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October 26, 2022

Via E-mail (planning.division@mountainview.gov)

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Re: 749 W. El Camino Real Project — State Density Bonus Law Letter of Intent

Dear Ms. Shrivastava and Ms. Williams:

As described in our June 29, 2022 letter, we represent Metropolitan Life Insurance (“MetLife”) in connection with its application to redevelop two parcels totaling 3.1 acres located at the intersection of W. El Camino Real and Castro Street (APN 193-02-049 and APN 193-02-050) with 299 apartment homes and approximately 23,000 square feet of commercial space (the “Project”) in Mountain View, California (the “City”), as submitted by MetLife’s agent and representative Greystar. In response to comments from the City, the Project has been further refined. Pursuant to the City’s inclusionary housing requirements for rental projects, the Project will provide approximately 16% of its base units (209 units) as income-restricted affordable housing including 31 available at the very low income affordability level and 2 available at the low income affordability level.

The purpose of this letter is to apply for certain rights under the State Density Bonus Law (Gov. Code § 65915, and reserve the right to apply for others at a later date. Pursuant to the State Density Bonus Law and Mountain View Municipal Code (“MVMC”) § 36.48.65 et seq., because

it will provide more than 14% of its units at the very low income affordability level, the Project is entitled to all of the following *separate* categories of incentives:

- (1) An up to 46.25% density bonus over the base density (43.1% bonus applied for at this time; please see details below);
- (2) 2 mandatory concessions or incentives (one concession applied for at this time; please see details below);
- (3) any required physical waivers of development standards to accommodate the Project (nine waivers applied for at this time, please see details below); and
- (4) applicable mandatory residential parking standards (not applied for at this time, please see details below).

Details on each of the above categories is provided below:

1. Up to 46.25% Density Bonus - **43.1% Applied for at This Time, Right to Remainder Reserved.**

Pursuant to the City's recently approved Density Bonus Program Guidelines and MVMC § 36.48.75, the base density of the Project was calculated to be 209 units using the 2.3 FAR density provided in the El Camino Real Precise Plan. The Project proposes 31 units at the very low income affordability level, or nearly 15% of the 209 base units, and 2 units at the low income affordability level. The State Density Bonus Law provides that the base density used to calculate the affordable housing requirements do not include any bonus units under the State Density Bonus Law.¹ Because the Project provides more than 14% of its base density units at the very low income level, the Project qualifies for a mandatory density bonus of up to 46.25%.²

The Project proposes a floor area ratio of approximately 3.05, which exceeds the maximum 2.3 FAR provided in the El Camino Real Precise Plan for Village Centers. The Project is therefore applying for an 43.1% density bonus to allow for the construction of 299 units.

Although not currently planned, MetLife reserves the right to apply for additional density bonus units, up to the maximum, if determined necessary to make the Project financially feasible during the development of the Project.³ MetLife notes that it is not required to take the entire density bonus in order to qualify for the below incentives and waivers, additional incentives to which it

¹ Gov. Code § 65915(b)(3).

² Gov. Code § 65915(f)(4).

³ Gov. Code § 65915(a)(3)(D)(ii) ("Any determination required by this subparagraph shall be based on the development project at the time the application is deemed complete. The local government shall adjust the amount of density bonus and parking ratios awarded pursuant to this section based on any changes to the project during the course of development.").

is separately entitled under the State Density Bonus Law by virtue of providing the requisite affordable housing units.

2. 2 Mandatory Concession(s) or Incentive(s) - One Applied for at This Time; Right to Identify Further Concession(s) or Incentive(s) Reserved.

Because the Project provides more than 14% of its base density units as very low income units, it is eligible for 2 mandatory concession(s) or incentive(s).⁴ A concession is defined to include, among other things, “reduction in site development standards or a modification of zoning code requirements or architectural design requirements,” including a reduction in setbacks and square footage requirements, and “[o]ther regulatory incentives or concessions proposed by the developer or the city, county, or city and county that result in identifiable and actual cost reductions to provide for affordable housing costs.”⁵ However, the Court of Appeal recently confirmed that the applicant for an incentive “is not required to establish that cost reductions will result.”⁶

Based on the attached preliminary application, MetLife has identified a specific need for one concession or incentive at this time, but hereby reserves the right to identify additional concession(s) or incentive(s) through the City’s application review and approval process.

- (1) *Concession of Upper Floor Setback from Street Other than El Camino Real.*

The El Camino Real Precise Plan requires all upper floors along streets other than El Camino Real to provide a minimum setback of 15 feet. The Project provides the required 15 foot setback along all streets other than El Camino Real as required by the Precise Plan, except at the new Chase Bank fronting Castro Street as illustrated at Plan Sheet X-002. At this location, the Project provides a 12-foot setback at the ground floor and a 10 foot setback at the second floor in order to create a unique corner feature and to provide the Chase Bank with its contractually required square footage. The Project site is subject to an existing long-term lease with Chase Bank, which provides minimum requirements necessary to allow for the relocation of the Bank. Unless these requirements are achieved, the Project could not proceed. It is therefore essential that the Project meets Chase Bank’s requirements, including but not limited to providing the contractually mandated square footage and access to the hard corner. The modification of this standard does not cause any public health or safety or environmental problems, does not harm historical property, and is not contrary to law.

⁴ Gov. Code § 65915(d)(2).

⁵ Gov. Code § 65915(k).

⁶ *Schreiber v. City of Los Angeles* (Sept. 28, 2021) 69 Cal.App.5th 549 (“By requiring the city to grant incentives unless it makes particular findings, the statute places the burden of proof on the city to overcome the presumption that incentives will result in cost reductions.”).

3. **Waivers - *Nine Applied for at This Time; Right to Identify Further Waivers Reserved***

In addition to, and separate from, the limited number of concessions/incentives described above, the State Density Bonus Law specifies that a project is entitled to a waiver from “any development standard that will have the effect of physically precluding the construction of a development... at the densities or with the concessions or incentives permitted by this section.”⁷ Cities are prohibited from applying any development standard that would physically preclude the construction of the project *as designed*.⁸ Unlike concessions/incentives, waivers are unlimited in number, and approval is mandatory if the standard would preclude development of the Project at its permitted density including any density bonus units.

Based on the enclosed formal application, MetLife has identified the need for/eligibility for five waivers at this time. Pursuant to Gov. Code § 65915(a)(2) and MVMC § 36.48.90 (to the extent consistent with State law), MetLife has provided the below information to comply with the requirement to provide “reasonable documentation to establish eligibility” for the waivers as part of its application.

- (1) *Waiver of Setback Standard for Ground Floor Commercial on El Camino Real.*

Pursuant to the El Camino Real Precise Plan, the Project must provide a minimum 10 foot setback along El Camino Real for ground floor commercial uses.⁹ The Project is entitled to a waiver of the setback distance under the State Density Bonus Law¹⁰ and we therefore hereby apply for this waiver as part of the Project’s State Density Bonus Law application.

MetLife has determined that an encroachment of approximately 10 feet into the El Camino Real setback is necessary to preserve the building form along El Camino Real. The Project generally adheres to the El Camino Real setback along the approximately 520-foot long frontage. However, the Project encroaches 10 feet into the setback for approximately 185 linear feet. A VTA bus duck-out located along El Camino Real shrinks the available space. While the remaining frontage complies with the El Camino Real setback requirement, it is not feasible for the Project to do so along the bus duck-out. MetLife is in discussions with City of Mountain View Department of Public Works and various other agencies on whether the duck-out can be eliminated. However, even in the event these discussions are successful, the Project’s property line would remain unchanged. Conforming to the setback requirement for all floors would result in the loss of approximately 780 square feet of usable retail space and approximately 3,400

⁷ Gov. Code § 65915(e)(1).

⁸ *Bankers Hill 150 v. City of San Diego* (2021) 74 Cal.App.5th 755, 775 (city could not deny waiver even if building could be designed differently to avoid inconsistency).

⁹ City of Mountain View, El Camino Real Precise Plan (2014), at p. 21.

¹⁰ Gov. Code § 65915(o)(1) (“‘Development standard’ includes a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.”)

square feet of usable residential space. Please see Plan Sheets X-001 to X-006 for an illustration of this loss of usable space. The waiver of the ground floor commercial setback is necessary to support the waiver of the setback for upper floors and this change would greatly impact the feasibility of the Project for MetLife, precluding its construction at the density permitted. This requirement must be waived.

- (2) *Waiver of Setback Standard for Upper Floors on El Camino Real.*

Similarly, the El Camino Real Precise Plan requires a minimum 10 foot setback along El Camino Real of all upper floors.¹¹ The Project is entitled to a waiver of the setback distance under the State Density Bonus Law and we therefore hereby apply for this waiver as part of the Project's State Density Bonus Law application.

For the same reasons as described above, MetLife has determined that an encroachment of approximately 10 feet into the El Camino Real setback is necessary to preserve the building form along El Camino Real. The Project generally adheres to the El Camino Real setback along the approximately 540 foot long frontage. However, the Project encroaches 10 feet into the setback for approximately 106 linear feet. A VTA bus duck-out located along El Camino Real shrinks the available space. While the remaining frontage complies with the El Camino Real setback requirement, it is not feasible for the Project to do so along the bus duck-out. MetLife is in discussions with VTA and various other agencies on whether the duck-out can be eliminated. However, even in the event these discussions are successful, the Project's property line would remain unchanged. Conforming to the setback requirement for all floors would result in the loss of approximately 780 square feet of usable retail space and approximately 3,400 square feet of usable residential space. Please see Plan Sheets X-001 to X-006 for an illustration of this loss of usable space. This change would preclude construction at the density permitted. This requirement must be waived.

- (3) *Waiver of Special Upper Floor Setbacks for Tier 2 Development.*

Pursuant to the El Camino Real Precise Plan, the fifth and sixth stories shall have an additional setback of 10 feet from El Camino Real, side streets, side and rear setback lines.¹² The Project is entitled to a waiver of these setback distances under the State Density Bonus Law¹³ and we

¹¹ Precise Plan, *supra* note 9, at p. 21.

¹² Precise Plan, *supra* note 9, at p. 20.

¹³ Gov. Code § 65915(o)(1) (“‘Development standard’ includes a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.”)

therefore hereby apply for this waiver as part of the Project's State Density Bonus Law application.

The Project generally provides an additional 10 foot setback of the fifth and sixth stories along side streets, side, and rear setback lines except where architectural projections are provided to create distinctive corner treatments.¹⁴ However, in light of the shallow depth of the Project Site, MetLife has determined that complying with the additional 10 foot setback at all locations would compromise the ability of the Project to achieve the desired density would render the Project infeasible and would further result in a significant reduction of approximately 3,500 square feet of useable space. Please see Plan Sheets X-005 and X-006 for an illustration of this loss of units. Complying with the upper floor setbacks would preclude construction at the permitted density. This requirement must be waived.

- (4) *Waiver of Sidewalk and Access Requirement.*

Pursuant to the El Camino Real Precise Plan, the Project must provide a minimum four foot sidewalk within the property along El Camino Real.¹⁵ The Project is entitled to a waiver of the setback distance under the State Density Bonus Law¹⁶ and we therefore hereby apply for this waiver as part of the Project's State Density Bonus Law application.

The Project generally provides a four-foot sidewalk along El Camino Real in compliance with this development standard. However, as explained above, the currently planned bus duck-out located along El Camino Real shrinks the available space along a small portion of the El Camino Real frontage. The Project generally provides 10 to 12 feet of paved sidewalk within the property boundary. However, conforming to the four-foot sidewalk requirement would result in the loss of approximately 300 square feet of usable retail space and approximately 1,350 square feet of usable residential space units. Please see Plan Sheets X-001 to X-006 for an illustration of this loss of usable space. This change would preclude its construction at the density permitted. This requirement must be waived.

- (5) *Waiver of Special Upper Floor Setbacks for Tier 2 Development.*

Pursuant to the El Camino Real Precise Plan, the fifth story shall be located no closer than 80 feet and the sixth story shall be no closer than 100 feet from any parcel in a residential zone or the right-of-way across from any residential zone.¹⁷ The Project is entitled to a waiver of these

¹⁴ Precise Plan, supra note 9, at p. 31.

¹⁵ Precise Plan, supra note 9, at p. 32.

¹⁶ Gov. Code § 65915(o)(1) ("Development standard' includes a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.")

¹⁷ Precise Plan, supra note 9, at p. 20 ("The front 4 feet of every parcel along El Camino Real shall be paved at sidewalk grade; no fences or signs are permitted within this area.")

setback distances under the State Density Bonus Law¹⁸ and we therefore hereby apply for this waiver as part of the Project's State Density Bonus Law application.

The Project provides an approximately 55 foot setback of the fifth floor and an approximately 65 foot setback of the sixth floor to preserve the 45-degree angle daylight plane from the applicable property lines. However, in light of the shallow depth of the Project Site, MetLife has determined that complying with the respective 80 and 100 foot setbacks would compromise the ability of the Project to achieve the desired density would render the Project infeasible and would further result in a significant reduction of at least 20 units and approximately 16,500 square feet of useable space. Please see Plan Sheets X-005 and X-006 for an illustration of this loss of usable residential space and units. Complying with the upper floor setbacks would preclude construction at the permitted density. This requirement must therefore be waived.

- (6) *Waiver of Maximum Height Adjacent to Residential.*

Pursuant to the El Camino Real Precise Plan, wall plates shall not be higher than the distance to a residentially zone property.¹⁹ The Project is entitled to a waiver of this height limit under the State Density Bonus Law²⁰ and we therefore hereby apply for this waiver as part of the Project's State Density Bonus Law application.

The Project is adjacent to residentially-zoned property along Victor Way. To create a neighborhood transition, the Project steps down its height as it approaches these properties and transitions to ground-floor residential uses. The stepped down structure generally preserves the 45 degree daylight plane as illustrated at Plan Sheet A-401. However, given the shallow depth of the Project Site, it is infeasible to conform to the daylight plane at all locations. MetLife has determined that doing so would compromise the ability of the Project to achieve the desired density and would further result in a reduction of at least 2 units and approximately 1,600 square feet of usable space. Please see Plan Sheet X-004 for an illustration of the loss of units. This requirement must therefore be waived.

- (7) *Waiver of Maximum Height Across a Street from Residential - Victor Way.*

Pursuant to the El Camino Real Precise Plan, where a project is proposed across the street from a residentially-zoned property, the development's wall plates and overall heights may be no taller

¹⁸ Gov. Code § 65915(o)(1) ("Development standard' includes a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.")

¹⁹ Precise Plan, *supra* note 9, at p. 30.

²⁰ Gov. Code § 65915(o)(1) ("Development standard' includes a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.")

than what is allowed in the adjacent residential zone within 40 feet of the street property line.²¹ The Project is entitled to a waiver of this height limit under the State Density Bonus Law²² and we therefore hereby apply for this waiver as part of the Project's State Density Bonus Law application.

The Project is located directly across the street from a residentially-zoned properties on Victor Way and on Lane Avenue. These residentially-zoned properties are designated R3: Multiple Family Residential with a maximum building height of 45 feet.²³ Within 40 feet of the Project's street property line along Victor Way, the Project gradually steps up to approximately 70 feet, 6 inches in height as measured from the top of the highest roof parapet, in excess of the 45 foot maximum. Given the shallow depth of the Project Site, it is infeasible to conform to the residential setback adjacent to Victor Way. MetLife has determined that doing so would compromise the ability of the Project to achieve the desired density and would further result in a reduction of at least 16 units and approximately 16,500 square feet of usable space residential space. Please see Plan Sheets X-004 through X-006 for an illustration of the loss of units. This requirement must therefore be waived.

- (8) *Waiver of Maximum Height Across a Street from Residential - Lane Avenue.*

Pursuant to the El Camino Real Precise Plan, where a project is proposed across the street from a residentially-zoned property, the development's wall plates and overall heights may be no taller than what is allowed in the adjacent residential zone within 40 feet of the street property line.²⁴ The Project is entitled to a waiver of this height limit under the State Density Bonus Law²⁵ and we therefore hereby apply for this waiver as part of the Project's State Density Bonus Law application.

The Project is located directly across the street from a residentially-zoned properties on Victor Way and on Lane Avenue. These residentially-zoned properties are designated R3: Multiple Family Residential with a maximum building height of 45 feet.²⁶ Within 40 feet of the Project's street property line along Lane Avenue, the Project steps up to 72 feet in height, in excess of the 45 foot maximum. Given the shallow depth of the Project Site, it is infeasible to conform to the

²¹ Precise Plan, supra note 9, at p. 30.

²² Gov. Code § 65915(o)(1) ("Development standard' includes a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.")

²³ MVMC § 36.10.70 (Table R3 Zone Development Standards).

²⁴ Precise Plan, supra note 9, at p. 30.

²⁵ Gov. Code § 65915(o)(1) ("Development standard' includes a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.")

²⁶ MVMC § 36.10.70 (Table R3 Zone Development Standards).

residential setback adjacent to Lane Avenue. MetLife has determined that doing so would compromise the ability of the Project to achieve the desired density and would further result in a reduction of 3 units and approximately 1,800 square feet of usable space. Please see Plan Sheets X-004 to X-006 for an illustration of the loss of units. This requirement must therefore be waived.

MetLife hereby reserves the right to identify any further necessary waivers through the City's application review and approval process.

- (9) *Waiver of Ground Floor Commercial Requirement.*

In its July 29, 2022 comments on the Project, the City requested that the Project be modified to include ground floor commercial on all frontages except for the residential ground floor uses on Victor Way, based on page 35 of the El Camino Real Precise Plan which provides that, "Ground floor commercial *should* occupy the full building frontage facing El Camino Real along with main entrances to upstairs uses. Side street frontages may transition from commercial to residential uses" (emphasis added).

We note that this provision uses the term "should." As noted on page 7 of the El Camino Real Precise Plan, "guidelines are typically written with a 'should' statement" and provide "flexibility in how projects meet each guideline depending on project specific design and location." "Guidelines" under the El Camino Real Precise Plan are therefore not "objective" under the Housing Accountability Act and, as explained further in the cover letter submitted for this Project, a project cannot be denied or conditioned on noncompliance with these subjective standards. However, the Project does comply with this requirement. At page 14, the El Camino Real Precise Plan notes that lobbies, parking, service spaces including but not limited to trash and utility rooms, bike parking, shared restrooms and loading areas are allowed in the ground floor commercial areas. Further, Table 2 of the El Camino Real Precise Plan provides that residential accessory uses and structures may be permitted in the ground floor commercial areas, including leasing offices, lounges, fitness rooms and other compatible uses.²⁷ Thus, "there is substantial evidence that would allow a reasonable person to conclude that the housing development project . . . is consistent, compliant, or in conformity" with this standard.²⁸

To the extent the City disagrees, and without waiving any of the above rights or protections provided by the Housing Accountability Act, the Project is entitled to a waiver of this

²⁷ Precise Plan, *supra* note 9, at p. 12.

²⁸ Gov. Code § 65589.5(f)(4).

development standard under the State Density Bonus Law²⁹ and we therefore hereby apply for this waiver as part of the Project's State Density Bonus Law application.

The Project locates the leasing office, lobbies, a fitness center, a mail and packages room, and a resident lounge on the ground floor, in addition to retail, restaurant, and banking units. Given the constraints of the Project Site, it is infeasible to relocate these facilities to conform to the City's interpretation of the ground floor commercial requirements. MetLife has determined that doing so would compromise the ability of the Project to achieve the desired density and would further result in a reduction of more than 8,500 square feet of usable residential space. This requirement must therefore be waived.

MetLife hereby reserves the right to identify any further necessary waivers through the City's application review and approval process.

4. **Mandatory Maximum Residential Parking Standards -Applied for at This Time, Right Reserved to Request Additional Reductions.**

Pursuant to the State Density Bonus Law, as a density bonus-eligible project and as further described in the enclosed submittal package, the Project has the right to meet mandatory maximum residential parking standards which as of January 1, 2021, are no more than:

- Zero to one bedroom: one onsite parking space;
- Two to three bedrooms: one and one-half onsite parking spaces; and
- Four and more bedrooms: two and one-half parking spaces.³⁰

Additionally, projects providing at least 11% of the base units at the very low income affordability level and that are located within one-half mile of a major transit stop may be required to provide no more than 0.5 spaces per unit inclusive of parking for persons with disability and guests.³¹

Under the State Density Bonus Law, the Project is required to provide 150 spaces.³² Upon request of MetLife, the City cannot impose a vehicular parking ratio greater than contemplated in

²⁹ Gov. Code § 65915(o)(1) ("Development standard' includes a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.")

³⁰ Gov. Code § 65915(p)(1), as revised by AB 2345 effective January 1, 2021.

³¹ Gov. Code § 65915(p)(2), as revised by AB 2345 effective January 1, 2021.

³² City of Mountain View, Multi-Modal Transportation Analysis Handbook (Feb. 2021) at pp. 62-64 (Figures 13 and 14 "indicate the areas where projects located within one-half mile of a major transit stop, or a stop along a high quality transit corridor").

Aarti Shrivastava
Stephanie Williams
October 26, 2022
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the State Density Bonus Law. Nevertheless as demonstrated at Plan Sheet A-100 and A-101, the Project provides approximately 344 spaces to serve the residential uses, including 51 spaces (or 15% of the required spaces) for guest parking consistent with the El Camino Real Precise Plan, subject to a permitted 10% reduction associated with the provision of a parking and transportation management program to be prepared and submitted with the Project.³³

MetLife reserves the right to revise this proposal consistent with its rights under the State Density Bonus Law.

Thank you for your attention to this matter, we look forward to working with the City on bringing this project to fruition.

Sincerely yours,

HOLLAND & KNIGHT LLP

A handwritten signature in blue ink, appearing to be "Tamsen Plume".

Tamsen Plume
Emily M. Lieban

TP:mlm

³³ Precise Plan, supra note 9, at p. 64.

From: Anderson, Eric B. <Eric.Anderson2@mountainview.gov>

Sent: Tuesday, September 2, 2025 1:10 PM

To: Daniel Deibel <ddeibel@greystar.com>

Cc: Jordan Geller <jordan.geller@greystar.com>; Reynoso, Anna <Anna.Reynoso@mountainview.gov>;

Barnard, Julie <Julie.Barnard@mountainview.gov>; Netto, Margaret

<Margaret.Netto@mountainview.gov>; Pancholi, Diana <Diana.Pancholi@mountainview.gov>

Subject: RE: 749 ECR-Density Bonus Calculation

Dan,

That is fine. For confirmation:

Calculation of Base Units

- A) Project Units = 299
- B) Max Allowable Gross Floor Area = Max FAR * lot area = 2.3 * 133,293 = 306,573.9 sf
- C) Nonresidential Gross Floor Area = 76,393 sf
- D) Project Gross Floor Area = 406,001 sf

Base Units = $A * (B - C) / (D - C)$ = 208.8, which rounds up to 209.