

MEDIATED SETTLEMENT AGREEMENT

THIS MEDIATED SETTLEMENT AGREEMENT (“Agreement”) is made and entered into on this ____ day of September 2017, by and between JNS REAL PROPERTIES, LLC, a Florida limited liability company (“JNS”), and the CITY OF ORLANDO, FLORIDA (“City”).

RECITALS:

WHEREAS, JNS is the owner of certain real property located at 5787 Vineland Road, Orlando, Florida (Parcel Id. No. 13-23-28-8864-01-000) (“Property”); and

WHEREAS, on May 1, 2006, the City Council of the City of Orlando (“City Council”) adopted an Ordinance (Document No. 0605011002) approving a planned development on the Property for retail and hotel use (“Shah PD”); and

WHEREAS, in December 2015, JNS filed an application with the City to amend the Shah PD to increase the height of the allowable hotel building to 130 feet, revise the signage size and location requirements, and approve a minor parking waiver based upon a shared parking analysis (“Shah PD Amendment”); and

WHEREAS, in July 2016, the City’s Municipal Planning Board (“MPB”) conducted a hearing on the proposed Shah PD Amendment and, at the conclusion thereof, voted to recommend denial of the same; and

WHEREAS, pursuant to Section 2.205 of the City’s Code, JNS timely filed a Petition in Opposition to the MPB’s Recommendation with the City; and

WHEREAS, in accordance with Section 2.207 of the City’s Code, a hearing officer subsequently held a hearing on JNS’s Petition in Opposition to the MPB’s Recommendation; and

WHEREAS, on December 2, 2016, the hearing officer issued a Recommended Order, therein recommending the denial of JNS’s request to overturn the MPB’s recommendation; and

WHEREAS, on January 23, 2017, the City Council voted to adopt the hearing officer’s Recommended Order and denied the proposed Shah PD Amendment; and

WHEREAS, on February 8, 2017, JNS filed a Request for Relief with the City pursuant to the Florida Land Use and Environmental Dispute Resolution Act, Section 70.51, *Florida Statutes* (“Special Magistrate Proceeding”), to contest the City Council’s denial of the proposed Shah PD Amendment; and

WHEREAS, on February 10, 2017, JNS also filed a Petition for Writ of Certiorari in the Circuit Court to challenge the City Council's denial of the proposed Shah PD Amendment, said case being styled as *JNS Real Properties, LLC v. City of Orlando*, Ninth Circuit Court, Case No. 2017-CA-1335 ("Litigation"); and

WHEREAS, in accordance with Section 70.51(17)(a), *Florida Statutes*, the City and JNS participated in mediation conferences on April 12, May 31, and July 14, 2017, in the Special Magistrate Proceeding in an attempt to amicably resolve their dispute regarding the proposed Shah PD Amendment; and

WHEREAS, the City and JNS desire to enter into this mediated Agreement for the purposes of resolving the Special Magistrate Proceeding and the Litigation, and are motivated by a desire to avoid the costs, time, and uncertainty associated with litigation and to arrive at a fair and reasonable agreement to resolve their dispute.

NOW, THEREFORE, in consideration of the terms and mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and JNS (collectively, the "Parties") intending to be legally bound, agree as follows:

1. **Recitals.** The above-referenced recitals are true and correct and are hereby incorporated into this Agreement for all purposes.

2. **Terms of Agreement.** In connection with the Parties' mutual execution of this Agreement and the covenants and terms herein, the Parties agree as follows:

- A. The orientation of the proposed hotel building on the Property will be revised as generally depicted on the conceptual plan dated July 14, 2017, a copy of which is attached hereto as Exhibit "A," with the following modifications:
 - i. The building height will be limited to 106 feet, and JNS will either remove an entire guest room floor in conjunction with other minor height alterations to the building or consolidate the amenity floors depicted on floors 10 and 11 of the July 14 conceptual plan;
 - ii. The meeting rooms and dining rooms within the proposed hotel building will stay at or less than the square footage shown on the July 14 conceptual plan;
 - iii. The building height of 106 feet does not include any elevator overruns or the four (4) foot high parapet wall for the proposed hotel building; and

- iv. Roof articulations up to four (4) feet above the 106-foot building height are permitted for up to thirty percent (30%) of the roof area; provided that, mechanical items on the roof (*e.g.*, air conditioning units, etc.) are placed at least four (4) feet from the parapet wall and screened as necessary if visible from the street level.
- B. JNS agrees that the amenities within the proposed hotel building on the Property will not be marketed or rented to non-guests, and such restriction shall be included as an additional condition upon the Shah PD.
- C. Contingent upon the limitation on the Shah PD set forth in Paragraph 2.B above, a parking waiver shall be permitted to allow a total of 150 parking spaces within the Shah PD based upon shared parking between the proposed hotel and the commercial/retail uses.
- D. The proposed hotel shall be permitted up to 500 square feet of high-rise signage. High-rise signs shall be permitted on the southern and eastern sides of the proposed hotel building, and each sign shall not exceed 250 square feet.
- E. The conditions on building orientation, height, amenities, parking, and signage set forth in Paragraphs 2.A through 2.D above shall be incorporated into a proposed amendment to the Shah PD (“Revised Shah PD Amendment”) for the City Council’s consideration for approval at a public meeting.
- F. Within ten (10) days of the Effective Date of this Agreement, JNS shall file a Status Report in the Litigation advising the Circuit Court of this Agreement and requesting the Circuit Court to continue to hold the Litigation in abeyance while the Parties are implementing the terms of this Agreement, *i.e.*, review and approval of the Revised Shah PD Amendment and the expiration of any applicable appeal periods.
- G. JNS shall execute and file a Notice of Voluntary Dismissal with prejudice in the Litigation within ten (10) days after the expiration of any applicable appeal periods associated with the City Council’s approval of the Revised Shah PD Amendment consistent with the conditions set forth in Paragraph 2 of this Agreement. If any appeal or legal challenge is filed against such approval, JNS shall execute and file a Notice of Voluntary Dismissal with prejudice in the Litigation within ten (10) days after the approval of said Revised Shah PD Amendment is finally adjudicated in favor of the City and JNS.

- H. The Revised Shah PD Amendment, if approved by the City Council, shall supersede and vacate the City Council's denial of the original proposed Shah PD Amendment, shall constitute the City Council's final decision on the matter, and shall constitute a final resolution of the Special Magistrate Proceeding.

3. **Scope of Agreement.** The Parties' obligations and rights under this Agreement are expressly made contingent upon the City Council's approval of this Agreement and the City Council's approval of the Revised Shah PD Amendment consistent with the conditions set forth in Paragraph 2 of this Agreement. In the event the City Council does not vote to approve this Agreement and the Revised Shah PD Amendment consistent with the conditions set forth in Paragraph 2 above within sixty (60) days of the Effective Date of this Agreement (unless JNS agrees to an extension of such time-frame in writing), this Agreement shall be null and void and the Parties shall retain all of their rights to continue with the Special Magistrate Proceeding and the Litigation. No term or condition of this Agreement shall be construed as to proscribe, limit, or affect the ability of the City to enforce its Growth Management Plan, its Land Development Code, or any other authority granted by law concerning the development and construction of the Property.

4. **Authority.** Each Party represents and warrants, with respect to itself, that the execution and delivery of this Agreement has been authorized by all necessary action of each Party, and that this Agreement constitutes the legal, valid, and binding agreement of each Party, enforceable in accordance with its terms. It is expressly understood and agreed that this Agreement shall not become binding upon the City unless and until the City Council approves this Agreement at a public meeting, as is required by Florida law.

5. **Governing Law; Venue.** This Agreement shall be construed, interpreted, enforced, and governed in accordance with the laws of the State of Florida. Venue for any action arising out of or related to this Agreement shall be in Orange County, Florida.

6. **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the respective successors, heirs, assigns, bankruptcy trustees, representatives, affiliates, officers, directors, partners, members, and joint venturers of the Parties.

7. **Non-Waiver.** Failure by the City or JNS to insist upon the strict performance of any of the terms, conditions, or provisions of this Agreement shall not be deemed to be a waiver of such terms, conditions, and provisions, and the City and JNS, notwithstanding such failure, shall have the right hereafter to insist upon the strict performance of any or all such terms and conditions of this Agreement as set forth herein.

8. **Mutual Releases.**

- A. JNS hereby waives and releases, acquits, satisfies, and forever discharges the City, including its elected officials and employees, and any and all affiliates, legal representatives, insurance carriers, successors, and assigns thereof (collectively, the “City-Related Parties”), from any and all claims, counterclaims, defenses, actions, causes of action, suits, controversies, agreements, promises, and demands whatsoever which JNS ever had or now has, in law or in equity, for, upon, or by reason of any claim raised or which could have been raised by any Party in the Special Magistrate Proceeding or the Litigation as of the Effective Date of this Agreement. In addition, and without waiving the generality of the foregoing, JNS covenants with and warrants to the City, including the City-Related Parties, that there exist no claims, counterclaims, defenses, objections, offsets, or claims of offsets against the City, including the City-Related Parties, with regard to any claim raised by any Party in the Special Magistrate Proceeding or the Litigation that are not included in and covered by this Agreement. The release set forth in this provision does not apply to any rights granted by or arising from this Agreement.
- B. The City hereby waives and releases, acquits, satisfies, and forever discharges JNS, including its officers, members, directors, shareholders, and employees, and any and all subsidiaries, affiliates, legal representatives, insurance carriers, successors, and assigns thereof (collectively, “JNS-Related Parties”), from any and all claims, counterclaims, defenses, actions, causes of action, suits, controversies, agreements, promises, and demands whatsoever which the City ever had or now has, in law or in equity, for, upon, or by reason of any claim raised or which could have been raised by any Party in the Special Magistrate Proceeding or the Litigation as of the Effective Date of this Agreement. In addition, and without waiving the generality of the foregoing, the City covenants with and warrants to JNS, including the JNS-Related Parties, that there exist no claims, counterclaims, defenses, objections, offsets, or claims of offsets against JNS, including the JNS-Related Parties, with regard to any claim raised by any party in the Litigation that are not included in and covered by this Agreement. The release set forth in this provision does not apply to any rights granted by or arising from this Agreement.
- C. The releases set forth above shall become effective only upon the City Council’s approval of this Agreement and the City Council’s approval of the Revised Shah PD Amendment consistent with the conditions set forth in Paragraph 2 above, and the expiration of any applicable appeal periods associated therewith. If any appeal or legal challenge is filed against such

approvals, these releases shall become effective only upon said approvals being finally adjudicated in favor of the City and JNS.

9. **Construction; Headings.** The Parties acknowledge that they participated in the negotiation and drafting of the terms of this Agreement and acknowledge that no provision shall be strictly construed against one party or the other based solely on draftsmanship. The Parties have entered into this Agreement without duress, coercion, or under undue influence of any kind, and are motivated by a desire to avoid the costs and time associated with litigation and to arrive at a fair and reasonable agreement with regard to the Special Magistrate Proceeding and the Litigation. The Parties acknowledge that they have been represented by counsel in connection with the negotiation of the terms of this Agreement and that they enter into this Agreement freely and voluntarily, and only after consultation with their respective counsel. All sections and descriptive headings in this Agreement are inserted for convenience only, and shall neither affect the construction or interpretation hereof, nor add or subtract from the meaning of the contents of each section.

10. **Interpretation.** This Agreement shall be read and interpreted in such a manner as to give all provisions their ordinary and customary meaning, and all words, terms, and phrases not otherwise specifically defined by a capitalized term or otherwise shall have the same meaning and interpretation as customarily used among lay persons. The terms “hereby,” “hereof,” “herein,” “hereto,” “hereunder,” and any similar terms refer to this Agreement in its entirety and not solely to the particular section or paragraph in which the term is used. All words, terms, and phrases specifically defined by a capitalized term shall apply throughout this Agreement in its entirety and not solely to the particular section or paragraph in which the term is used. In construing this Agreement, the singular shall be held to include the plural, the plural shall include the singular, and the use of any gender shall include every other and all genders.

11. **Entire Agreement; Amendments.** This Agreement represents the entire understanding and agreement between the Parties with respect to the subject matter hereof. No representations have been made, either express or implied by the Parties, other than those expressly set forth in this Agreement. This Agreement or any part hereof may not be changed, amended, waived, discharged, or terminated except by an instrument in writing, executed by all Parties.

12. **Enforcement; Remedies.** The Parties shall have all equitable and legal remedies available under Florida law to enforce the terms and conditions of this Agreement, and the terms of this Agreement shall be specifically enforceable in court. In the event of any dispute hereunder or any action to interpret or enforce this Agreement, any provision hereof, or any matter arising herefrom, the prevailing party shall be paid by the non-prevailing party the reasonable attorneys’ fees and costs incurred in enforcing its rights and remedies, whether incurred at the pre-trial, trial, or appellate levels, including any fees and costs incurred in determining the amount of awardable fees.

13. **Severability.** If any part of this Agreement is found invalid or unenforceable by any court of competent jurisdiction, such invalidity or unenforceability shall not affect the other parts of this Agreement if the rights and obligations of the Parties contained therein are not materially prejudiced and if the intentions of the Parties can continue to be effectuated. To that end, this Agreement is declared severable.

14. **Disclaimer of Third Party Beneficiaries.** This Agreement is solely for the benefit of the Parties and no right or cause of action shall accrue by reason hereof to, or for the benefit of, any third party not a formal party hereto. Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon or give any other third person or entity any right, remedy, or claim under or by reason of this Agreement or any provisions or conditions hereof, other than as expressly stated herein.

15. **Purpose of this Agreement; Not Establishing Precedent.** By entering into this Agreement, the Parties do not admit any liability whatsoever to the other, or to any other person, arising out of any claims asserted, or that could have been asserted, in the Special Magistrate Proceeding or the Litigation, and expressly deny any and all such liability. The Parties acknowledge and agree that this Agreement is not intended by any Party to be construed, and shall not be construed, as an admission by any Party of any liability or violation of any law, statute, ordinance, regulation, or other legal duty of any nature whatsoever. Rather, this Agreement is for the compromise of potential and disputed claims, involving both fact and law, and the Parties enter into this Agreement in a spirit of cooperation for the purpose of avoiding further litigation and in recognition of the desire for the speedy and reasonable resolution of the Parties' dispute. The acceptance of proposals for purposes of this Agreement is part of a negotiated settlement affecting many factual and legal issues and is not an endorsement of, and does not establish precedent for, the use of these proposals in any other circumstances.

16. **Attorneys' Fees; Costs.** The Parties expressly agree to bear the fees and costs of their respective counsel, experts, and consultants in the Special Magistrate Proceeding, the Litigation, and in the preparation of this Agreement.

17. **Notices.** All notices and other communications required hereunder shall be in writing and shall be delivered personally, or by registered or certified mail, return receipt requested, postage prepaid, or by Federal Express, or other nationally recognized overnight commercial delivery service, fees prepaid for next day delivery. Such notices shall be deemed to have been received: (i) upon delivery, if personally delivered; (ii) upon the earlier of actual receipt or the third day after mailing, if mailed by registered or certified United States mail, return receipt requested, postage prepaid; and (iii) upon the earlier of actual receipt or the next business day if sent by Federal Express or other nationally recognized overnight commercial delivery service, if fees are prepaid for next day delivery. The addresses for delivery of such notices shall be as follows:

(a) To JNS:

JNS Real Properties, LLC
c/o Swapnil Shah
2110 N.W. 95 Avenue
Miami, Florida 33172

With a copy to:

S. Brent Spain, Esquire
David A. Theriaque, Esquire
Theriaque & Spain
433 N. Magnolia Drive
Tallahassee, Florida 32308

(b) To the City:

Planning Division
City of Orlando
400 South Orange Avenue
Orlando, Florida 32801
ATTN: Planning Official

With a copy to:

Office of Legal Affairs
Orlando City Hall
400 South Orange Avenue
Orlando, Florida 32801

or to such other address as any party hereto shall from time to time designate to the other party by notice in writing as herein provided.

18. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original and need not be signed by more than one of the Parties and all of which shall constitute one and the same agreement. The Parties further agree that each Party shall execute and deliver all other appropriate supplemental agreements and other instruments, and take any other action necessary to make this Agreement fully and legally effective, binding, and enforceable as between them and as against third parties.

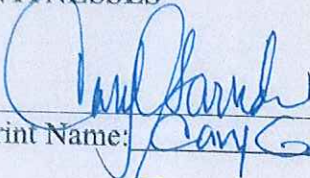
19. **Effective Date.** This Agreement shall become effective upon the date of execution by the last of the Parties.


20. **Waiver of Jury Trial**. The Parties hereby knowingly, voluntarily, and intentionally waive any right to a jury trial with respect to any claims arising in connection with this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in a manner sufficient to bind them as set forth herein.

Signed, sealed, and delivered before me:

WITNESSES


Print Name: Gary Camacho


Print Name: Lourdes Ruiz

JNS REAL PROPERTIES, LLC, a Florida limited liability company,

By: 

Its: Manager

Date: 7/20/17

STATE OF FLORIDA

COUNTY OF Miami-Dade

The foregoing instrument was acknowledged before me this 20 day of September 2017, by Swapnil Shah, as Manager of JNS Real Properties, LLC, a Florida limited liability company, on behalf of said entity. Said person (check one) ☒ is personally known to me or ☐ produced DL as identification.

(Notary Seal)



Printed Name: Caridad G. Garrido

Notary Public, State of Florida

Commission No. _____

My commission expires: _____

CITY OF ORLANDO, FLORIDA

By:_____

Name: Buddy Dyer

Its: Mayor

Date:_____

ATTEST, BY THE CLERK OF THE
CITY COUNCIL OF THE CITY OF
ORLANDO, FLORIDA:

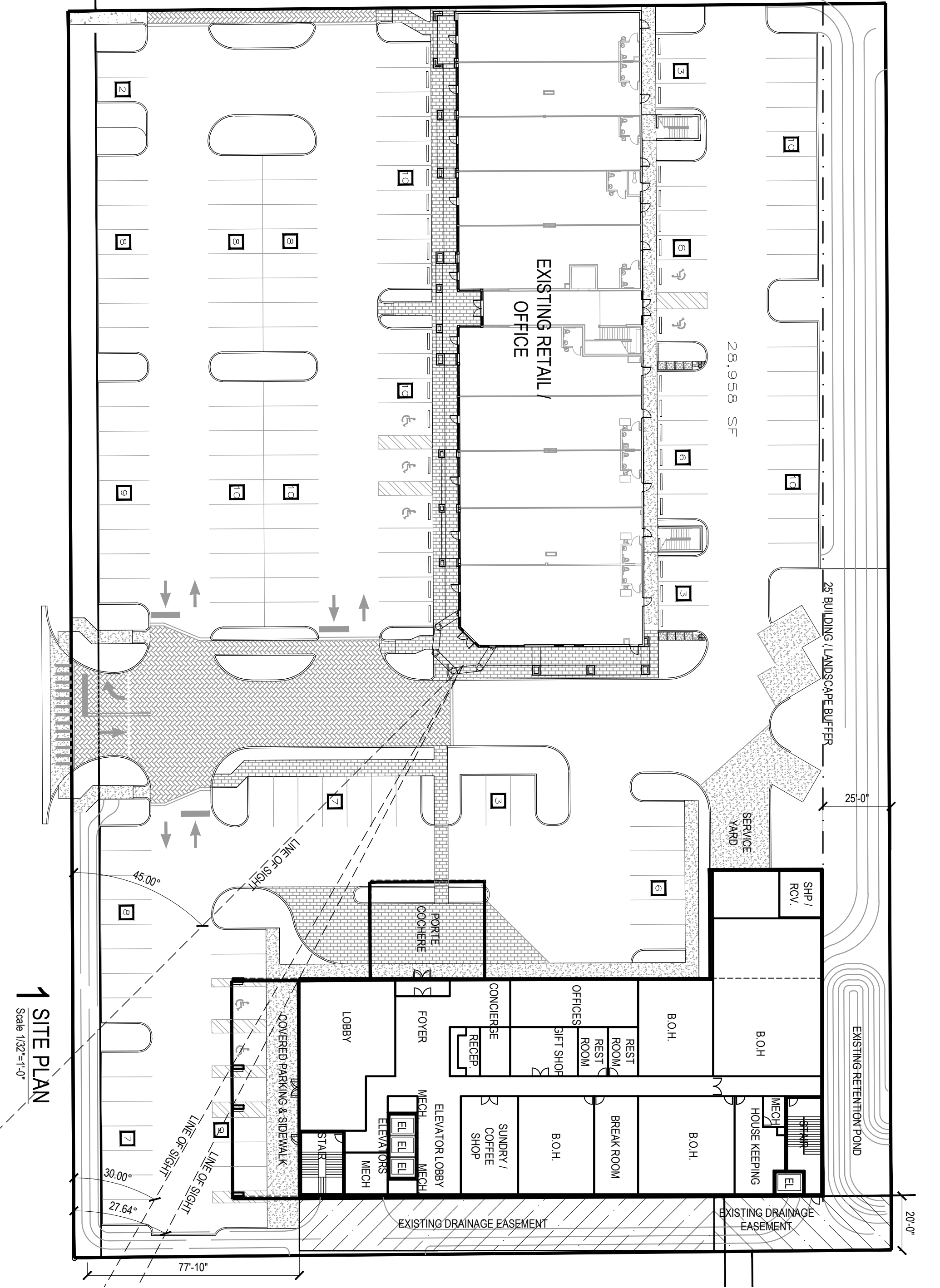
City Clerk

Print Name

APPROVED AS TO FORM AND LEGALITY
FOR THE USE AND RELIANCE OF THE
CITY OF ORLANDO, FLORIDA:

City Attorney

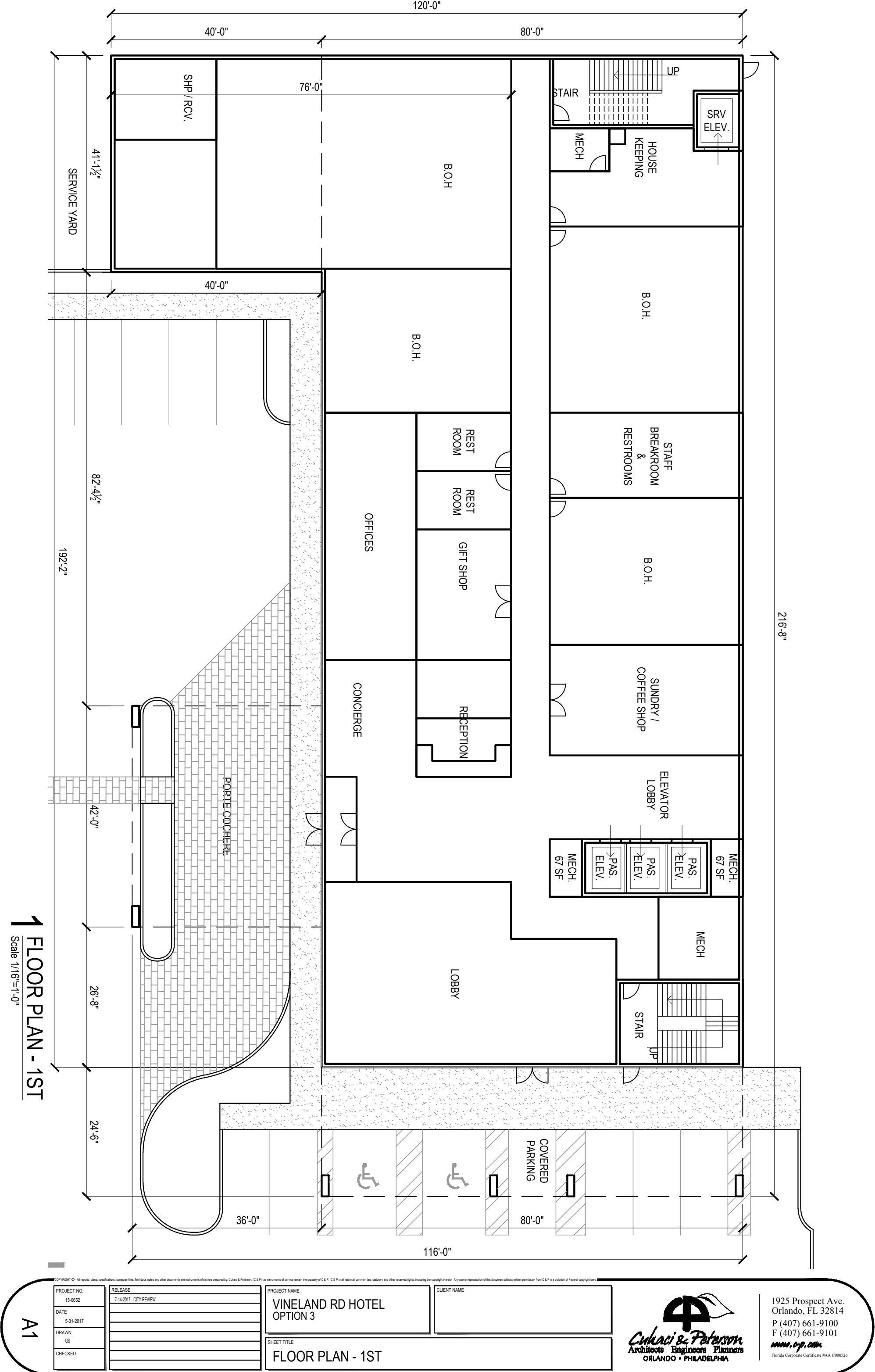
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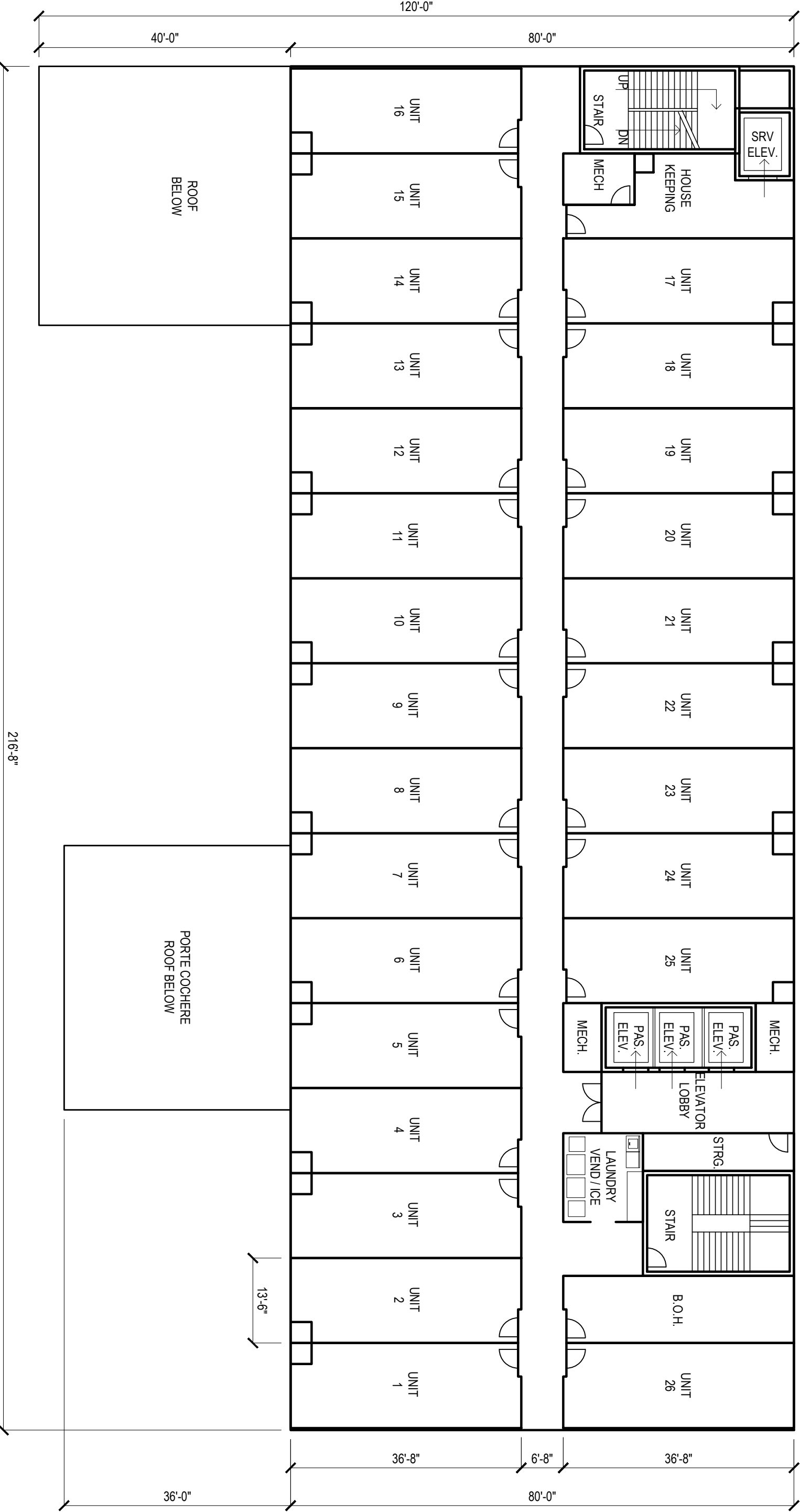


1 SITE PLAN
Scale 1/32"=1'-0"

PROJECT NO. 15-0652		RELEASE 7-14-2017 - CITY REVIEW		PROJECT NAME VINELAND RD HOTEL OPTION 3		CLIENT NAME	
DATE 5-31-2017				SHEET TITLE SITE PLAN			
DRAWN GS							
CHECKED							

1925 Prospect Ave.
Orlando, FL 32814
P (407) 661-9100
F (407) 661-9101
www.c.p.com
Florida Corporate Certificate #AA C000526





1 FLOOR PLAN - 2ND-7TH - GUEST UNITS

Scale 1/16"=1'-0"

UNITS = 26 PER LEVEL

PROJECT NO.	15-0652
DATE	5-31-2017
DRAWN	GS
CHECKED	

RELEASE	7-14-2017 - CITY REVIEW

PROJECT NAME	VINELAND RD HOTEL OPTION 3
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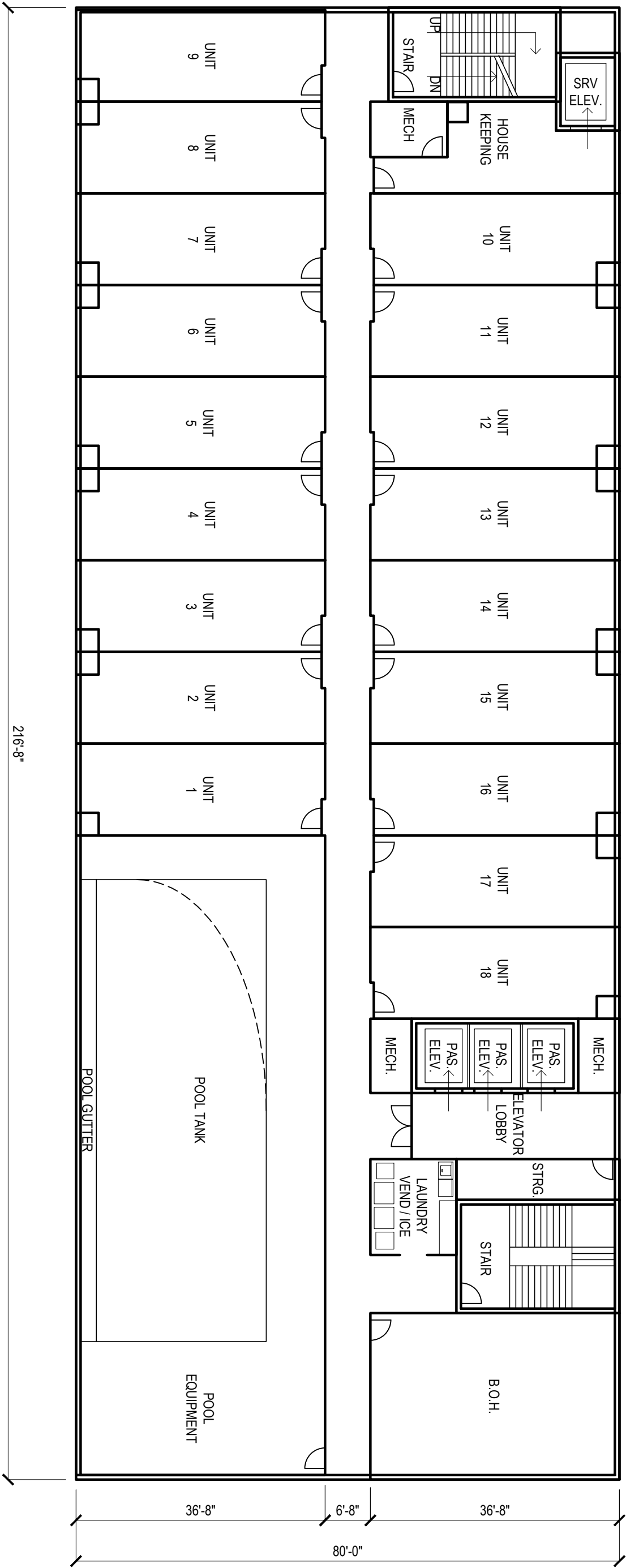
CLIENT NAME	
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SHEET TITLE	FLOOR PLAN - 2ND-7TH - GUEST UNITS
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A2



1 FLOOR PLAN - 8TH - GUEST UNITS
Scale 1/16"=1'-0"
UNITS = 18

PROJECT NO.
15-0652

DATE
5-31-2017

DRAWN
GS


CHECKED

RELEASE
7-14-2017 - CITY REVIEW

PROJECT NAME
VINELAND RD HOTEL
OPTION 3

SHEET TITLE
FLOOR PLAN - 8TH - GUEST UNITS

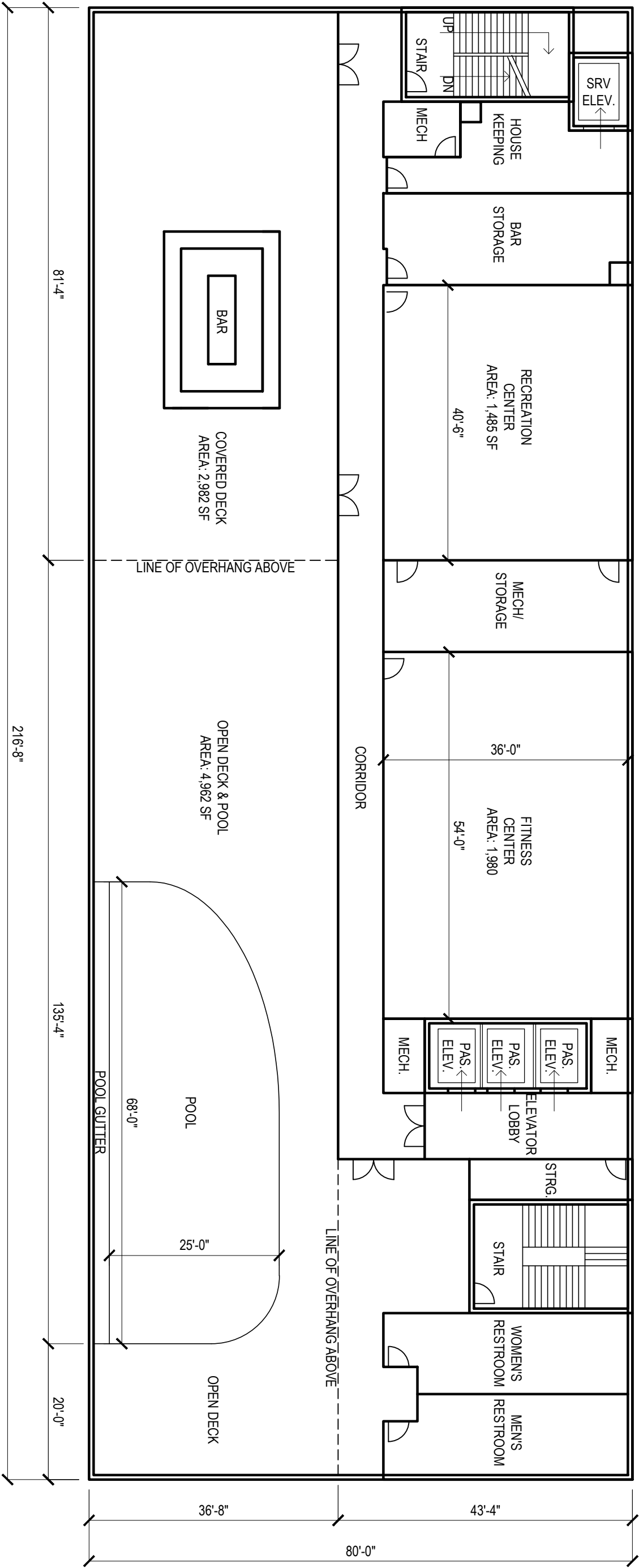
CLIENT NAME



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CONCEPTS FOR MEDIATION PURPOSES ONLY

EXHIBIT A



1 FLOOR PLAN - 9TH - POOL DECK

Scale 1/16"=1'-0"

PROJECT NO.	15-0652
DATE	5-31-2017
DRAWN	GS
CHECKED	

RELEASE	7-14-2017 - CITY REVIEW

PROJECT NAME	VINELAND RD HOTEL OPTION 3
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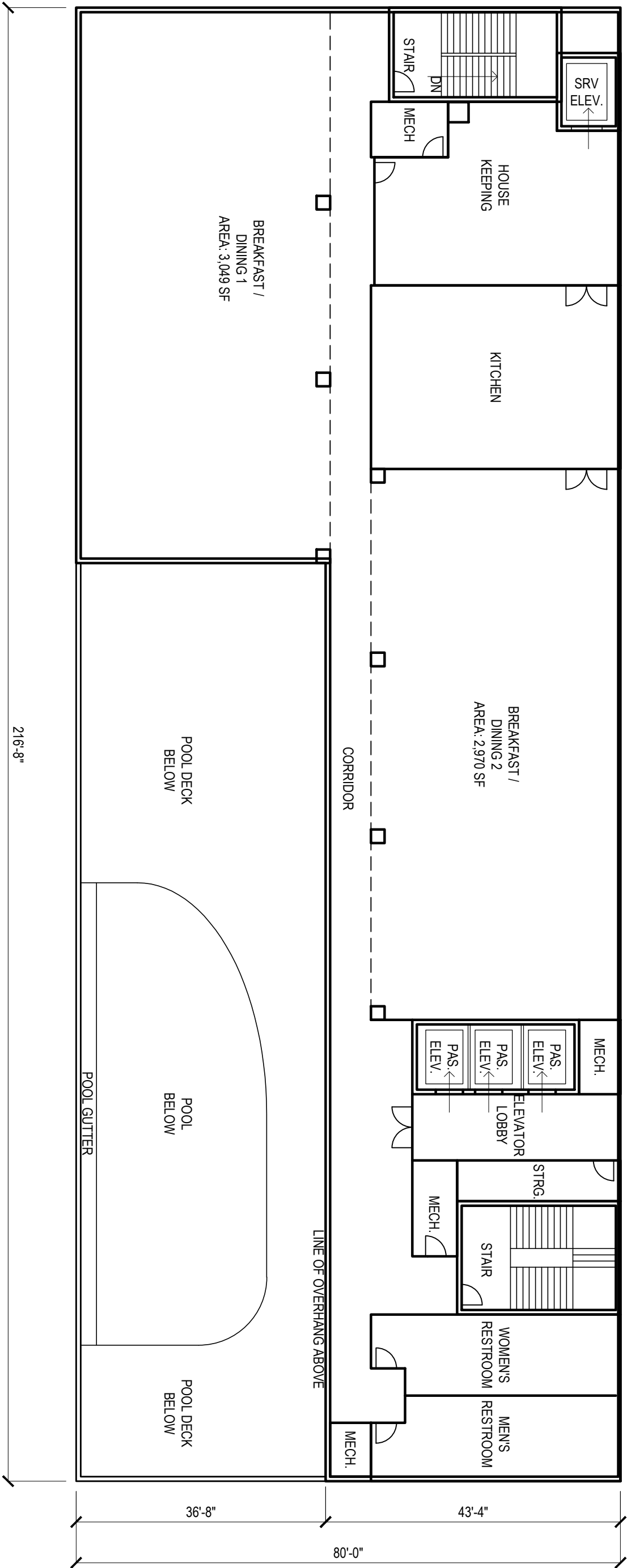
CLIENT NAME	
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SHEET TITLE	FLOOR PLAN - 9TH - POOL DECK
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A4



1 FLOOR PLAN - 10TH - DINING
Scale 1/16"=1'-0"

PROJECT NO. 15-0652	RELEASE 7-14-2017 - CITY REVIEW
DATE 5-31-2017	
DRAWN GS	
CHECKED	

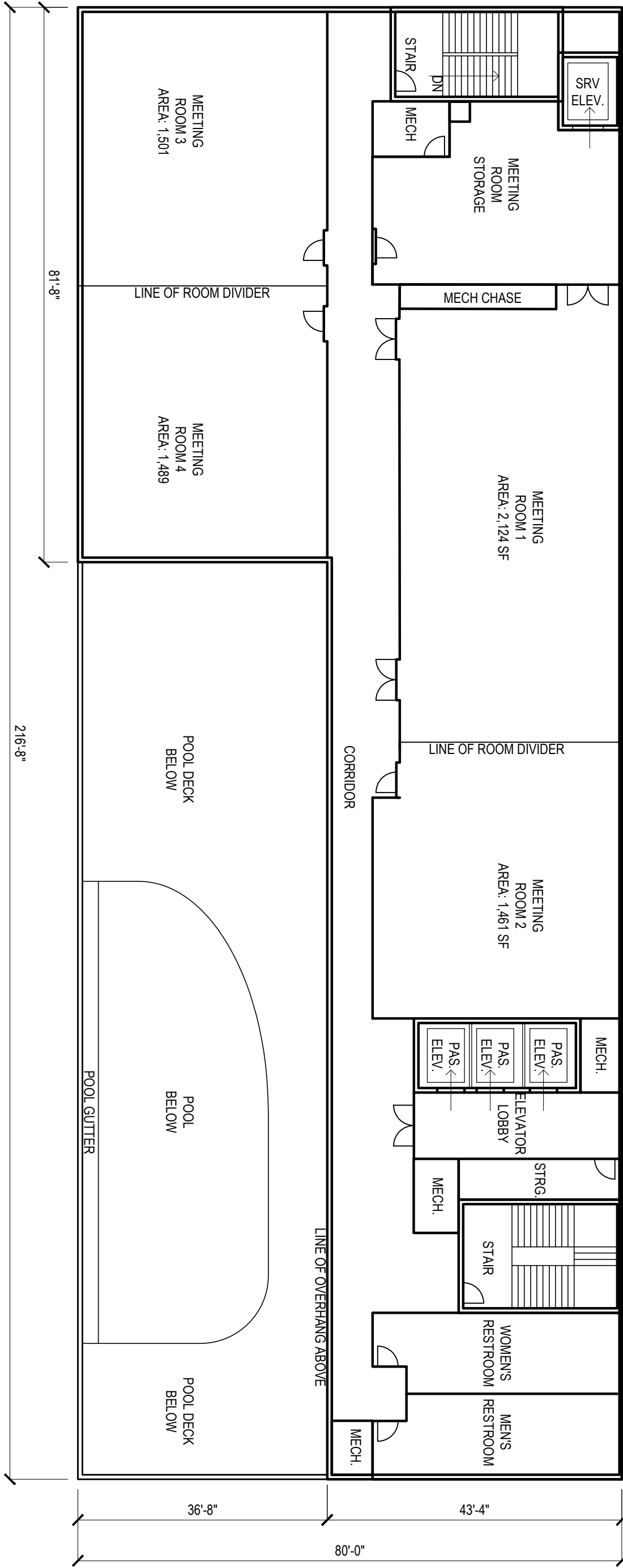
PROJECT NAME
VINELAND RD HOTEL
OPTION 3

CLIENT NAME

SHEET TITLE
FLOOR PLAN - 10TH - DINING



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1 FLOOR PLAN - 11TH LEVEL-MEETING ROOMS

Scale 1/16"=1'-0"

PROJECT NO.	15-0652
DATE	5-31-2017
DRAWN	GS
CHECKED	

RELEASE	7-14-2017 - CITY REVIEW

PROJECT NAME	VINELAND RD HOTEL OPTION 3
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CLIENT NAME	
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SHEET TITLE	FLOOR PLAN - 11TH LEVEL - MEETING ROOMS
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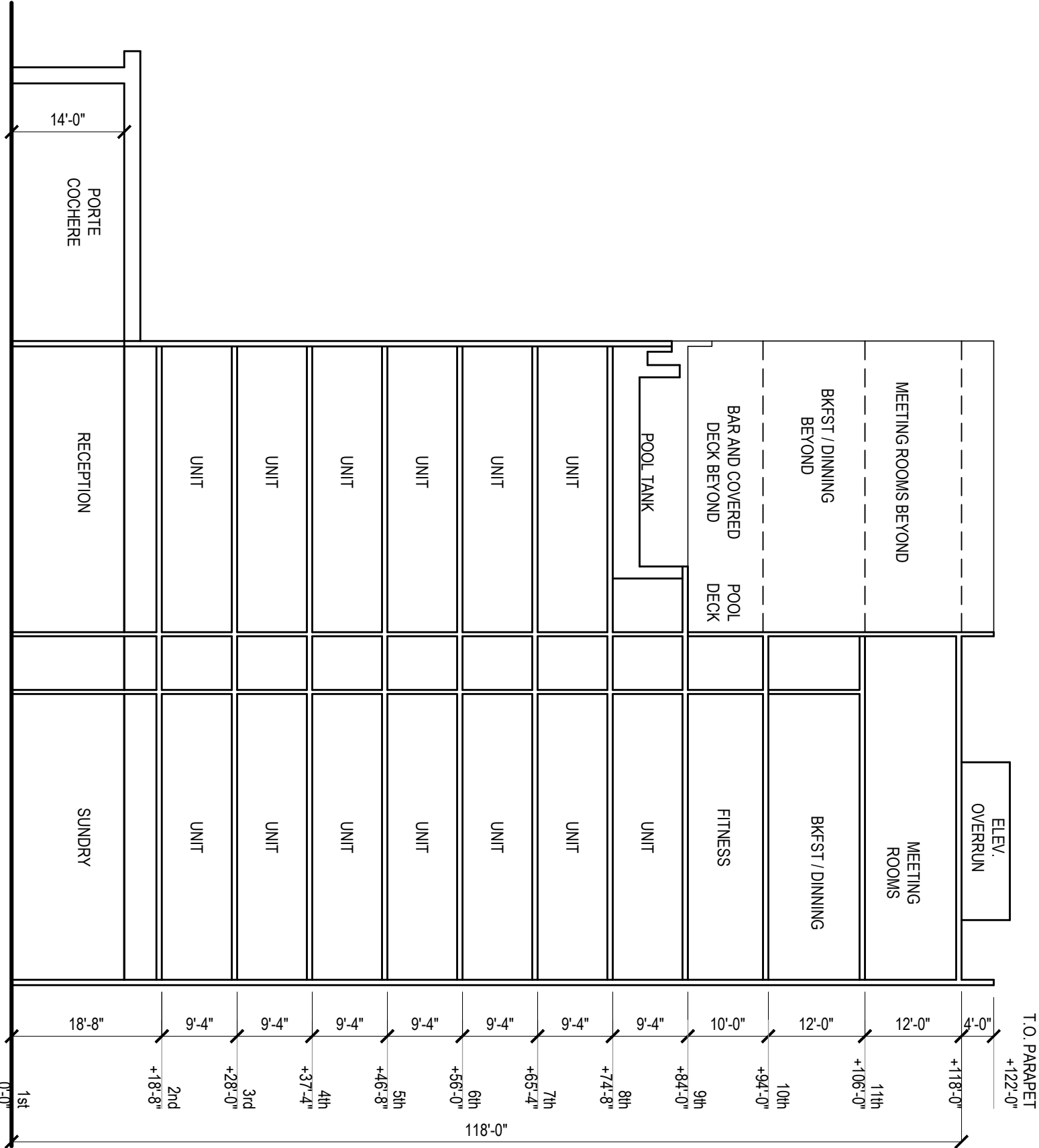
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PROJECT INFORMATION

FLOOR LEVEL	FLOOR HT.	GSF (CONDITIONED SPACE)	UNIT QT.
1 ST	+ 0'-0"	17,019	0
2 ND	+ 18'-8"	17,333	26
3 RD	+ 28'-0"	17,333	26
4 TH	+ 37'-4"	17,333	26
5 TH	+ 46'-8"	17,333	26
6 TH	+ 56'-0"	17,333	26
7 TH	+ 65'-4"	17,333	26
8 TH	+ 74'-8"	17,333	18
9 TH	+84'-0"	12,383	0
10 TH	+94'-0"	12,383	0
11 TH	+106'-0"	12,383	0
T.O. ROOF DECK	+118'-0"	-	-
T.O. PARAPET	+122'-0"	-	-
TOTAL		175,499	174

AMENITIES

FLOOR LEVEL	AREA (SF)	AREA (GSF)
9 TH	OPEN POOL DECK / POOL	4,962
	COVERED POOL DECK / BAR	2,982
	RECREATION CENTER	1,485
	FITNESS CENTER	1,980
10 TH	BREAKFAST / DINING 1	3,049
	BREAKFAST / DINING 2	2,970
	MEETING ROOM 1	2,124
11 TH	MEETING ROOM 2	1,461
	MEETING ROOM 3	1,501
	MEETING ROOM 4	1,489
TOTAL		24,003



BUILDING SECTION
Scale 1/16"=1'-0"

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DRAWN GS	
CHECKED	

PROJECT NAME VINELAND RD HOTEL OPTION 3

SHEET TITLE BUILDING SECTION

CLIENT NAME



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