

**PROPERTY ADDRESS:**

110 S. Washington Street  
Naperville, Illinois 60540

**P.I.N.**

07-13-424-001  
07-13-424-002

**RETURN TO:**

**City of Naperville**  
**City Clerk's Office**  
**400 South Eagle Street**  
**Naperville, IL 60540**

**OWNER'S ACKNOWLEDGEMENT AND ACCEPTANCE AGREEMENT  
FOR NICHOLS PLACE SUBDIVISION (NKA CENTRAL PARK PLACE)**

This Owner's Acknowledgement and Acceptance Agreement ("**Agreement**") for Central Park Place (formerly known as Nichols Place) located at 110 S. Washington Street, Naperville, Illinois 60540 is entered into by and between the City of Naperville, a home rule unit of local government under the Constitution and laws of the State of Illinois ("**City**"), with an address of 400 South Eagle Street, Naperville, Illinois 60540, and Great Central Properties III, LLC, ("**OWNER AND DEVELOPER**"), with an address of 1255 Bond Street, Suite 111, Naperville, Illinois 60563. The City and the OWNER AND DEVELOPER are together hereinafter referred to as the "Parties" and sometimes individually as "Party".

**RECITALS**

A. This Agreement pertains to certain real property within the corporate limits of the City of Naperville with a common address of 110 S. Washington Street, Naperville, Illinois having parcel identification numbers of 07-13-424-001 and 07-13-424-002 ("**SUBJECT PROPERTY**") which SUBJECT PROPERTY encompasses the building commonly known as the Old Nichols Library.

B. Said SUBJECT PROPERTY is a designated Naperville Landmark and is therefore subject to Section 6-11 of the Naperville Municipal Code (Historic Preservation) in addition to all other Naperville Municipal Code revisions as amended from time to time ("**Code**").

B.1 Certificate of Appropriateness #18-1430 was issued on May 25, 2018 pertaining to changes to the existing Old Nichols Library building and proposed addition to the Old Nichols Library.

B.2 Certificate of Appropriateness #18-3642 was issued on September 28, 2018 pertaining to the final architectural rendering of the proposed addition to the Old Nichols Library building.

Final architectural elevations, depicted on **Exhibit A** attached hereto and made part hereof, which the City has determined are consistent with Certificate of Appropriateness #18-1430 and Certificate of Appropriateness #18-3642 ("**Certificates of Appropriateness**"), have since been submitted by the OWNER AND DEVELOPER and approved by the City ("**Final Architectural Elevations**").

C. The SUBJECT PROPERTY is subject to certain covenants ("**Covenants**") recorded in the Warranty Deed issued by the City of Naperville to Truth Lutheran Church, recorded with the DuPage County Recorder as document number R96-059018.

D. OWNER AND DEVELOPER intends to develop the SUBJECT PROPERTY with a mixed-use building containing commercial uses on the first floor and residential uses on the upper floors.

E. By entering into this Agreement, the City is acting pursuant to its home rule authority under the Constitution and laws of the State of Illinois.

**NOW THEREFORE, in consideration of the mutual promises and agreements set forth herein, the parties agree as follows:**

- 1. Recitals Incorporated.** The foregoing Recitals are incorporated herein as though fully set forth in this Section 1.
- 2. Ongoing Compliance.** In the development and operation of the SUBJECT PROPERTY, the OWNER AND DEVELOPER shall be subject to and shall fulfill all conditions set forth or referenced herein associated with the SUBJECT PROPERTY, including but not limited to: (i) the terms of this Agreement; (ii) the provisions of the Naperville Municipal Code, as amended from time to time; and (iii) all ordinances and resolutions passed or adopted by the Naperville City Council related to the SUBJECT PROPERTY.
- 3. Sidewalk Construction.** OWNER AND DEVELOPER shall install sidewalk adjacent to the SUBJECT PROPERTY in strict compliance with the provisions of the Naperville Municipal Code, as amended from time to time, including but not limited to Section 5-2B-5 thereof. Notwithstanding the foregoing, the provisions of the Code, including but not limited to the timeframe for installation of sidewalks, may be varied by the written approval, or the written direction, of the City Engineer.
- 4. Building Permits.** No building permits shall be issued for the SUBJECT PROPERTY, or any portion thereof, until the Final Subdivision Plat has been

recorded and the City has determined that sufficient improvements have been installed and are functioning to protect the health, safety, and welfare of the public.

- 5. Infrastructure Availability Charges and User Fees.** Upon a request for connection and service to the City's water or sanitary system, OWNER AND DEVELOPER shall pay for all infrastructure availability charges and user fees in accordance with Title 8 of the Naperville Municipal Code as amended from time to time, as are applicable to that portion of the SUBJECT PROPERTY for which connection and service is requested.
- 6. Facility Installation Charges and User Fees.** Upon a request for connection and service to the City of Naperville electric system, the OWNER AND DEVELOPER shall pay for all Facility Installation Charges (FIC) and user fees in accordance with Title 8 of the Naperville Municipal Code as amended from time to time, as are applicable to that portion of the SUBJECT PROPERTY for which connection and service is requested.

## **7. Special Conditions**

- 7.1 School Donation:** OWNER AND DEVELOPER has elected to pay a cash in lieu of land school donation as permitted by Section 7-3-5 of the Naperville Municipal Code (Dedication of Park Lands and School Sites or for Payments of Fees in Lieu of). OWNER AND DEVELOPER acknowledges that said school donation will be determined pursuant to Code provisions in effect at the time of payment, and agrees that payment shall not be paid under protest or otherwise objected to. Further, OWNER AND DEVELOPER has elected to pay the required school donation on a per permit basis as permitted by Code. Said per permit school donation shall be calculated at the time of each building permit issuance based on the number of bedrooms in each dwelling unit in accordance with the school donation table in effect at the time the building permit is issued. Payment shall be made prior to issuance of any building permit for the SUBJECT PROPERTY.
- 7.2 Park Donation:** OWNER AND DEVELOPER has elected to pay a cash in lieu of land park donation as permitted by Naperville Municipal Code Section 7-3-5 (Dedication of Park Lands and School Sites or for Payments of Fees in Lieu of). OWNER AND DEVELOPER acknowledges that said park donation will be determined pursuant to Code provisions in effect at the time of payment and agrees that payment shall not be paid under protest, or otherwise objected to. Further, OWNER AND DEVELOPER has elected to pay the required park donation on a per permit basis as permitted by Code. Said per permit park donation shall be calculated at the time of each building permit issuance based on the number of bedrooms in each dwelling unit in accordance with the park donation table in effect at the time

the building permit is issued. Payment shall be made prior to issuance of any building permit for the SUBJECT PROPERTY.

**7.3 Fees Due Prior to Recordation of Final Subdivision Plat.** OWNER AND DEVELOPER shall pay all fees (which fees shall not be paid under protest or otherwise objected to) set forth herein and required by the Naperville Municipal Code as amended from time to time, including but not limited to the following:

**7.3.1 Engineering Review Fee:** \$2,353.69 (1.5% of the approved engineer's cost estimate). This fee is due prior to recording the Preliminary/ Final Plat of Subdivision.

**7.3.2 Special Service Area Taxes.** The SUBJECT PROPERTY is located within Special Service Areas 21 and 26 ("SSAs") which SSAs provide for the construction and maintenance of public parking in the downtown business district of the City of Naperville. From the time the SSAs (and prior SSAs created for the same purpose) were established, the SUBJECT PROPERTY has been used as a public library and then as a religious institution, and has therefore been exempt from paying property taxes. OWNER AND DEVELOPER intends to develop the SUBJECT PROPERTY with a mixed-use building containing commercial uses on the first floor and residential uses on the upper floors; therefore, the SUBJECT PROPERTY will no longer be tax-exempt. In order to benefit from the public parking provided and maintained by the SSAs, the OWNER AND DEVELOPER shall make a parking fee in lieu payment to the City in the amount of \$190,380.00. This fee is due prior to recording the Preliminary/Final Plat of Subdivision.

**7.4 Financial Surety.** Financial surety in a form acceptable to the City Attorney shall be provided and maintained in the amount of \$166,651.91 (110% of the approved engineer's cost estimate) which guarantees the completion of public improvements and soil erosion and sedimentation control for the SUBJECT PROPERTY ("**Public Improvements**"). Financial surety shall be received and approved prior to issuance of a site development permit. Notwithstanding provision of said surety, until the Public Improvements have been accepted by the City, the OWNER AND DEVELOPER shall remain obligated for completion of said Public Improvements and/or (at the City's sole discretion) to pay any costs for said Public Improvements to the extent that the surety is not sufficient to pay for the costs of the Public Improvements, or in the event of any denial, or partial denial of coverage by the surety, or failure of the surety to timely respond to a demand for payment. Prior to acceptance of the Public Improvements by the City, the OWNER AND DEVELOPER shall provide the City with a

maintenance surety for the Public Improvements in a form approved by the City Attorney and in conformity with the Naperville Municipal Code.

As to any surety, or maintenance surety, provided by the OWNER AND DEVELOPER to the City hereunder, the OWNER AND DEVELOPER agrees that: (1) at no time shall the City be liable for attorneys' fees with respect thereto; (2) OWNER AND DEVELOPER shall be liable to pay the City's reasonable attorneys' fees and costs (in-house or outside counsel) in enforcement thereof; and (3) the list of circumstances set forth in such surety (including any exhibit thereto) as bases for default thereunder shall entitle the City to draw on said surety.

**7.5 Development of the Subject Property.** OWNER AND DEVELOPER, at its sole cost, shall construct all improvements related to the development of the SUBJECT PROPERTY in compliance with final engineering plans prepared by Watermark Engineering Resources, Ltd, dated June 22, 2018, last revised February 18, 2019 ("**Final Engineering Plans**"). Said Final Engineering Plans may be revised with the written approval of the City Engineer.

**7.6 Historic Preservation/COAs and Covenants.** OWNER AND DEVELOPER agrees that in developing and utilizing the SUBJECT PROPERTY, OWNER AND DEVELOPER shall at all times fully comply with: (i) Certificates of Appropriateness #18-1430 and #18-3642; (ii) the Covenants; (iii) all ordinances applicable to the SUBJECT PROPERTY; (iv) the Naperville Municipal Code, as amended from time to time; and (v) the Final Architectural Elevations. The City Zoning Administrator may approve minor revisions to the Final Architectural Elevations so long as such revisions are consistent with the Certificates of Appropriateness and so long as such approval is in writing. OWNER AND DEVELOPER acknowledges and agrees that the City's execution of this Agreement, and any approvals granted by or through the City to the OWNER AND DEVELOPER in developing or utilizing the SUBJECT PROPERTY, shall in no way be constituted as a waiver of the City's right to continue to strictly enforce the Covenants with respect to the SUBJECT PROPERTY.

## **8. General Conditions**

**8.1 Binding Effect.** City and OWNER AND DEVELOPER acknowledge and agree that the terms contained herein shall be binding upon and inure to the benefit of the City and the OWNER AND DEVELOPER and their respective successors, assigns, and transferees, and any subsidiary, affiliate or parent of the OWNER AND DEVELOPER.

**8.2 Severability.** It is mutually understood and agreed that all agreements and covenants herein are severable and that in the event any of them shall be

held to be invalid by any court of competent jurisdiction, this Agreement shall be interpreted as if such invalid agreement or covenant were not contained herein.

- 8.3 Amendment.** The agreements, covenants, terms and conditions herein contained may be modified only through the written mutual consent of the parties hereto.
- 8.4 Assignment.** This Agreement may not be assigned by either party without the written consent of the other party.
- 8.5 Choice of Law and Venue.** This Agreement shall in all respects be subject to and construed in accordance with and governed by the laws of the State of Illinois. Venue for any action arising out of the terms or conditions of this Agreement shall be proper only in the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois.
- 8.6 Ambiguity.** If any term of this Agreement is ambiguous, it shall not be construed for or against any party on the basis that the party did or did not write it.
- 8.7 Recordation.** This Agreement will be recorded by the City with the office of the DuPage County Recorder.
- 8.8 Term.** This Agreement shall be effective upon the Effective Date and shall terminate, without further action by either party, upon the later of ten (10) years from the Effective Date or issuance of all final certificates of occupancy for the SUBJECT PROPERTY.
- 8.9 Automatic Expiration.** If the final plat of subdivision for the SUBJECT PROPERTY is not recorded within five (5) years of the date of approval by the City Council of the ordinance approving said final plat of subdivision (“**Ordinance**”) to which Ordinance this Agreement is attached, then said Ordinance, by its terms, and this Agreement shall automatically expire and have no further force or effect without further action by either party hereto.
- 8.10 Survival.** The following terms and conditions shall survive the termination of this Agreement: paragraphs 1 through 6, 7 (and all sub-parts thereof), 8.1, 8.2, 8.5, 8.6, and 8.10.
- 8.11 Authority to Execute/OWNER AND DEVELOPER.** The undersigned warrants that he/she is the OWNER AND DEVELOPER of the SUBJECT PROPERTY, or is the duly authorized representative of the OWNER AND DEVELOPER of the SUBJECT PROPERTY in the case of a corporation, partnership, trust, or similar ownership form which owns the SUBJECT

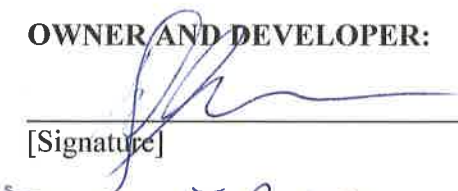
PROPERTY and that the undersigned has full power and authority to sign this document and voluntarily agrees to the provisions set forth herein.

**8.12 Authority to Execute/City.** The undersigned City Manager warrants that he has been directed to, and has the authority to, execute this Agreement. The undersigned City Clerk warrants that she has been directed to, and has the authority to, attest the signature of the City Manager on this Agreement.

**8.13 Effective Date.** The effective date of this Agreement (“**Effective Date**”) shall be the date upon which it is fully executed by both parties hereto.

/SIGNATURES ON FOLLOWING PAGES/

**OWNER AND DEVELOPER:**

  
\_\_\_\_\_  
[Signature]

Dwight Auram  
\_\_\_\_\_  
[Printed name]

MANAGER  
\_\_\_\_\_  
[Title]

State of Illinois        )  
                                  ) ss  
County of DuPage     )

The foregoing instrument was acknowledged before me by Dwight Auram  
this 11th day of March 2019.

  
\_\_\_\_\_  
Notary Public

Paul M. Mitchell  
\_\_\_\_\_  
Print Name

Given under my hand and official seal this 11th day of March, 2019.



  
\_\_\_\_\_  
Notary Public  
My Commission Expires: 11/18/21



**CITY OF NAPERVILLE**

By: \_\_\_\_\_  
Douglas A. Krieger  
City Manager

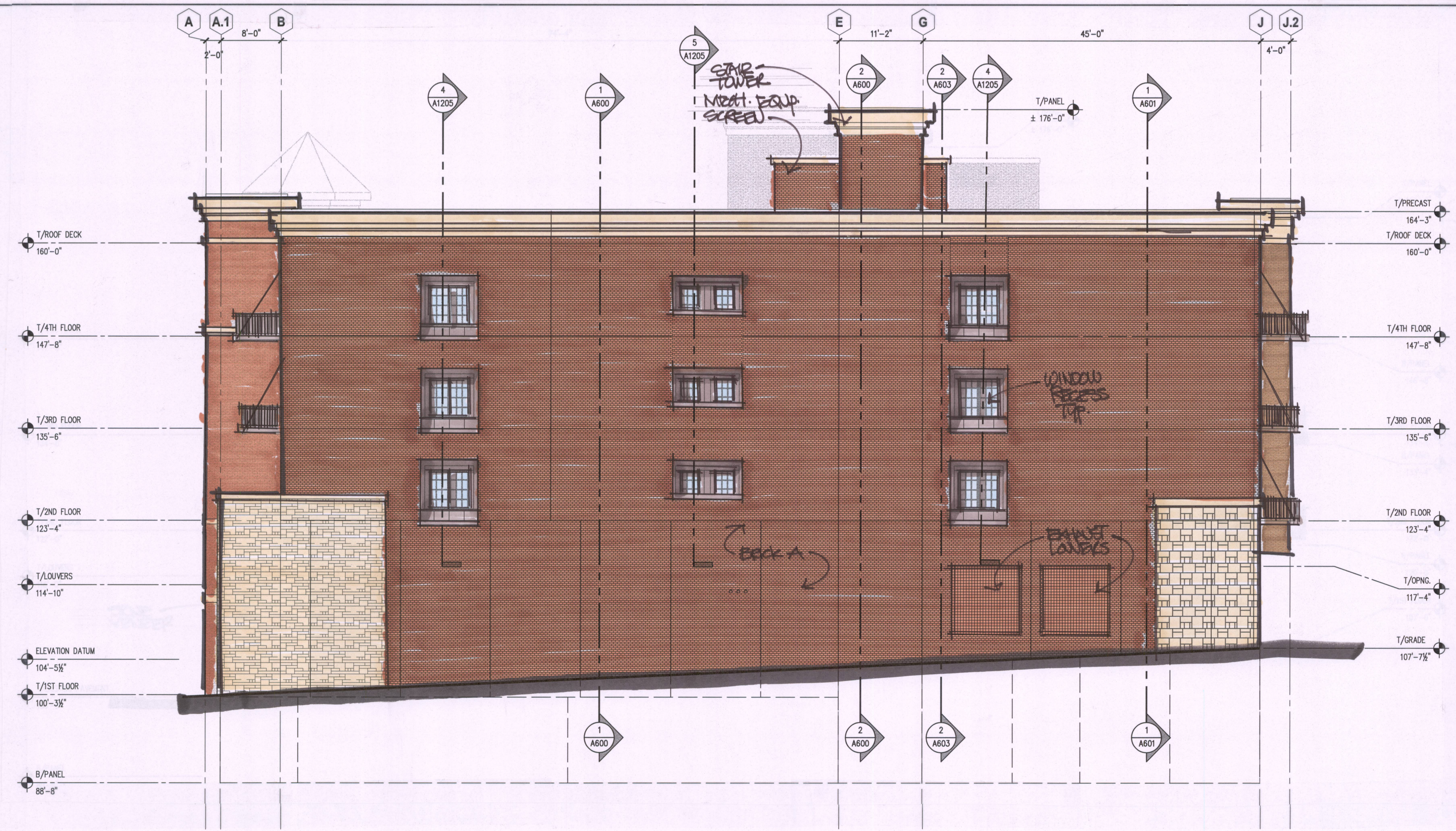
**ATTEST:**

By: \_\_\_\_\_  
Pam Gallahue, Ph.D.  
City Clerk

Date: \_\_\_\_\_



**EAST ELEVATION** ②  
SCALE: 1/8" = 1'-0"



**EXHIBIT A SOUTH ELEVATION** ①  
SCALE: 1/8" = 1'-0"

**KEYNOTES**

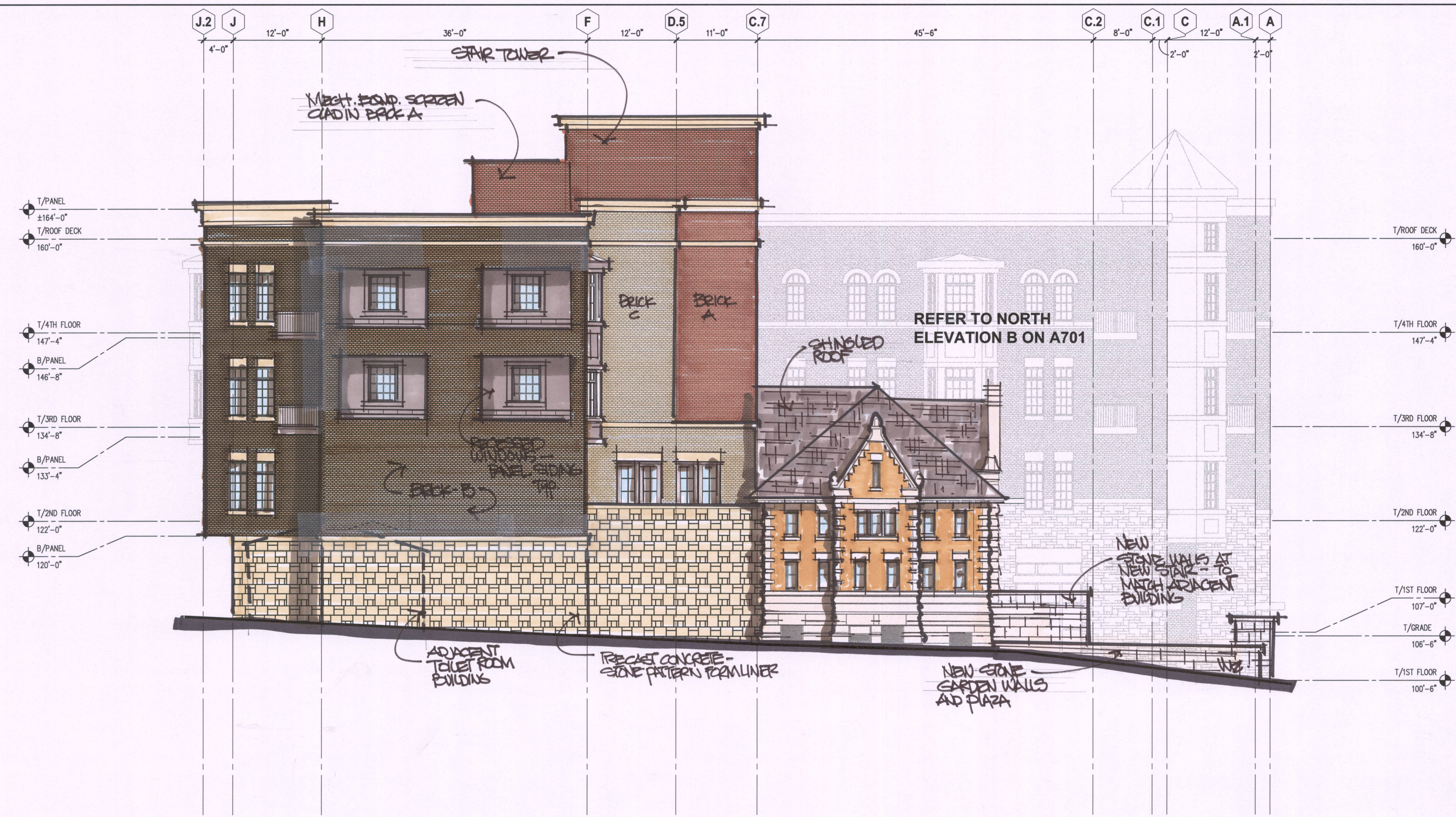
**GENERAL NOTES**

**MATERIAL LEGEND**

- STONE VENEER
- STONE FORMLINER
- THIN BRICK - TYPE 'A'
- THIN BRICK - TYPE 'B'
- THIN BRICK - TYPE 'C'



**NORTH ELEVATION B** (2)  
SCALE: 1/8" = 1'-0"



**EXHIBIT A**  
EXHIBIT C  
**NORTH ELEVATION A** (1)  
SCALE: 1/8" = 1'-0"

**KEYNOTES**

**GENERAL NOTES**

**MATERIAL LEGEND**

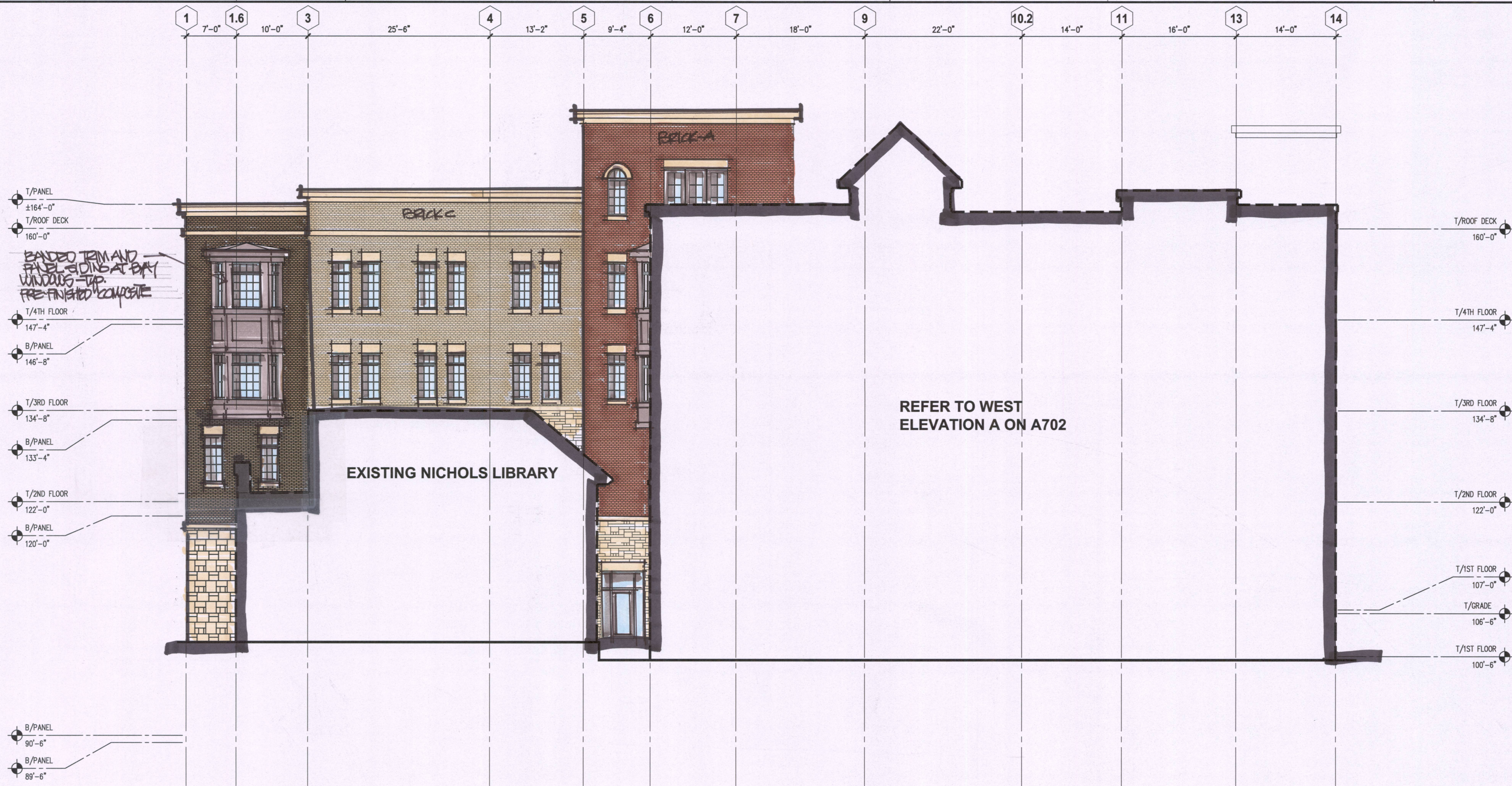
- STONE VENEUR
- STONE FORMLINER
- THIN BRICK - TYPE 'A'
- THIN BRICK - TYPE 'B'
- THIN BRICK - TYPE 'C'

**KEYNOTES**

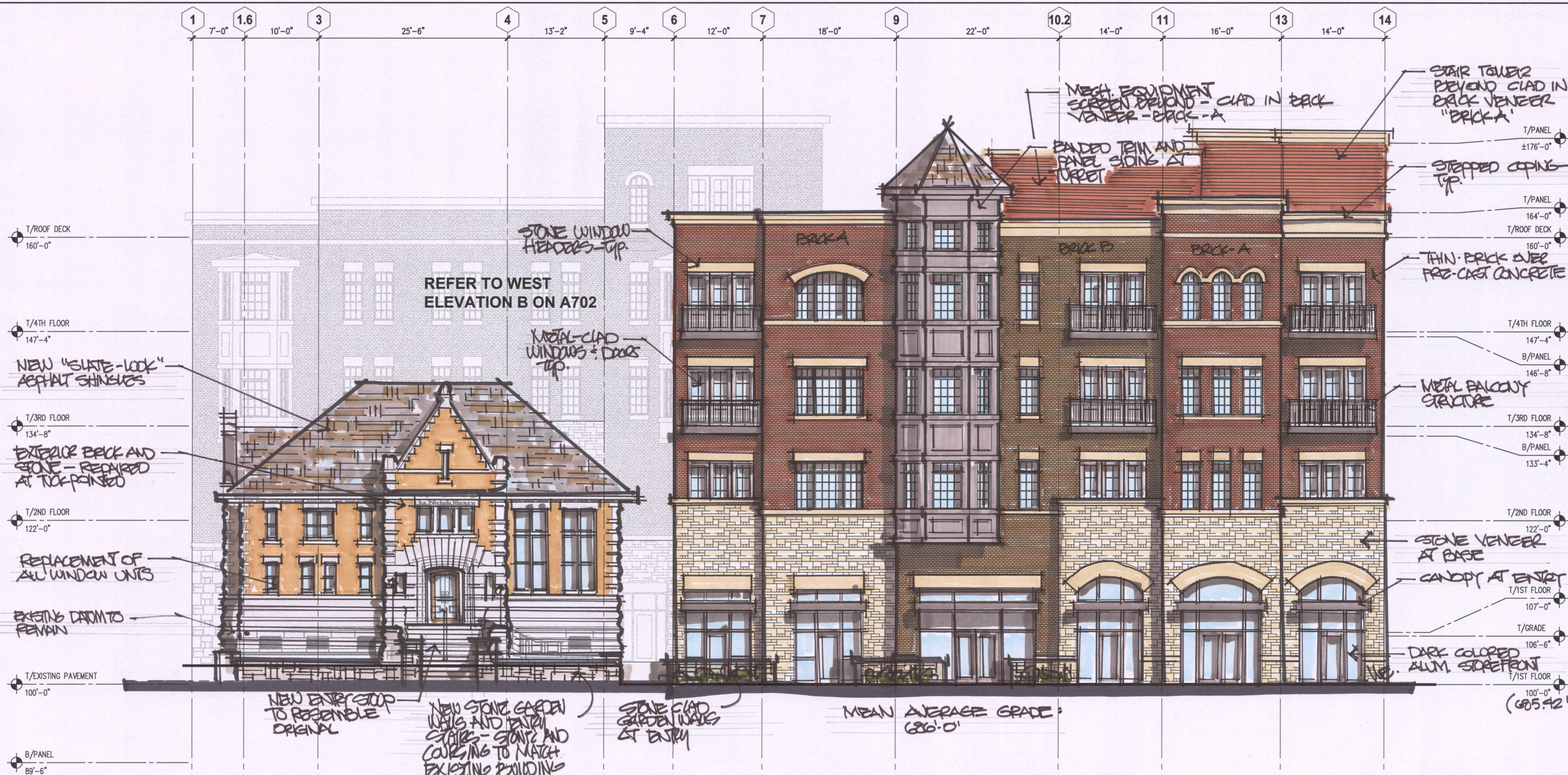
**GENERAL NOTES**

**MATERIAL LEGEND**

- STONE VENEUR
- STONE FORMLINER
- THIN BRICK - TYPE 'A': 60% RED IRONSPOT - 40% MED. IRONSPOT
- THIN BRICK - TYPE 'B': 40% RED IRONSPOT - 60% BORDEN BLEND
- THIN BRICK - TYPE 'C': NEAR BLEND VENEUR



**WEST ELEVATION B** (2)  
SCALE: 1/8" = 1'-0"



**EXHIBIT A**  
EXHIBIT C

**WEST ELEVATION A** (1)  
SCALE: 1/8" = 1'-0"