

**FIRST AMENDMENT TO MEMORANDUM OF UNDERSTANDING AND
LEASE AGREEMENT (10808 CULVER BOULEVARD)**

This First Amendment (“AMENDMENT”), having an effective date of ^{18th} day of December, 2020, amends that certain Memorandum of Understanding and Lease Agreement (the “LEASE”) originally dated December 3, 2012 and entered into by and between the City of Culver City, a California municipal corporation (referred to in the LEASE and this AMENDMENT as the “CITY”) and the Wende Museum of the Cold War, Inc. a California nonprofit corporation (referred to in the LEASE and this AMENDMENT as “WENDE”).

Recitals:

A. WHEREAS, WENDE has leased from the CITY the SUBJECT PROPERTY (also referred to herein as the “WENDE MUSEUM CAMPUS”) comprised of the land located on Lots 14 through 30 inclusive, in Tract 9974, as recorded in Book 139, pages 1 and 2 of Maps, in the Office of the County Recorder of Los Angeles, State of California and all improvements and buildings situated thereon; and,

B. WHEREAS, in addition to Lots 14 through 30, WENDE desires to lease from the CITY Lots 11 through 13, which are adjacent to the SUBJECT PROPERTY, as more particularly described in Book 139, pages 1 and 2 of Maps, in the Office of the County Recorder of Los Angeles, State of California (hereinafter the “ADDITIONAL LOTS”); and,

C. WHEREAS, WENDE intends to utilize the ADDITIONAL LOTS to reactivate the theater and renovate the front-most building situated upon the ADDITIONAL LOTS into a new education center, which will benefit the general public by providing a public benefit and fulfill a service to the community by strengthening the cultural economy of the city including creating new cultural learning opportunities for the community as well as creating a new gathering place for the community and helping to alleviate the significant lack of meeting venues and performance spaces in the city; and,

D. WHEREAS, at its meeting on February 24, 2020, the City Council of the City of Culver City voted unanimously to pursue the Wende’s proposed “creative community center” project ; and,

E. WHEREAS, at its meeting on November 9, 2020, the City Council of the City of Culver City voted unanimously to amend the LEASE to allow the Wende to pursue entitlements for its “creative community center”; and,

F. WHEREAS, the parties further desire to formalize the Leasehold Interest Commencement Date and Leasehold Interest Termination Date, which terms are defined in Section 3 of this AMENDMENT; and,

G. WHEREAS, all capitalized terms used in this AMENDMENT shall have the same meaning as those terms have in the LEASE; and,

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the parties modify the LEASE as follows:

1. Incorporation of Recitals. The above recitals are incorporated herein as if set forth in full.
2. Lease of ADDITIONAL LOTS. The CITY shall lease to WENDE, for its exclusive use and interest, the ADDITIONAL LOTS. The lease of the ADDITIONAL LOTS, and the parties' respective rights and duties in regards thereto, shall be subject to and governed by the terms of the LEASE as though the ADDITIONAL LOTS were originally included as part of the SUBJECT PROPERTY. The existing buildings on the ADDITIONAL LOTS are also hereby added as though each and all of the buildings were included in Sections 4.E, 4.F and 4.I of the LEASE. The CITY grants WENDE an exclusive leasehold interest in the ADDITIONAL LOTS and buildings thereon for the purposes of creating a public benefit and to fulfill a service to the community through a new education center and new theater (as explained in the recitals above and Section 7, below) to be used both by the public and also by the Wende Museum in connection with the adjacent WENDE MUSEUM CAMPUS and its purposes as defined under the LEASE.
3. Leasehold Interest Term. The LEASE provides that the term of the LEASEHOLD INTEREST shall commence upon the first day of the first month after the issuance of a Certificate of Occupancy for the SUBJECT PROPERTY and shall continue for the period of seventy-five (75) years therefrom (the "Leasehold Interest Term"). The parties hereby acknowledge that the LEASEHOLD INTEREST commenced on December 1, 2017 (the "Leasehold Interest Commencement Date"). Accordingly, the Leasehold Interest Term shall run from the Leasehold Interest Commencement Date for a period of seventy-five (75) years until November 30, 2092 (the "Leasehold Interest Termination Date"). The Leasehold Interest Term shall apply to the SUBJECT PROPERTY and the ADDITIONAL LOTS. WENDE shall not owe any additional consideration to the CITY for its lease of the ADDITIONAL LOTS except as described in this AMENDMENT, and WENDE's consideration obligations for the ADDITIONAL LOTS shall be included in those set forth in Section 4.D of the LEASE.
4. Reaffirmation of Lease. Unless otherwise modified by this AMENDMENT, all of the terms, conditions, rights and obligations in the LEASE shall remain in full force and effect with the ADDITIONAL LOTS added.
5. Wende's Additional Rights, Duties and Responsibilities. This AMENDMENT adds the following to the list of rights, duties and responsibilities listed in the LEASE, Section 3.A.
 - a. WENDE shall, at its sole cost and expense, perform all work (entitlements, remediation, renovations and repairs) to renovate the existing A-Frame building, including the theater, situated upon the ADDITIONAL LOTS into a new education center and new theater to be used in connection with the adjacent WENDE MUSEUM CAMPUS ("AL WORK"). The current tentative plan for the AL WORK

includes renovation of the existing A-Frame building and adding an additional approximately 5,000 sf of space.

- b. WENDE and its directors, officers, agents, employees, members and volunteers shall not have any possessory interest in the ADDITIONAL LOTS except for the LEASEHOLD INTEREST provided by Section 2 of this AMENDMENT.
- c. WENDE shall raise all AL WORK funds necessary to complete the AL WORK and shall complete the AL WORK within twenty-four (24) months from the date of issuance of a Notice to Proceed (AL WORK COMPLETION PERIOD). The AL Work shall be deemed complete upon issuance by the City of a Temporary CERTIFICATE OF OCCUPANCY or a CERTIFICATE OF OCCUPANCY. The City Manager or his/her designee shall, upon the request of WENDE, extend the AL WORK COMPLETION PERIOD by up to two additional periods of six-months (twelve total months) so long as WENDE is using diligent, good faith efforts to complete the work and WENDE is not in default under the LEASE. Such extension(s) must be in writing and signed by the City Manager or his/her designee and shall not be unreasonably withheld by the CITY.
- d. WENDE will also be permitted an additional day for day extension up to a maximum extension of 18 months, if the AL WORK is delayed as a result of force majeure events (FORCE MAJEURE DELAY). Force majeure events shall be events beyond the reasonable control of WENDE including strike, lockout or other labor or industrial disturbance, civil disturbance, future order claiming jurisdiction, act of a public enemy, war, riot, sabotage, blockade, embargo, pandemic, epidemics, or other viral outbreaks including but not limited to COVID-19 or similar viral outbreaks, inability to secure customary materials, supplies or labor through ordinary sources by reason of regulation or order of any government or regulatory body, lightning, earthquake, fire, storm, hurricane, tornado, flood, washout, explosion, or any other similar industry wide cause beyond the reasonable control of WENDE, or any of WENDE's contractors or other representatives. WENDE must notify the City in writing within 30 days of the start of a FORCE MAJEURE DELAY, and the City must approve in writing the start of a FORCE MAJEURE DELAY, with such approval to be granted or denied within 30 days of receipt of the notice from WENDE and which approval will not be unreasonably withheld. WENDE must notify the City in writing of the end of a FORCE MAJEURE DELAY within 30 days of the end of a FORCE MAJEURE DELAY, and the City must approve in writing the total length of the FORCE MAJEURE DELAY, with such approval to be granted or denied within 30 days of receipt of the notice from WENDE, which approval will not be unreasonably withheld.
- e. The parties agree that any and all costs for the AL WORK are added to the AMORTIZABLE RENOVATION COSTS under the terms of the LEASE.
- f. WENDE shall design or cause to be designed the necessary AL WORK and shall submit any and all design proposals to the CITY for approval, approval shall be

subject to Sections 7.B and 7.C, below. Where required, such designs shall be completed by properly licensed and qualified firms or individuals.

- g. Except as allowed in accordance with designs approved by the CITY, WENDE shall not alter the existing physical contours, features or improvements of the AL buildings (interior and exterior) without first requesting and receiving the written approval from the CITY or the CITY'S designated representative, which approval shall not be unreasonably withheld. The CITY shall provide a written response within 20 business days after the presentation of any and all requests.
 - h. WENDE shall track and maintain fiscal accountability to all its donors for the AL WORK funds, and maintain records of financial transactions associated with donated materials and labor as legally obligated as a 501(c)3 charitable organization.
 - i. WENDE shall notify the CITY in the event that it discovers dangerous or hazardous materials on the ADDITIONAL LOTS. WENDE shall not be responsible for any dangerous or hazardous materials on the ADDITIONAL LOTS identified in the Soil Report referred to in Section 7(f), below. With respect to any other dangerous or hazardous materials identified on the ADDITIONAL LOTS in quantities sufficient to require remediation under applicable laws, WENDE, at its sole cost and expense, shall promptly and fully remediate any such dangerous or hazardous condition pursuant to the direction of the applicable governmental agency and in accordance with applicable laws and requirements.
 - j. Upon completion of the AL WORK and the issuance of the CERTIFICATE OF OCCUPANCY, the AL WORK shall become the property of the CITY. Other than the rights, responsibilities, and duties provided to WENDE under this AMENDMENT, WENDE shall have no claim for payment or reimbursement for the AL WORK.
 - k. WENDE shall be required to comply with all applicable CITY requirements, including, but not limited to, zoning entitlements (including appropriate analysis of parking and traffic), building permits, the provisions of Chapter 17.250 of the Culver City Municipal Code regarding Open Space District Requirements.
6. Wende's Contribution of Public Benefit. The City has decided to enter into this AMENDMENT because the improvement of the ADDITIONAL LOTS provides a benefit to the general public. The following are in addition to the Contribution of Public Benefit listed in Section 3.A.15 of the LEASE. WENDE agrees to provide the following at the sole cost of WENDE:
- a. COMMUNITY ORGANIZATIONS, as defined below, shall be offered at no cost indoor space in either the lobby, theater, classroom, or education/tutorial room (together, "INDOOR SPACE"), all of which are generally described in Exhibit A

- b. The INDOOR SPACE will be available for use at no cost by the City of Culver City and its COMMUNITY ORGANIZATIONS in accordance with the guidelines set forth herein. For the purposes of this Amendment, "COMMUNITY ORGANIZATIONS" shall be defined as non-for-profit organizations, unincorporated associations, or neighborhood associations whose services benefit the residents of Culver City and whose offices or main places of business are in Culver City. COMMUNITY ORGANIZATIONS shall include the United States Veterans' Artists Alliance (USVAA), or an organization with a similar mission subject to the approval of the City Manager, and the Mayme Clayton Library and Museum (MCLM), or an organization with a similar mission subject to the approval of the City Manager.
- c. The INDOOR SPACE shall be offered at no cost to COMMUNITY ORGANIZATIONS during reasonable operating hours (such as 7 AM to 11 PM) at least 40 hours per month ("MINIMUM MONTHLY TIME"). Should COMMUNITY ORGANIZATIONS not use the theater for the duration of the MINIMUM MONTHLY TIME during the course of any month, it shall expire at the end of that month.
- d. As part of the MINIMUM MONTHLY TIME, USVAA shall be offered use of the INDOOR SPACE for a minimum of 12 hours per month at mutually agreeable times.
- e. As part of the MINIMUM MONTHLY TIME, MCLM shall be offered use of the INDOOR SPACE for at least one exhibition per calendar year and at least twelve performances or lectures per calendar year (the "MINIMUM MCLM TIME").
 - i. During the first year that facilities are open, the MINIMUM MCLM TIME shall be pro-rated based on the number of months remaining in the calendar year.
 - ii. The MCLM may co-sponsor events using the INDOOR SPACE as long as they are substantially related to the mission of the MCLM, which is to collect, preserve, exhibit, and celebrate the unique history and cultural heritage of Americans of African descent.
- f. WENDE will be solely responsible for management, maintenance and operations related to use by COMMUNITY ORGANIZATIONS.
- g. COMMUNITY ORGNIZATIONS shall not be allowed to sub-lease, gift, sell or transfer use of the INDOOR SPACE.
- h. WENDE shall make lobby space and restrooms available to COMMUNITY ORGANIZATIONS during their use of the theater.
- i. A community/demonstration garden with bee-supporting plants, in partnership with Upward Bound House or a similar organization subject to the approval of the City Manager, shall be provided in the area described in Exhibit B.

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- i. The garden shall be open to the public during daylight hours.
 - ii. WENDE shall be solely responsible for the maintenance, upkeep, and operation of the community/demonstration garden.
- j. As generally described in Exhibit C, classroom space (“CLASSROOM SPACE”) shall be offered at no cost to the Culver City Unified School District (CCUSD).
 - i. The Wende shall be solely responsible for managing the use of the CLASSROOM SPACE . CCUSD shall be given first priority for use of the space. When not being used by CCUSD , Wende may allow COMMUNITY ORGANIZATIONS or others to use the space.
 - ii. CCUSD shall be granted locked storage space within the CLASSROOM SPACE, and access to restroom facilities.
 - iii. The CLASSROOM SPACE shall be a minimum of 800 square feet.
- k. WENDE shall offer INDOOR SPACE to the CITY for City meetings and events at mutually agreeable times, no fewer than six times per calendar year. If the CITY does not use the INDOOR SPACE during the course of the calendar year, any remaining shall expire.
- l. WENDE will be solely responsible for all costs related to the maintenance and operation of the ADDITIONAL LOTS and any facilities located on the ADDITIONAL LOTS, including but not limited to utilities, taxes, insurance, maintenance, and repairs, except that WENDE shall be permitted to charge a reasonable cleaning fee to COMMUNITY ORGANIZATIONS.
- m. A record of the use of the INDOOR SPACE by COMMUNITY ORGANIZATIONS, consisting of the name of the organization, date and time and of the event and contact name, must be made publicly available upon request to WENDE by the CITY.
- n. Except as set forth herein, WENDE shall have the right to charge for use of the INDOOR SPACE.
- o. The requirements of this Section 6 may also be met with similar alternative contributions as mutually agreed to by WENDE and the CITY subject to the approval of the CITY MANAGER, which approval shall not be unreasonably withheld.
- p. All 3rd party users of the INDOOR SPACE, including but not limited to COMMUNITY ORGANIZATIONS, shall carry CGL insurance consistent with Exhibit C of the LEASE, and such CGL policies shall name WENDE and CITY as additional insureds; further such 3rd party users shall indemnify and hold harmless WENDE and CITY from any and all claims, demands and liabilities arising out their

use of the SUBJECT PROPERTY, all in form in form and substance reasonably acceptable to WENDE and CITY.

7. CITY's Rights, Duties and Responsibilities. This AMENDMENT adds the following to the list of rights, duties and responsibilities listed in the LEASE, Section 3B.
- a. CITY shall retain title to the ADDITIONAL LOTS.
 - b. After discussion with WENDE, CITY shall review any and all proposal for the AL WORK and have the right to reject or amend such proposals at its reasonable discretion, which discretion shall be reasonably exercised by CITY, to be confirmed in writing by the City Manager.
 - c. After discussion with WENDE, CITY shall review any and all proposals to alter the existing physical contours, features, or improvements of the ADDITIONAL LOTS (interior and exterior) and have the right to reject or amend such proposals at its reasonable discretion, which discretion shall be reasonably exercised by CITY, to be confirmed in writing by the City Manager.
 - d. Upon satisfactory completion of the AL WORK by WENDE, the CITY shall issue a CERTIFICATE OF OCCUPANCY in accordance with the City's usual process for inspection of the AL WORK and finalization of all required permits.
 - e. CITY Contributions to Project: In return for the public benefit provided by WENDE as described in Section 6, above, the CITY shall contribute the following non-General Fund, one-time items to defray certain costs which otherwise would be incurred by WENDE during completion of the AL WORK and operation of the ADDITIONAL LOTS:
 - i. Value of leasehold interest conveyed hereby in the ADDITIONAL LOTS.
 - ii. Sewer facility connection fee
 - iii. Art in Public Places Fee: The CITY and WENDE shall work cooperatively to integrate design elements into the AL WORK that would qualify the AL WORK as Art in Public Places in accordance with Chapter 15.06 of the Culver City Municipal Code, or display public art on the ADDITIONAL LOTS, or a combination, such that the In-Lieu Fee equal to 1% of the total building valuation for the project is not required.
 - iv. Value of the cost of the fees to obtain necessary entitlements, building permits, or other related permits.
 - f. CITY will perform limited soil sampling and analysis at the ADDITIONAL LOTS to evaluate the soil for the presence of dangerous or hazardous conditions, including, but not limited to, petroleum hydrocarbons ("Soil Report"). The CITY will share the

results of the Soil Report with WENDE. Should the Soil Report reflect dangerous or hazardous conditions, including, but not limited to, petroleum hydrocarbons, at a level that would warrant remediation as a matter of law and/or in the interest of the public health and safety of the environment, the CITY and WENDE shall consult with regard to the findings in the Soil Report and work in good faith to come to a mutual agreement about the responsibility for the cost and responsibility for the remediation. Such an agreement will be memorialized in an amendment to the LEASE.


8. Parking. WENDE shall manage events at the WENDE MUSEUM CAMPUS and the ADDITIONAL LOTS to ensure that sufficient parking in WENDE'S reasonable discretion will be available for any events or gatherings and at nearby City Parks and Recreational facilities. WENDE shall coordinate with the Parks, Recreation and Community Services Department (PRCS) on the timing and scheduling of events for purposes of managing the parking. WENDE shall not schedule more than one event for more than 90 people at any given time.
9. Surplus Land Act Indemnification. WENDE hereby defends, holds harmless and indemnifies CITY, its officials, officers, employees, agents and volunteers, from any and all claims, including costs, and damages, resulting from a violation (or alleged violation) of the California Surplus Land Act (Government Code Sections 54220-54234).
10. A correction is hereby made to the LEASE, which states that WENDE refers to the entity named "the Wende Museum, a California not-for-profit corporation." The correct name is "The Wende Museum of the Cold War, Inc., a California nonprofit corporation". Use of the term WENDE in the LEASE and in this AMENDMENT refers to "The Wende Museum of the Cold War, Inc., a California nonprofit corporation".

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to Memorandum of Understanding and Lease Agreement on date first written above.

"WENDE"

THE WENDE MUSEUM OF THE COLD
WAR, INC.
a California nonprofit corporation

Dated: 12/18/2020

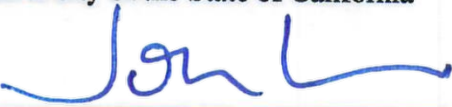
By: 
Name: JUSTINIAN JAMPOL
Its: EXECUTIVE DIRECTOR

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

“CITY”

CITY OF CULVER CITY,
a charter city of the State of California

Dated: 12/18/2020

By: 
John M. Nachbar
City Manager

APPROVED AS TO FORM:

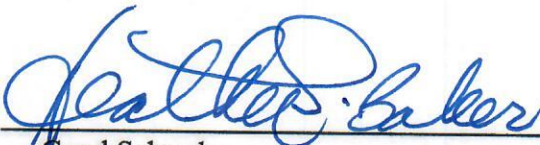

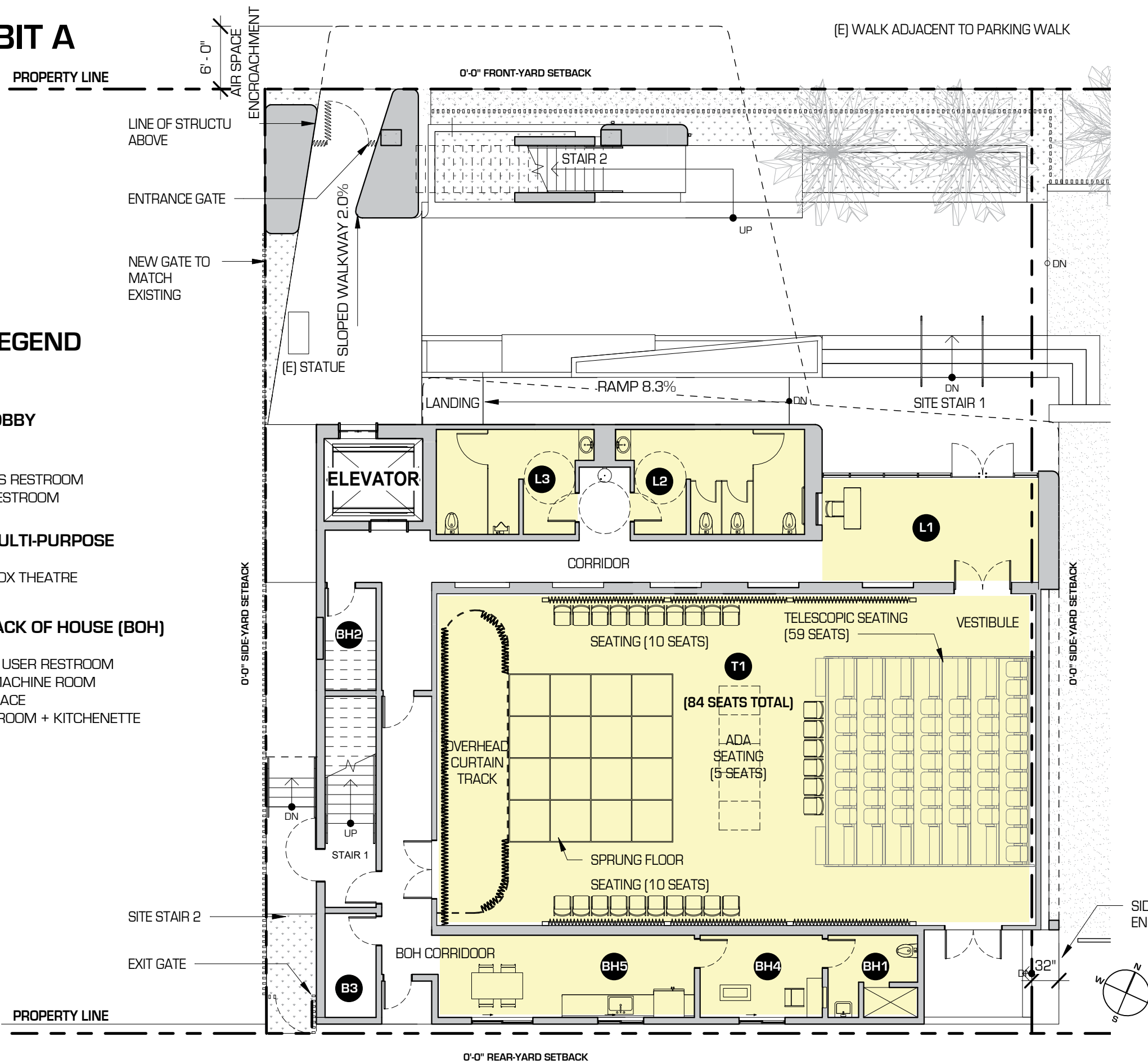
By: 
 Carol Schwab
City Attorney



EXHIBIT A

LEGEND

- L** LOBBY
 - L1- LOBBY
 - L2- WOMEN'S RESTROOM
 - L3- MEN'S RESTROOM
- T** MULTI-PURPOSE
 - T1- BLACK BOX THEATRE
- BH** BACK OF HOUSE (BOH)
 - BH1- SINGLE USER RESTROOM
 - BH2- ELEV. MACHINE ROOM
 - BH4- FLEXSPACE
 - BH5- BREAKROOM + KITCHENETTE



GROUND FLOOR PLAN
SCALE: 3/32" = 1'0"

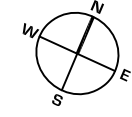
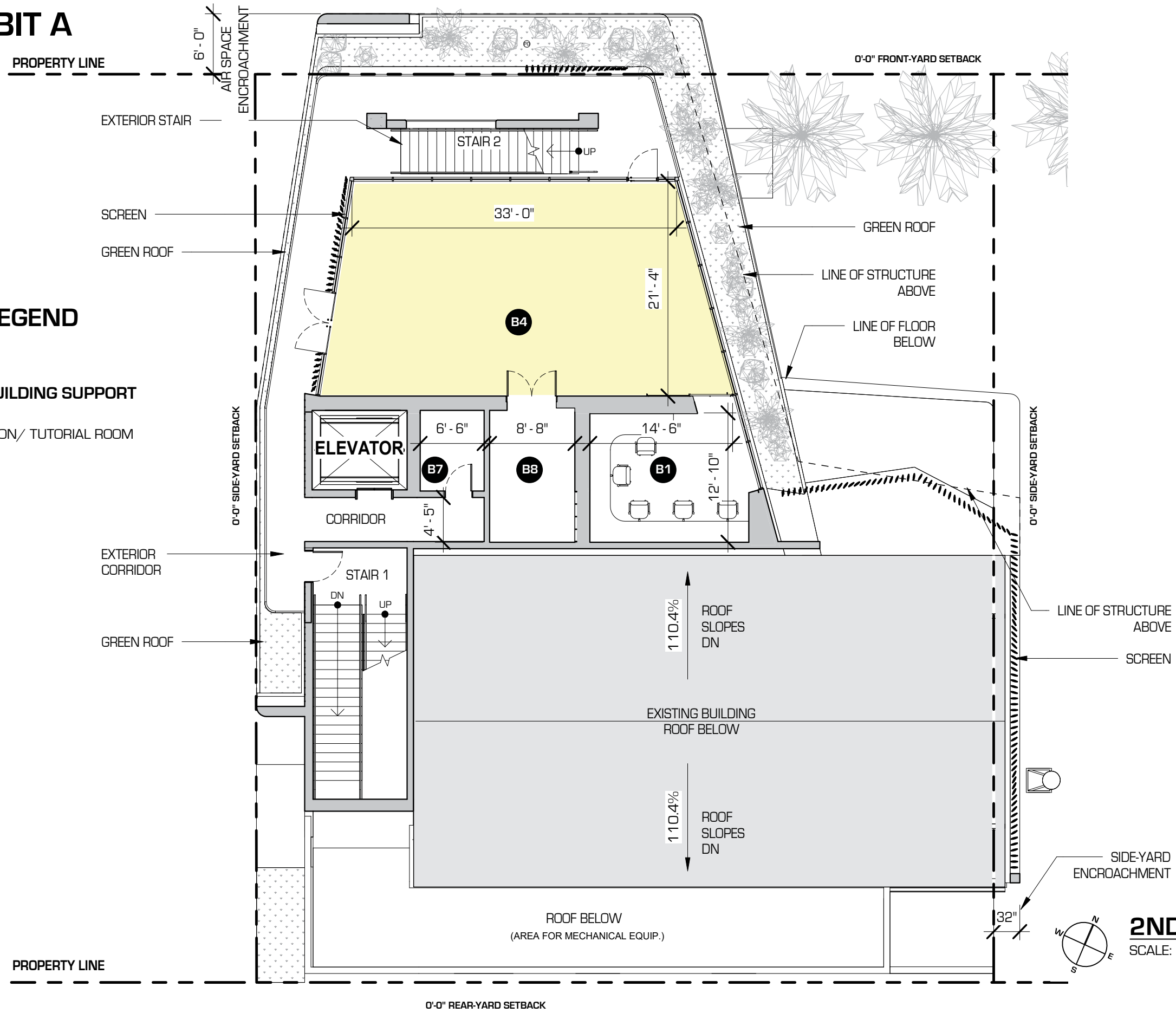


EXHIBIT A

- LEGEND**
- B** BUILDING SUPPORT
 - B4- EDUCATION/ TUTORIAL ROOM

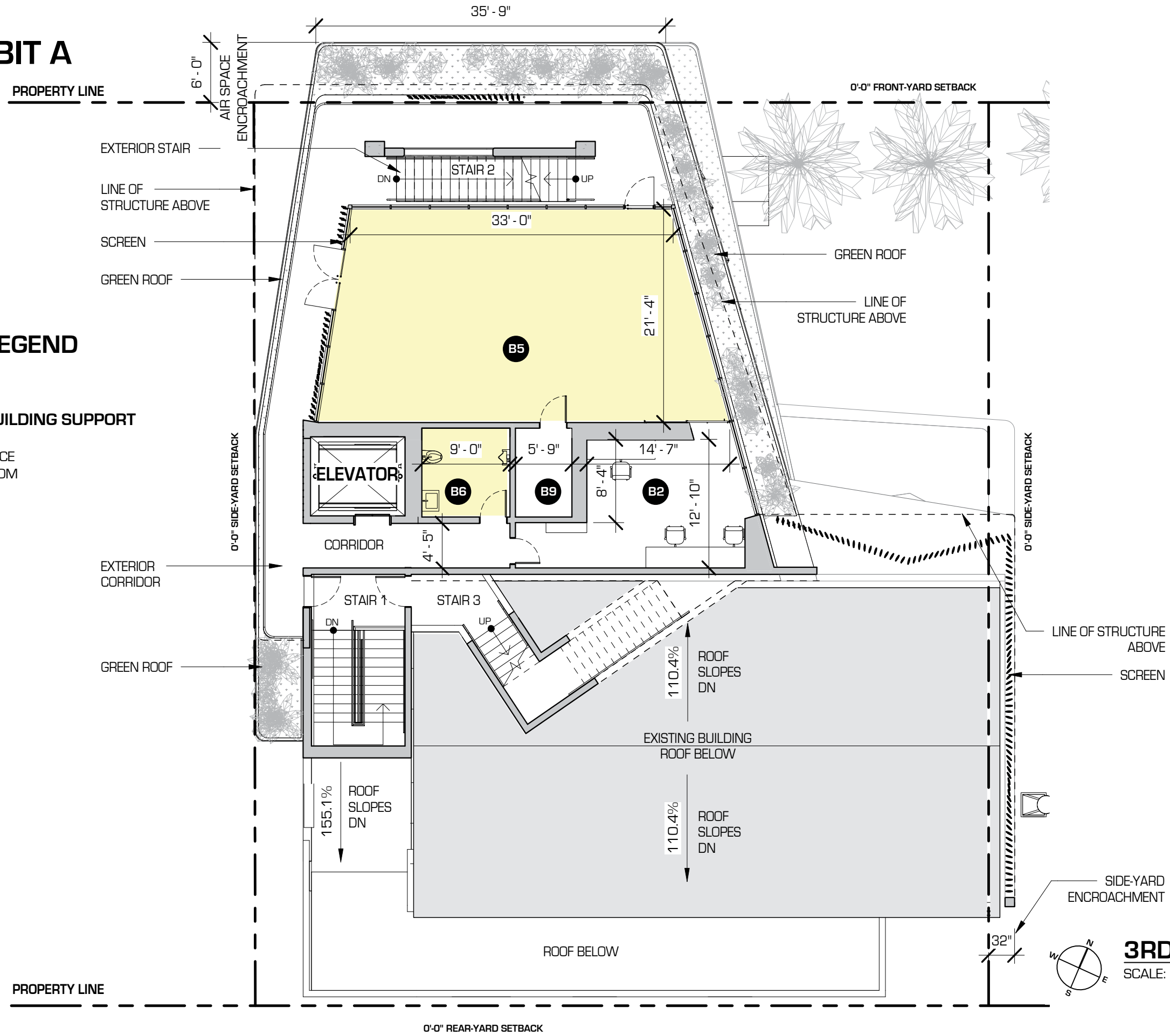


2ND FLOOR PLAN
SCALE: 3/32"=1'0"

EXHIBIT A

LEGEND

- B** BUILDING SUPPORT
- B5- FLEXSPACE
- B6- BATHROOM



3RD FLOOR PLAN

SCALE: 3/32"=1'0"

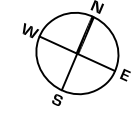


EXHIBIT B

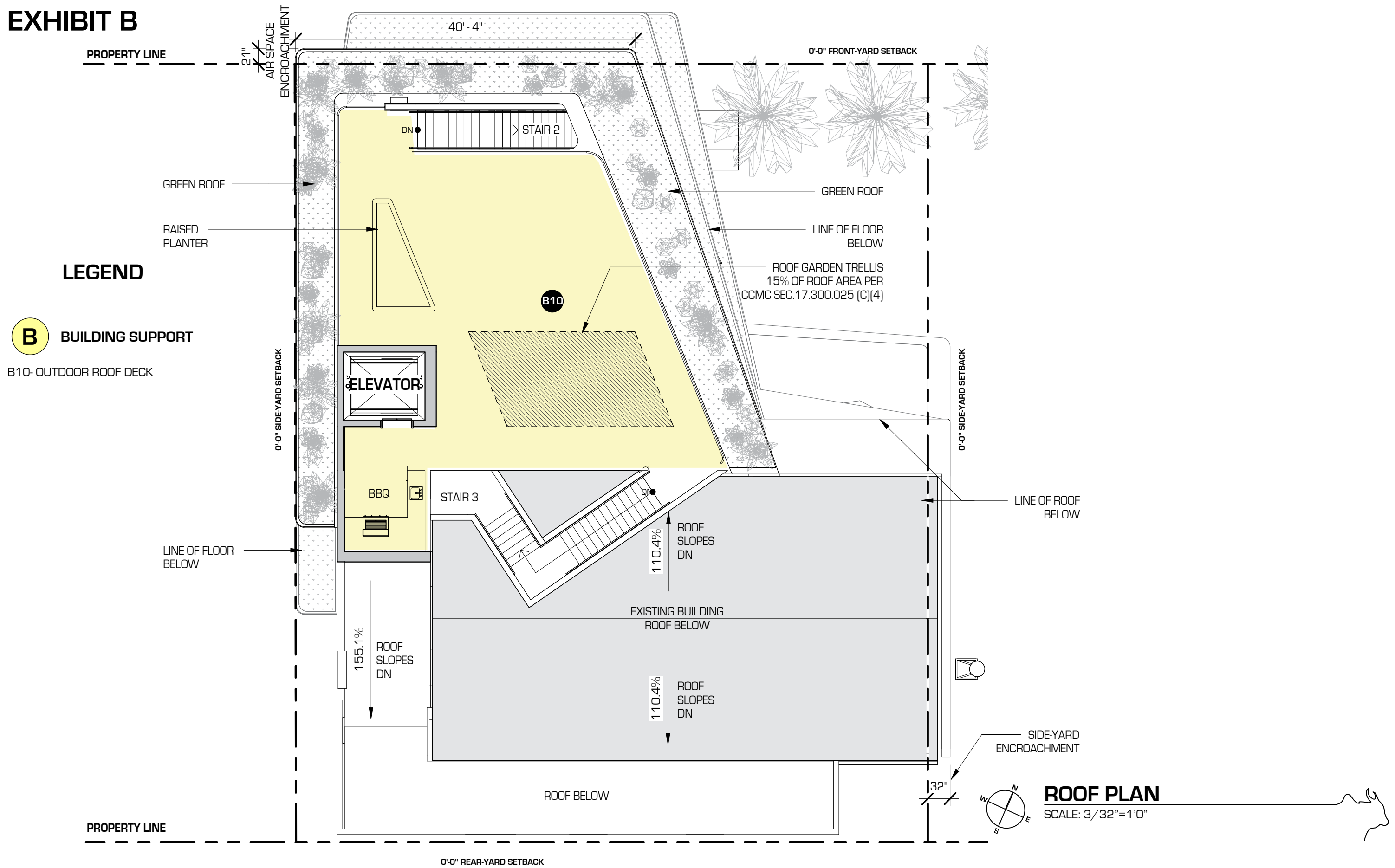
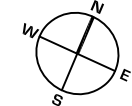
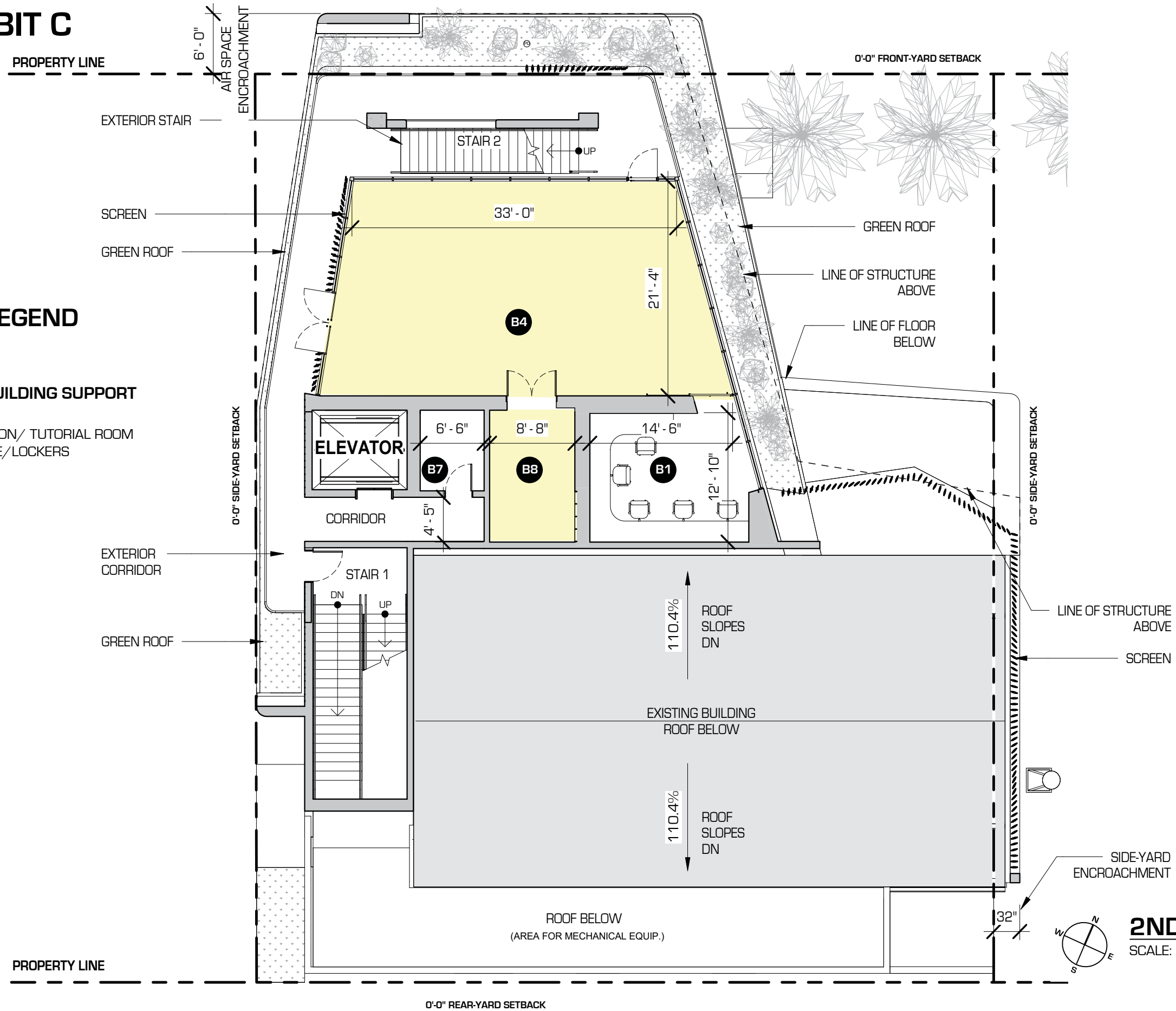


EXHIBIT C

- LEGEND**
- B** BUILDING SUPPORT
- B4- EDUCATION/ TUTORIAL ROOM
 B8- STORAGE/LOCKERS



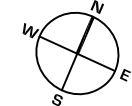
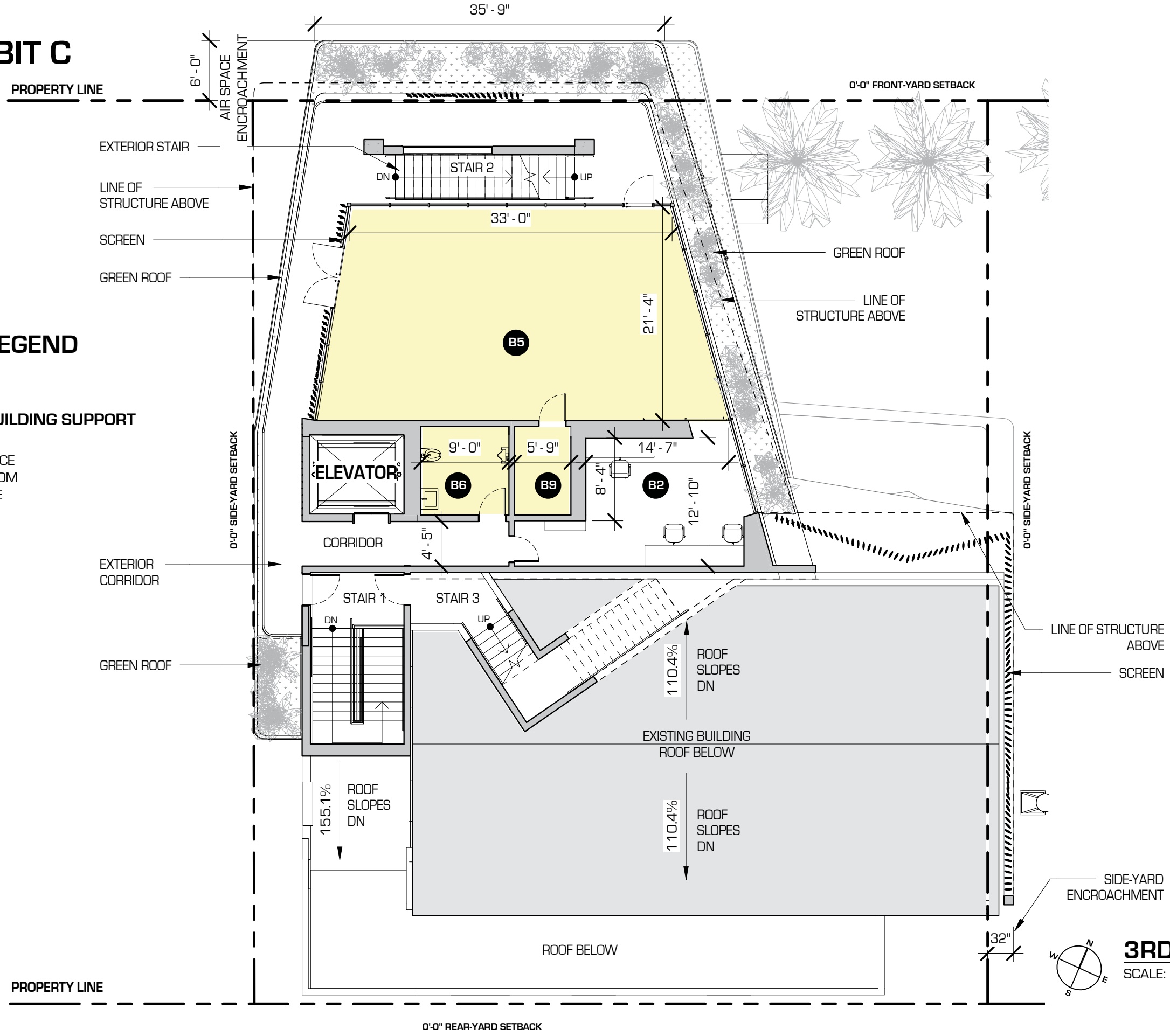
2ND FLOOR PLAN
 SCALE: 3/32"=1'0"

EXHIBIT C

LEGEND

B BUILDING SUPPORT

- B5- FLEXSPACE
- B6- BATHROOM
- B9- STORAGE



3RD FLOOR PLAN
SCALE: 3/32"=1'0"