activity shall be limited to between the hours of 7:00 AM and 6:00 PM on Monday through Friday, and between 9:00 AM and 4:00 PM on Saturday. No construction-related activity shall occur on Sunday or any Federal Holiday.

- 38. Construction Hours- Exceptions.** It is recognized that certain construction activities, such as the placement of concrete, must be performed in a continuous manner and may require an extension of these work hours. Prior to initiating any activity that might require a longer period, the developer

must notify the Zoning Officer and request an exception for a finite period of time. If the Zoning Officer approves the request, then two weeks prior to the expanded schedule, the developer shall notify businesses and residents within 500 feet of the project site describing the expanded construction hours. A copy of such notice and methodology for distributing the notice shall be provided in advance to the City for review and approval. The project shall not be allowed more than 15 extended working days.

- 39. Transportation Construction Plan.** The applicant and all persons associated with the project are hereby notified that a Transportation Construction Plan (TCP) is required for all phases of construction, particularly for the following activities:
- Alterations, closures, or blockages to sidewalks, pedestrian paths or vehicle travel lanes (including bicycle lanes);
 - Storage of building materials, dumpsters, debris anywhere in the public ROW;
 - Provision of exclusive contractor parking on-street; or
 - Significant truck activity.

The applicant shall secure the City Traffic Engineer's approval of a TCP. Please contact the Office of Transportation at 981-7010, or 1947 Center Street, and ask to speak to a traffic engineer. In addition to other requirements of the Traffic Engineer, this plan shall include the locations of material and equipment storage, trailers, worker parking, a schedule of site operations that may block traffic, and provisions for traffic control. The TCP shall be consistent with any other requirements of the construction phase.

Contact the Permit Service Center (PSC) at 1947 Center Street or 981-7500 for details on obtaining Construction/No Parking Permits (and associated signs and accompanying dashboard permits). Please note that the Zoning Officer and/or Traffic Engineer may limit off-site parking of construction-related vehicles if necessary to protect the health, safety or convenience of the surrounding neighborhood. A current copy of this Plan shall be available at all times at the construction site for review by City Staff.

- 40. Project Construction Website.** The applicant shall establish a project construction website with the following information clearly accessible and updated monthly or more frequently as changes warrant:
- Contact information (i.e. "hotline" phone number, and email address) for the project construction manager
 - Calendar and schedule of daily/weekly/monthly construction activities
 - The final Conditions of Approval, Mitigation Monitoring and Reporting Program, Transportation Construction Plan, Construction Noise Reduction Program, and any other reports or programs related to construction noise, air quality, and traffic.

- 41. Avoid Disturbance of Nesting Birds.** Initial site disturbance activities, including vegetation and concrete removal, shall be prohibited during the general avian nesting season (February 1 to August 30), if feasible. If nesting season avoidance is not feasible, the applicant shall retain a qualified biologist to conduct a preconstruction nesting bird survey to determine the presence/absence, location, and activity status of any active nests on or adjacent to the project site. The extent of the survey buffer area surrounding the site shall be established by the qualified biologist to ensure that direct and indirect effects to nesting birds are avoided. To avoid the destruction of active nests and to protect the reproductive success of birds protected by the MBTA and CFGC, nesting bird surveys shall be performed not more than 14 days prior to scheduled

vegetation and concrete removal. In the event that active nests are discovered, a suitable buffer (typically a minimum buffer of 50 feet for passerines and a minimum buffer of 250 feet for raptors) shall be established around such active nests and no construction shall be allowed inside the buffer areas until a qualified biologist has determined that the nest is no longer active (e.g., the nestlings have fledged and are no longer reliant on the nest). No ground-disturbing activities shall occur within this buffer until the qualified biologist has confirmed that breeding/nesting is completed and the young have fledged the nest. Nesting bird surveys are not required for construction activities occurring between August 31 and January 31.

- 42. Air Quality - Diesel Particulate Matter Controls during Construction.** All off-road construction equipment used for projects with construction lasting more than 2 months shall comply with **one** of the following measures:
- A. The project applicant shall prepare a health risk assessment that demonstrates the project's on-site emissions of diesel particulate matter during construction will not exceed health risk screening criteria after a screening-level health risk assessment is conducted in accordance with current guidance from BAAQMD and OEHHA. The health risk assessment shall be submitted to the Public Works Department for review and approval prior to the issuance of building permits.
 - B. All construction equipment shall be equipped with Tier 2 or higher engines and the most effective Verified Diesel Emission Control Strategies (VDECS) available for the engine type (Tier 4 engines automatically meet this requirement) as certified by the California Air Resources Board (CARB). The equipment shall be properly maintained and tuned in accordance with manufacturer specifications.

In addition, a Construction Emissions Minimization Plan (Emissions Plan) shall be prepared that includes the following:

- An equipment inventory summarizing the type of off-road equipment required for each phase of construction, including the equipment manufacturer, equipment identification number, engine model year, engine certification (tier rating), horsepower, and engine serial number. For all VDECS, the equipment inventory shall also include the technology type, serial number, make, model, manufacturer, CARB verification number level, and installation date.
- A Certification Statement that the Contractor agrees to comply fully with the Emissions Plan and acknowledges that a significant violation of the Emissions Plan shall constitute a material breach of contract. The Emissions Plan shall be submitted to the Public Works Department for review and approval prior to the issuance of building permits.

- 43. Archaeological Resources (Ongoing throughout demolition, grading, and/or construction).** Pursuant to CEQA Guidelines section 15064.5(f), "provisions for historical or unique archaeological resources accidentally discovered during construction" should be instituted. Therefore:
- A. In the event that any prehistoric or historic subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the project applicant and/or lead agency shall consult with a qualified archaeologist, historian or paleontologist to assess the significance of the find.
 - B. If any find is determined to be significant, representatives of the project proponent and/or lead agency and the qualified professional would meet to determine the appropriate avoidance measures or other appropriate measure, with the ultimate determination to be made by the City of Berkeley. All significant cultural materials recovered shall be subject to scientific analysis, professional museum curation, and/or a report prepared by the qualified professional according to current professional standards.

- C. In considering any suggested measure proposed by the qualified professional, the project applicant shall determine whether avoidance is necessary or feasible in light of factors such as the uniqueness of the find, project design, costs, and other considerations.
 - D. If avoidance is unnecessary or infeasible, other appropriate measures (e.g., data recovery) shall be instituted. Work may proceed on other parts of the project site while mitigation measures for cultural resources is carried out.
 - E. If significant materials are recovered, the qualified professional shall prepare a report on the findings for submittal to the Northwest Information Center.
44. Human Remains (Ongoing throughout demolition, grading, and/or construction). In the event that human skeletal remains are uncovered at the project site during ground-disturbing activities, all work shall immediately halt and the Alameda County Coroner shall be contacted to evaluate the remains, and following the procedures and protocols pursuant to Section 15064.5 (e)(1) of the CEQA Guidelines. If the County Coroner determines that the remains are Native American, the City shall contact the California Native American Heritage Commission (NAHC), pursuant to subdivision (c) of Section 7050.5 of the Health and Safety Code, and all excavation and site preparation activities shall cease within a 50-foot radius of the find until appropriate arrangements are made. If the agencies determine that avoidance is not feasible, then an alternative plan shall be prepared with specific steps and timeframe required to resume construction activities. Monitoring, data recovery, determination of significance and avoidance measures (if applicable) shall be completed expeditiously.
45. Paleontological Resources (Ongoing throughout demolition, grading, and/or construction). In the event of an unanticipated discovery of a paleontological resource during construction, excavations within 50 feet of the find shall be temporarily halted or diverted until the discovery is examined by a qualified paleontologist (per Society of Vertebrate Paleontology standards [SVP 1995,1996]). The qualified paleontologist shall document the discovery as needed, evaluate the potential resource, and assess the significance of the find. The paleontologist shall notify the appropriate agencies to determine procedures that would be followed before construction is allowed to resume at the location of the find. If the City determines that avoidance is not feasible, the paleontologist shall prepare an excavation plan for mitigating the effect of the project on the qualities that make the resource important, and such plan shall be implemented. The plan shall be submitted to the City for review and approval.
46. Halt Work/Unanticipated Discovery of Tribal Cultural Resources. In the event that cultural resources of Native American origin are identified during construction, all work within 50 feet of the discovery shall be redirected. The project applicant and project construction contractor shall notify the City Planning Department within 24 hours. The City will again contact any tribes who have requested consultation under AB 52, as well as contact a qualified archaeologist, to evaluate the resources and situation and provide recommendations. If it is determined that the resource is a tribal cultural resource and thus significant under CEQA, a mitigation plan shall be prepared and implemented in accordance with State guidelines and in consultation with Native American groups. If the resource cannot be avoided, additional measures to avoid or reduce impacts to the resource and to address tribal concerns may be required.
47. Stormwater Requirements. The applicant shall demonstrate compliance with the requirements of the City's National Pollution Discharge Elimination System (NPDES) permit as described in BMC Section 17.20. The following conditions apply:

- A. The project plans shall identify and show site-specific Best Management Practices (BMPs) appropriate to activities conducted on-site to limit to the maximum extent practicable the discharge of pollutants to the City's storm drainage system, regardless of season or weather conditions.
- B. Trash enclosures and/or recycling area(s) shall be covered; no other area shall drain onto this area. Drains in any wash or process area shall not discharge to the storm drain system; these drains should connect to the sanitary sewer. Applicant shall contact the City of Berkeley and EBMUD for specific connection and discharge requirements. Discharges to the sanitary sewer are subject to the review, approval and conditions of the City of Berkeley and EBMUD.
- C. Landscaping shall be designed with efficient irrigation to reduce runoff, promote surface infiltration and minimize the use of fertilizers and pesticides that contribute to stormwater pollution. Where feasible, landscaping should be designed and operated to treat runoff. When and where possible, xeriscape and drought tolerant plants shall be incorporated into new development plans.
- D. Design, location and maintenance requirements and schedules for any stormwater quality treatment structural controls shall be submitted to the Department of Public Works for review with respect to reasonable adequacy of the controls. The review does not relieve the property owner of the responsibility for complying with BMC Chapter 17.20 and future revisions to the City's overall stormwater quality ordinances. This review shall be conducted prior to the issuance of a Building Permit.
- E. All paved outdoor storage areas must be designed to reduce/limit the potential for runoff to contact pollutants.
- F. All on-site storm drain inlets/catch basins must be cleaned at least once a year immediately prior to the rainy season. The property owner shall be responsible for all costs associated with proper operation and maintenance of all storm drainage facilities (pipelines, inlets, catch basins, outlets, etc.) associated with the project, unless the City accepts such facilities by Council action. Additional cleaning may be required by City of Berkeley Public Works Engineering Dept.
- G. All private or public projects that create and/or replace 10,000 square feet or more of impervious surface must comply with Provision C.3 of the Alameda County NPDES permit and must incorporate stormwater controls to enhance water quality. Permit submittals shall include a Stormwater Requirement Checklist and detailed information showing how the proposed project will meet Provision C.3 stormwater requirements, including a) Site design measures to reduce impervious surfaces, promote infiltration, and reduce water quality impacts; b) Source Control Measures to keep pollutants out of stormwater runoff; c) Stormwater treatment measures that are hydraulically sized to remove pollutants from stormwater; d) an O & M (Operations and Maintenance) agreement for all stormwater treatment devices and installations; and e) Engineering calculations for all stormwater devices (both mechanical and biological).
- H. All on-site storm drain inlets must be labeled "No Dumping – Drains to Bay" or equivalent using methods approved by the City.
- I. Most washing and/or steam cleaning must be done at an appropriately equipped facility that drains to the sanitary sewer. Any outdoor washing or pressure washing must be managed in such a way that there is no discharge or soaps or other pollutants to the storm drain. Sanitary connections are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.
- J. Sidewalks and parking lots shall be swept regularly to prevent the accumulation of litter and debris. If pressure washed, debris must be trapped and collected to prevent entry to the storm drain system. If any cleaning agent or degreaser is used, wash water shall not discharge to the storm drains; wash waters should be collected and discharged to the sanitary sewer.

Discharges to the sanitary sewer are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.

- K. The applicant is responsible for ensuring that all contractors and sub-contractors are aware of and implement all stormwater quality control measures. Failure to comply with the approved construction BMPs shall result in the issuance of correction notices, citations, or a project stop work order.
- 48. Public Works - Implement BAAQMD-Recommended Measures during Construction.** For all proposed projects, BAAQMD recommends implementing all the Basic Construction Mitigation Measures, listed below to meet the best management practices threshold for fugitive dust:
- A. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
 - B. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
 - C. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
 - D. All vehicle speeds on unpaved roads shall be limited to 15 mph.
 - E. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
 - F. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
 - G. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified visible emissions evaluator.
 - H. Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.
- 49. Public Works.** All piles of debris, soil, sand, or other loose materials shall be covered at night and during rainy weather with plastic at least one-eighth millimeter thick and secured to the ground.
- 50. Public Works.** The applicant shall ensure that all excavation takes into account surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.
- 51. Public Works.** The project sponsor shall maintain sandbags or other devices around the site perimeter during the rainy season to prevent on-site soils from being washed off-site and into the storm drain system. The project sponsor shall comply with all City ordinances regarding construction and grading.
- 52. Public Works.** Prior to any excavation, grading, clearing, or other activities involving soil disturbance during the rainy season the applicant shall obtain approval of an erosion prevention plan by the Building and Safety Division and the Public Works Department. The applicant shall be responsible for following these and any other measures required by the Building and Safety Division and the Public Works Department.

53. Public Works. The removal or obstruction of any fire hydrant shall require the submission of a plan to the City's Public Works Department for the relocation of the fire hydrant during construction.
54. Public Works. If underground utilities leading to adjacent properties are uncovered and/or broken, the contractor involved shall immediately notify the Public Works Department and the Building & Safety Division, and carry out any necessary corrective action to their satisfaction.

Prior to Final Inspection or Issuance of Occupancy Permit:

55. Compliance with Conditions and Environmental Mitigations. The project shall conform to the plans and statements in the Use Permit. The developer is responsible for providing sufficient evidence to demonstrate compliance with the requirements throughout the implementation of this Use Permit. Occupancy is subject to verification of compliance to the Mitigation Monitoring and Reporting Program.
56. Compliance with Approved Plan. The project shall conform to the plans and statements in the Use Permit. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated October 25, 2018, except as modified by conditions of approval.
57. Community Space Management Plan Approval. The applicant shall submit a management plan for the community space that shall include, but is not limited to: who has access to the space; how active use will be promoted within the space; how the space will be advertised; fees associated; etc. The plan must be submitted for **review and approval by the Zoning Officer prior to issuance of final inspection** or issuance of occupancy permit.
58. Car Sharing Spaces. At least **five** car share spaces shall be provided within the parking garage for the life of the building. In addition, these car share spaces are subject to the following requirements:
- A. At least 90 days prior to issuance of a certificate of occupancy, the property owner shall do one of the following if necessary to ensure that car share spaces are provided at this site: 1) purchase 2 cars for the use of a vehicle sharing service provider, or VSSP (e.g., City CarShare or Zipcar), or 2) provide a monthly subsidy to offset the costs to a VSSP to provide for the management of the cars at this site.
 - B. Prior to issuance of a certificate of occupancy, the property owner shall provide one of the following: 1) a signed agreement with a VSSP to manage shared vehicles at the site, or 2) a plan to provide on-site management. If the vehicle sharing spaces are managed by a VSSP, these spaces shall be accessible to all VSSP members in the same manner and during the same hours as other vehicles offered by the VSSP.
59. Construction and Demolition Diversion. A Waste Diversion Report, with receipts or weigh slips documenting debris disposal or recycling during all phases of the project, must be completed and submitted for approval to the City's Building and Safety Division. The Zoning Officer may request summary reports at more frequent intervals, as necessary to ensure compliance with this requirement. A copy of the Waste Diversion Plan shall be available at all times at the construction site for review by City Staff.
60. Green Building Certification. The applicant shall submit updated documentation demonstrating that the building will attain LEED Gold or higher, or attain a building performance equivalent to this rating that has been approved by the Zoning Officer for this project. Documentation expected at this stage includes proof of submission of the final application materials and payment of the

certification fee. If this submission has not yet occurred, a detailed explanation and timeline indicating when it will happen must be submitted to the Zoning Officer for review and approval. Once awarded by the organization administering the green building certification system, the applicant shall forward a copy of the certification award to the Zoning Officer.

At All Times:

61. Exterior Lighting. All exterior lighting shall be energy efficient where feasible; and shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
62. Rooftop Projections. No additional rooftop or elevator equipment shall be added to exceed the approved maximum roof height without submission of an application for a Use Permit Modification, subject to Board review and approval.
63. Design Review. Signage and any other exterior modifications, including but not limited to landscaping and lighting, shall be subject to Design Review approval.
64. Drainage Patterns. The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way. Drainage plans shall be submitted for approval of the Building & Safety Division and Public Works Department, if required.
65. Electrical Meter. Only one electrical meter fixture may be installed per dwelling unit.
66. Transit Subsidy. Consistent with BMC 23E.68.080.H, and subject to the review and oversight of the Transportation Division Manager, the property owner shall provide at least one of the following transportation benefits at no cost to every employee, residential unit, and/or GLA resident and a notice describing these transportation benefits shall be posted in a location or locations visible to employees and residents:
 1. A pass for unlimited local bus transit service; or
 2. A functionally equivalent transit benefit in an amount at least equal to the price of a non-discounted unlimited monthly local bus pass. Any benefit proposed as a functionally equivalent transportation benefit shall be approved by the Zoning Officer in consultation with the Transportation Division Manager.
67. Loading. All loading/unloading activities associated with deliveries to all uses shall be restricted to the hours of 7:00 a.m. to 10:00 p.m. daily.
68. Residential Permit Parking. No Residential Permit Parking (RPP) permits shall be issued to project residents, nor shall commercial placards be issued to non-residential occupants and/or users of the site. The project planner shall notify the Finance Department, Customer Service Center, to add these addresses to the list of addresses ineligible for RPP permits. The property owner shall notify all tenants of rental units, and/or buyers of condominium units, of this restriction in leases and/or contracts, and shall provide sample leases and/or contracts including such notification to the project planner prior to issuance of an occupancy permit or final inspection.
69. Parking to be Leased or Sold Separately. All residential parking spaces shall be leased or sold separate from the rental or purchase of dwelling units.

- 70. Bike Parking.** Secure and on-site bike parking for at least 99 bicycles shall be provided for the life of the building.
 - 71. Bicycle Access.** The building shall provide easy access to the bicycle parking through the loading alley with an easily accessible door.
 - 72. Tenant Notification.** The developer shall provide tenant notification, via a lease rider or deed covenant, that each dwelling unit is located in a mixed-use area that includes commercial, food service and entertainment uses, and that each occupant shall not seek to impede their lawful operation.
-