

August 4, 2023

VIA E-MAIL [BWISNESKI@DANAPOINT.ORG]

Brenda Wisneski
Director of Community Development
City of Dana Point
33282 Golden Lantern
Dana Point, CA 92629

Re: 23731-81 Mariner Drive SB 330 Preliminary Application

Dear Brenda:

This firm represents ST Apartments LLC (“Applicant”) with respect to its proposed multifamily dwelling project at 23731 and 23781 Mariner Drive, Dana Point, CA 92629 (the “Project”). Consistent with SB 330 (the Housing Crisis Act of 2019), the Applicant submitted, and the City accepted, a preliminary application for the Project on May 18, 2023 (the “Preliminary Application”). On June 14, 2023, the City issued a letter to the Applicant asserting that the Preliminary Application is “not complete at this time” and identifying a number of alleged deficiencies with the Preliminary Application. This letter responds to those alleged deficiencies and, as necessary, provides additional information and materials to supplement the May 18 Preliminary Application submittal. Based on these supplemental materials, the Applicant respectfully requests written confirmation from the City that the Preliminary Application vests the existing “ordinances, policies, and standards adopted and in effect [August 3, 2023].” (Govt. Code § 65589.5(o)(1).)

As you know, SB 330 was adopted with the express purpose of increasing certainty for developers in the early stages of the entitlement process. SB 330 makes it clear that, unlike a standard development permit application, a preliminary application does not require an “affirmative determination regarding the completeness of a preliminary application....” (Govt. Code § 65941.1(d)(3).) If the statutorily required information is submitted and any permit

processing fee is paid, an applicant “*shall be deemed* to have submitted a preliminary application...” (Govt. Code § 65941.1(a).) Indeed, HCD has stated that “[t]he primary focus of local agencies, therefore, should be on verifying the presence of all application materials – *without analyzing the substance of the materials submitted. Analyzing the application materials is contrary to the purpose of the Preliminary Application.*” (HCD Technical Assistance Letter to Town of Los Gatos [February 16, 2023] [emphasis added].) Further, to the extent the City’s Pre-Application Checklist is inconsistent with or seeks additional information beyond what is required by Government Code Section 65941.1, the City cannot rely on that Pre-Application Checklist as a means to deem the Preliminary Application incomplete.

With that background, I address each of the reasons cited in your June 14th letter, below:

1. Elevations - The City asserts that the plans and elevations submitted as part of the Preliminary Application are not adequate. The Applicant team prepared additional elevations, which are attached and submitted with this letter as Exhibit A. Consistent with SB 330, the new elevations show design, color, and materials of each building that is to be occupied. As HCD has noted, “elevations submitted for Preliminary Application purposes are expected to be conceptual in nature and need not contain a level of detail associated with construction drawings. *Requiring elevations for all sides of each building seems excessive for meeting the purpose of the statute, which is to communicate the ‘design, color, and material, massing and height’ of the primary side of the proposed structures.*” (HCD Technical Assistance Letter to Town of Los Gatos [February 16, 2023] [emphasis added].)
2. Height Waiver - To clarify, the Applicant is not seeking a height “variance,” but rather a waiver of maximum height consistent with the State Density Bonus Law (“DBL”). If a development meets the requirements of the DBL, “a local government is *obligated* to permit increased building density, grant incentives, and waive any conflicting local development standards unless certain limited exceptions apply.”

(*Bankers Hill 150 v. City of San Diego* (2022) 74 Cal.App.5th 755, 763 [emphasis added].) The project proposes a maximum height of 72 feet.

3. Parking - The Applicant is not seeking a concession to deviate from required parking. For projects that comply with the DBL, the DBL provides that, upon an applicant's request, a locality **must** use state-mandated parking ratios (which are inclusive of handicapped and guest parking) for a density bonus project. (Govt. Code § 65915(p).) These parking ratios are by-right and are not considered a concession/incentive or waiver. The table below illustrates our compliance with the DBL's parking requirements:

Unit Count	Parking Spaces Required (DBL)	Parking Spaces Provided
391	537.5	625

4. Protected Units - Exhibit B, attached, includes a list of the existing units and whether the units are occupied. The Applicant is in the process of collecting the relevant tenant income information. However, I would like to clarify that under state law protected units are determined based upon the following: (1) if a unit is occupied, it is currently occupied by a lower income household and (2) if a unit is unoccupied, it was rented to a lower income household as the last occupant within the last five years. (Govt. Code § 66300(a)(1)(F)(vi)(III) [a protected unit includes those that “**are** or **were** rented to lower or very low income households”]; Govt. Code §§ 66300(d)(2)(A) and 66300(a)(1)(F)(vii) [collectively stating that a project must “replace” protected units and that “replace” has the same meaning as in Govt. Code § 65915(c)(3)(B), which states that for units occupied on the date of the application, replace means that the housing development shall “provide at least the same number of units of equivalent size to be made available at affordable rent ... and occupied by ... persons and families in the same or lower income category **as those households in occupancy**”].)

5. Vesting Map - Government Code Section 65941.1 requires the preliminary application specify only whether any approvals under the Subdivision Map Act are being requested. The Preliminary Application noted that a vesting tentative map *is* requested.

We look forward to receipt of written confirmation from the City that the Preliminary Application vests the existing “ordinances, policies, and standards adopted and in effect [August 3, 2023].” Should you have any questions, please contact me directly at (949) 260-4652.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sm', is positioned above the typed name.

Sean Matsler
of COX, CASTLE & NICHOLSON LLP

EXHIBIT A

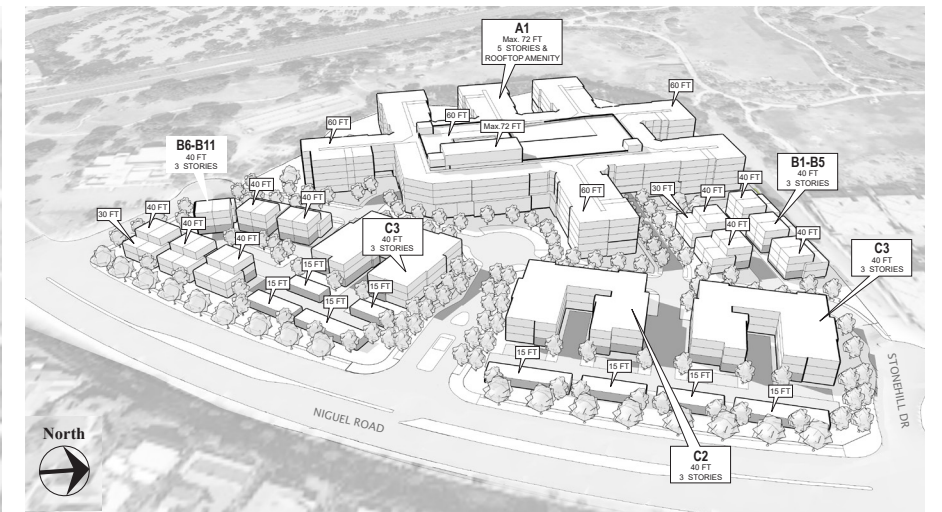
CONCEPTUAL ARCHITECTURE

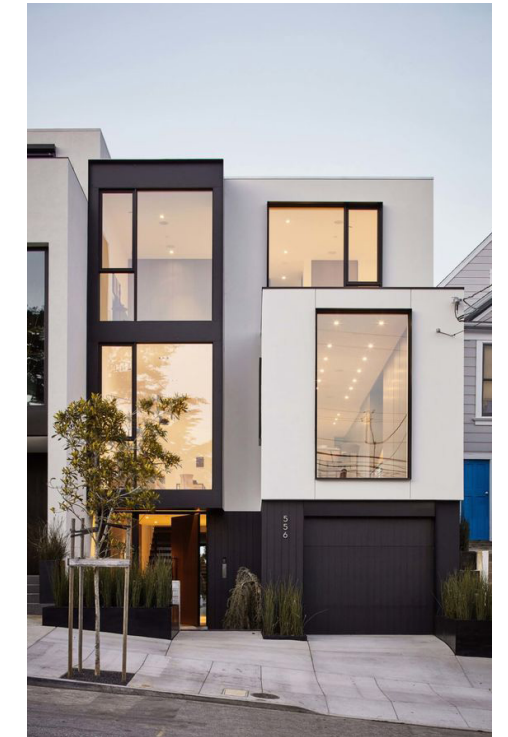
The Project takes inspiration from California coastal contemporary architectural design aesthetic. While different, materials and color palette complement contextual adjacencies such as the Waldorf Astoria Monarch Beach, The Ritz Carlton Laguna Niguel, and the Grand Monarch condominiums.

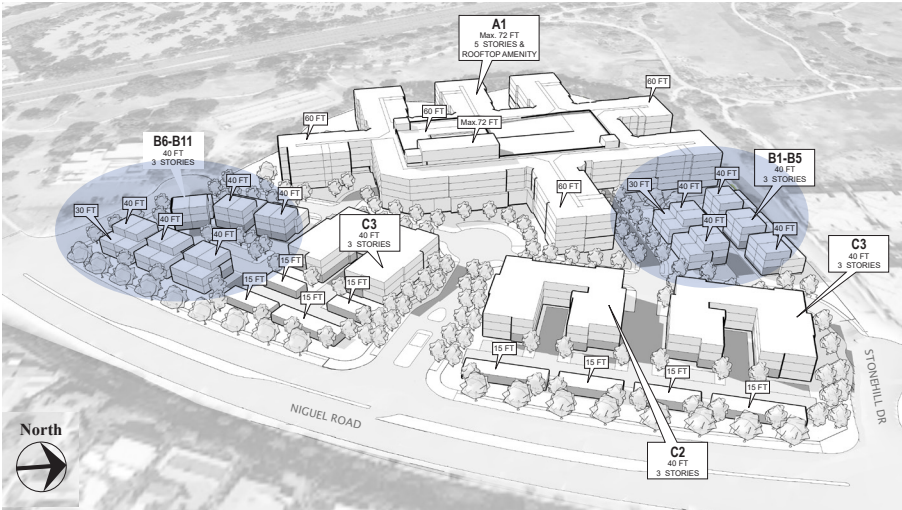
Rather than emulate the traditional character of these projects, the coastal contemporary architecture style uses materials and colors to reflect natural seaside elements, such as surf, sand, sky, and similar natural tones and color palette to create a timeless architectural expression. The Project envisions the use of materials such as stucco, wood, metal, stone, concrete, brick, laminate, siding, glass, and/or tile.

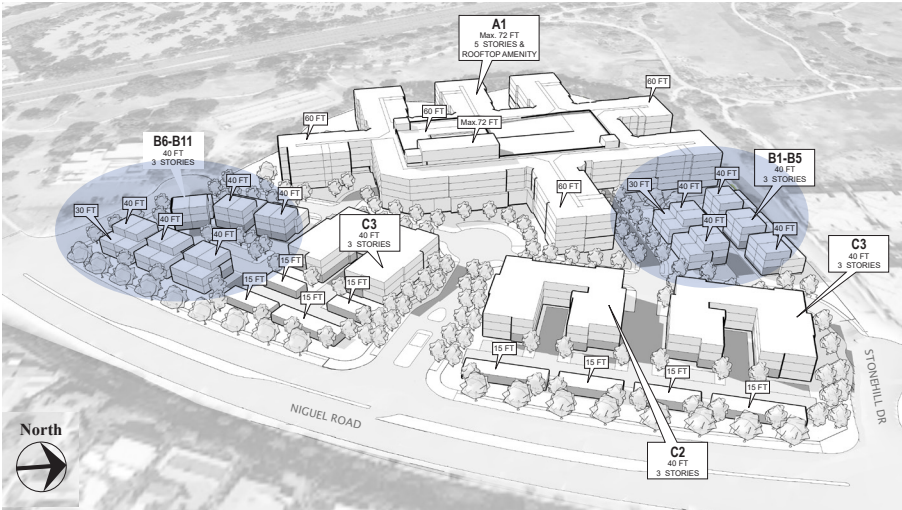
Building forms, fenestration, articulation, and overall composition reinforce strong connections with the outdoors, celebrate ocean and park views, and enhance natural light in units and common areas. Buildings will use a combination of flat and pitched roofs designed to create movement in the roof line and accommodate transitions between changes in height or building massing.

The following images illustrate the variety of architecture that will be used. As a part of the full Site Development Permit application package, and pursuant to DPMC Section 9.71.050, we intend to finalize design and architecture consistent with the vernacular of the City's Urban Design Guidelines process.





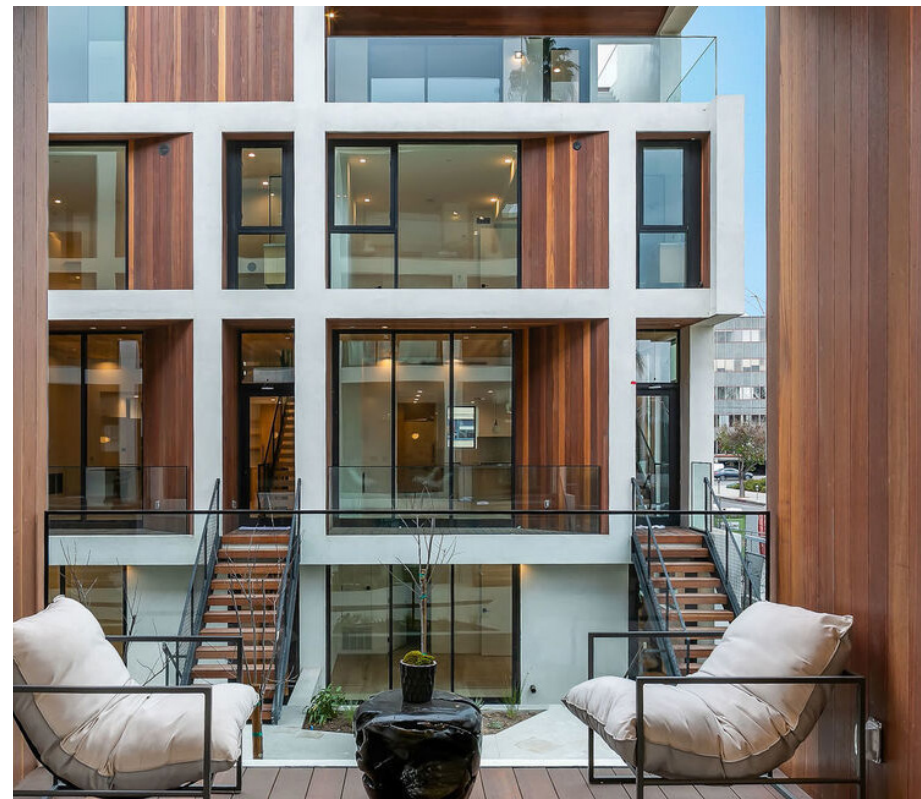


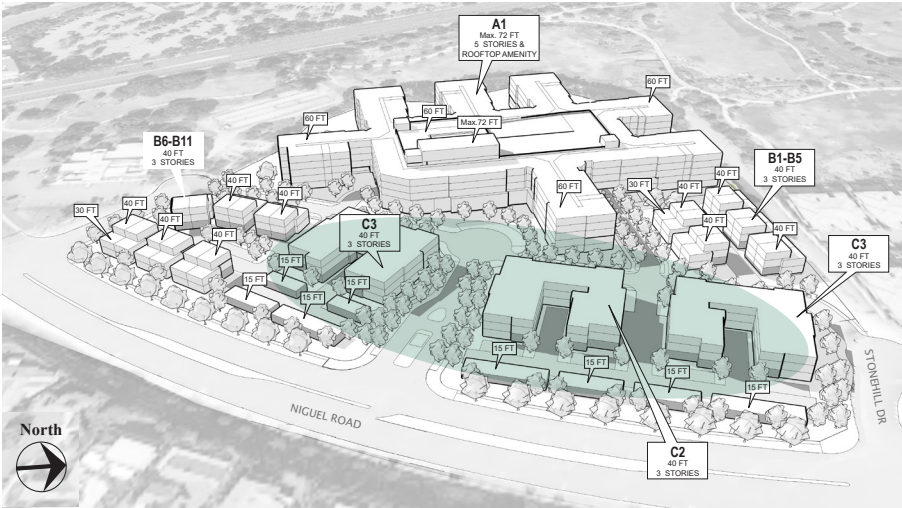


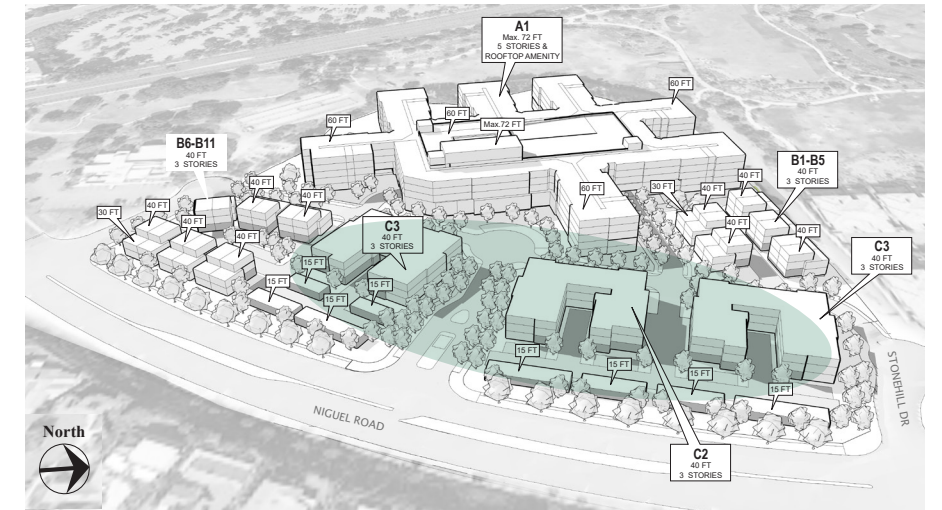
----- PROPOSED HEIGHT: 40 FT

----- HEIGHT LIMIT: 28 FT

----- GROUND LEVEL



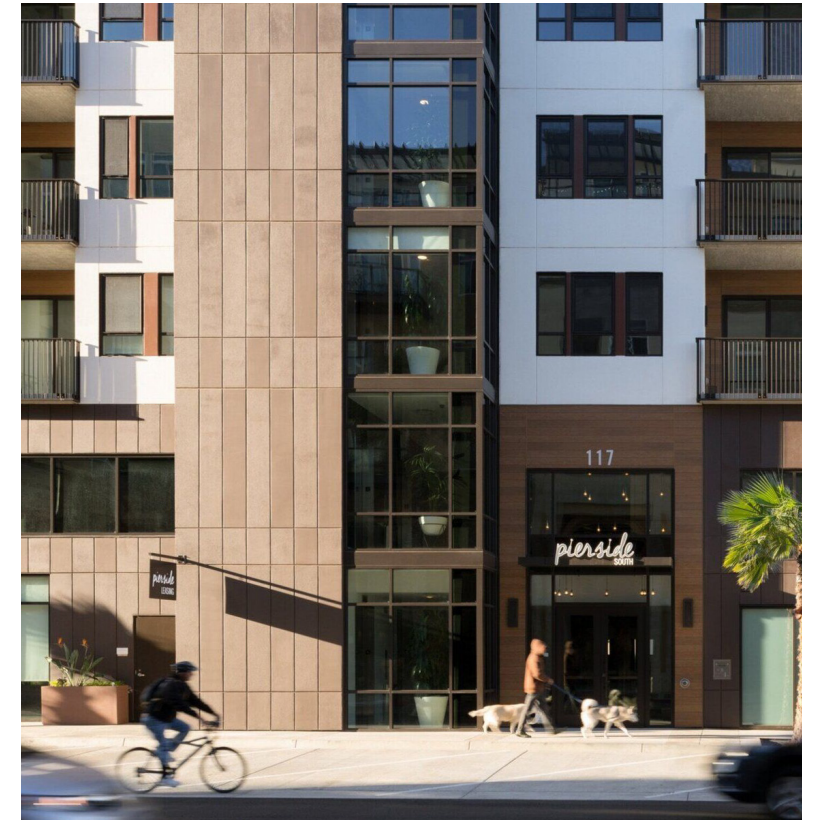


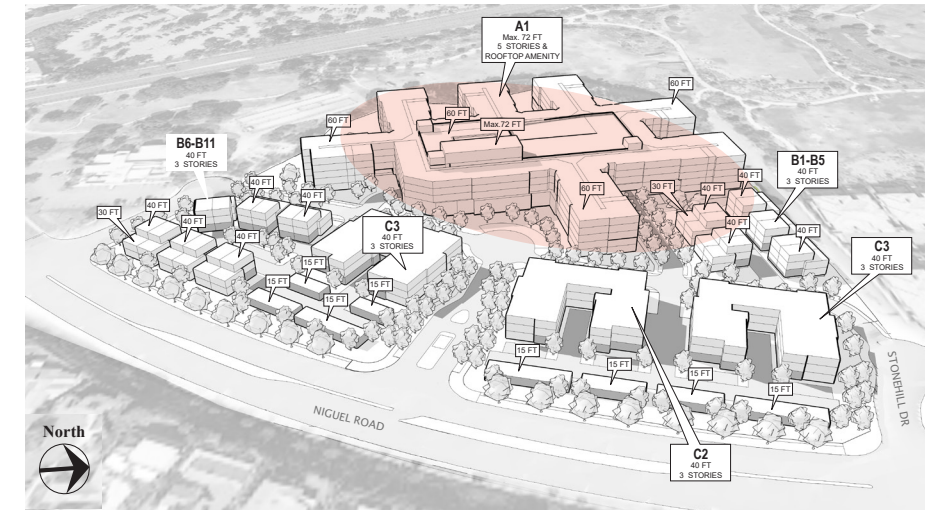


PROPOSED HEIGHT: 40 FT

HEIGHT LIMIT: 28 FT

GROUND LEVEL





----- PROPOSED RESIDENTIAL
HEIGHT: 60 FT

----- HEIGHT LIMIT: 28 FT

----- GROUND LEVEL



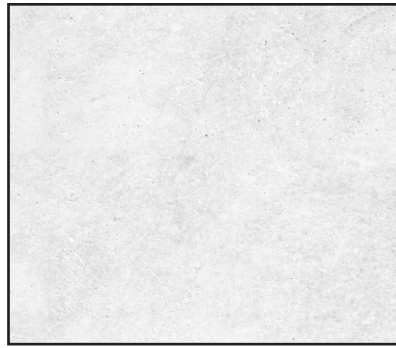
PROPOSED AMENITY
HEIGHT: 72 FT



STUCCO



STONE



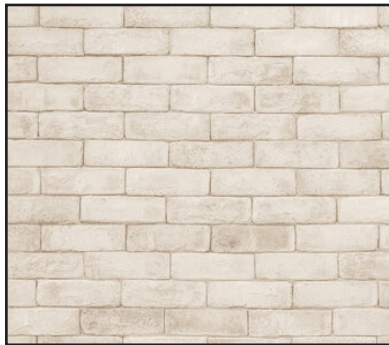
CONCRETE



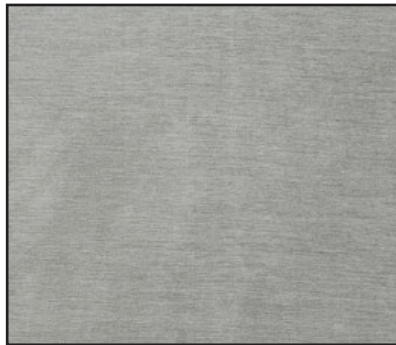
WOOD



LAMINATE



BRICK



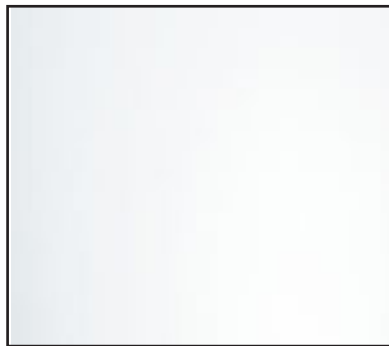
METAL



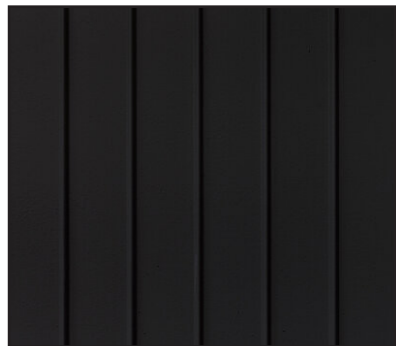
STEEL



SIDING

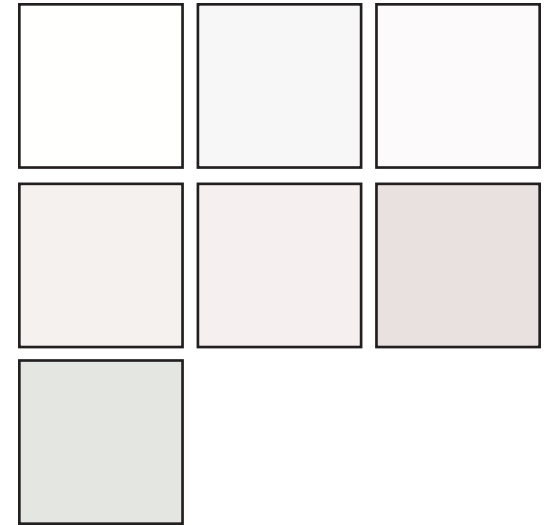


GLASS



STANDING
METAL SEAM

PRIMARY BUILDING
COLORS



SECONDARY
BUILDING COLORS



EXHIBIT B

Exhibit B

Unit	Occupied Yes (Y) or No (N)?
001	Y
002	Y
003	Y
004	Y
005	Y
006	Y
007	Y
008	Y
009	Y
010	Y
011	Y
013	Y
014	Y
015	Y
016	Y
017	Y
018	Y
019	Y
020	Y
021	Y
022	Y
023	Y
025	Y
026	Y
027	Y
028	Y
029	Y
030	Y
031	Y
032	Y
033	Y
034	Y
035	Y
036	Y
037	Y
038	Y
039	Y
040	Y
041	Y
042	Y
043	Y
044	Y
045	Y
046	Y
047	Y
048	Y
049	Y
050	Y
051	Y
052	Y
053	Y
054	Y

Unit	Occupied Yes (Y) or No (N)?
055	Y
056	Y
058	Y
059	Y
060	Y
061	Y
062	Y
064	Y
065	Y
066	Y
067	Y
068	Y
069	Y
070	Y
071	Y
072	Y
073	Y
074	Y
075	Y
076	Y
077	Y
078	Y
079	Y
080	Y
081	Y
082	Y
083	Y
084	Y
085	Y
086	Y
087	Y
088	Y
089	Y
090	Y
091	Y
092	Y
093	Y
094	Y
095	Y
096	Y
101	Y
102	Y
103	Y
104	Y
105	Y
107	Y
108	Y
109	Y
110	Y
111	Y
112	Y
113	Y
114	Y
115	Y
117	Y
118	Y
119	Y

*Occupancy Data as of 8/2/23

Unit	Occupied Yes (Y) or No (N)?
120	Y
121	Y
122	Y
123	Y
124	Y
125	Y
126	Y
127	Y
128	Y
129	Y
130	Y
131	Y
132	Y
133	Y
134	Y
135	Y
136	Y
137	Y
138	Y
139	Y
140	Y
141	Y
142	Y
143	Y
144	Y
145	Y
146	Y
147	Y
148	Y
149	Y
150	Y
151	Y
152	Y
153	Y
154	Y
155	Y
156	Y
157	Y
158	Y
159	Y
160	Y
161	Y
162	Y
163	Y
164	Y
165	Y
166	Y
167	Y
169	Y
170	Y
171	Y
172	Y
173	Y
175	Y
176	Y
177	Y

*Occupancy Data as of 8/2/23

Unit	Occupied Yes (Y) or No (N)?
178	Y
179	Y
180	Y
181	Y
182	Y
183	Y
184	Y
185	Y
186	Y
187	Y
188	Y
189	Y
190	Y
191	Y
192	Y
193	Y
194	Y
195	Y
196	Y
197	Y
198	Y
199	Y
200	Y
201	Y
202	Y
203	Y
204	Y
205	Y
206	Y
207	Y
208	Y
209	Y
210	Y
211	Y
212	Y
012	N
024	N
057	N
063	N
106	N
116	N
168	N
174	N

# of occupied units	Unit Occupancy
199	95%

*Occupancy Data as of 8/2/23