

October 14, 2022

City of Palo Alto  
Planning and Development  
Amy French, Chief Planning Official  
250 Hamilton Ave  
Palo Alto, CA 94301

Dear Ms. French:

Please accept this letter of application for a Preliminary Parcel Map with Exceptions. We own the property with the legal description of Lots 1 and 2, Block 48, Tract entitled College Terrace, as shown on a Map recorded in Book E, Page 121 of Maps, Record of Santa Clara County, California. Although the legal description has always been and continues to be Lots 1 and 2, there is a single APN (137-01-038). The zoning is RMD (NP). The land use is multi-family.

We are asking to move the existing lot line 45 ° NW to be perpendicular to Yale Street. The current lot line is oriented perpendicular to College Avenue. Both existing dwellings were built to face Yale Street to comply with the 1983 change of the two lots from commercial to RMD zoning. The lot line adjustment will then allow for a minor subdivision of one assessor's parcel lot into two, sub-standard parcel lots to remedy the non-compliant development of two (2) detached single family homes built on one 5770 square feet lot within the RMD (NP) zoning district.

- (1) The minimum lot size in the RMD zone is 5,000 sq ft. Each of the two lots will be 2885 square feet. We need a minimum lot size exception.
- (2) The minimum depth required for lots in this zone is 83 feet. Each of the lots will have a depth of 50.15 feet. We need a minimum depth exception.

The proposed subdivision does not comply with the design criteria of PAMC Chapter 21.20 and 21.28. Below is our demonstration that the following exception findings are supported.

**A. There are special circumstances or conditions affecting the property.**

The Architectural Review Board approved a project on September 6, 2007, to demolish the then extant single-family home at 586 College Avenue and build a "...two-story Duplex w/Basement & Attached Garages" under common ownership as required within the RMD (NP) zoning designation. A new construction permit (Permit #080000-00000-00136) was approved on 1/22/2008. The permit to demolish the single-family home was approved (Permit # 080000-00000-01678) on 07/09/2008. The final building inspection was issued for the "New 2 Story Duplex w/ Basement & Attached Garages on 10/06/2009.

The two lots in the parcel face College Avenue. However, the Board and the new construction permit disregarded the lot lines by approving side-by-side, detached single-family homes facing Yale Street. The modification was necessary to give both homes equal access to the street as well as ensuring a more natural continuance with regards to neighboring residences. Nonetheless, the City did not rotate and revise mapping of the lots to reflect the new development positioning.

In December 2010, a developer acquired the parcel from an auction sale. Without further permitting, the “New 2-story Duplex with Basement & Attached Garages” was somehow developed as two detached, single-family homes, each situated, including setbacks, on approximately 2885 square feet lots. Each home has its own basement, attached garage, two stories above the basement, mailing address, utility billing account, driveway. Only a third driveway for guest parking is shared.

The developer successfully marketed the two dwelling units as separate, single-family homes for owner occupation, violating the intent of the City’s urgency in establishing an ordinance, on September 20, 2006, against the “individual sales of second dwellings”. On May 11, 2011, KATHRYN E GELMAN AND THE KATHRYN E GELMAN FAMILY TRUST purchased 2147 Yale Street. Concurrent with the sale of the first home, the developer and investors converted ownership to a Tenancy in Common (TIC) to comply with the single owner RMD (NP) requirement. On June 10, 2011, F J GRIFFITH & Y LI CO-TTEES FIRTH GRIFFITH & YUQING LI 1999 TRUST U/A DTD 10/29/99 aka Firth Griffith & Yuqing Li Trust purchased 2149 Yale Street. The home purchasers had each bought an undivided 50% TIC interest, replacing the developer as co-owners of the TIC.

The RMD district was intended to minimize incentives to replace existing single-family dwellings. (See Ordinance 18.10.010c). Yet, the project at 586 College Avenue led to the demolition of a single-family home in favor of two detached single, family homes. RMD (NP) zoning was intended to create incentives to invest in properties to capture rents from tenants in the form of detached Accessory and Junior Accessory Dwelling Units or attached additions. It is true that the zoning ordinance (See 18.12.070) in effect at the time of the development did not specify the type or size of the second dwelling unit for RMD (NP) parcels. Still, in the R- 2 district with which RMD (NP) was categorized, there was a stated limit of 450 square feet for the 2<sup>nd</sup> dwelling unit on lots of 6000 to 7500 square feet. RMD (NP) lots have smaller footprints, thereby implying a comparable, if not smaller, maximum size for their second dwelling units. Clearly, it was not intended for a 2300 square foot single family home as the second dwelling unit. Accordingly, the revised ordinances of 2017 did establish, for RMD (NP) zoning, a maximum square footage for detached second dwelling units of 1000 square feet for 2-bedroom, detached ADUs/JADUs. (City of Palo Alto Ordinance 18.10.070)

The subject property is the only one within Palo Alto’s two RMD (NP) zoning districts with TIC ownership and two single-family homes, evidencing that this development does not fit with the zoning designation. Also, the 1983 rezoning of the two lots into RMD (NP) created an unrecorded merger of the two lots by requiring single ownership, enabling the TIC to unmerge the lots into separate parcels via the 2020 California Government Code - Section 66451.30-66451.33: Article 1.7. Unmerger Of Parcels.

Finally, the split of the property into two separately owned lots conforms with the intent of SB9. Excepting the zoning designation<sup>1</sup>, the proposed lot split complies with all SB9 requirements.

Each lot:

- is roughly equal in size to the other;
- exceeds 1,200 square feet;
- meets the definition of an urban lot; and,
- is not located within a historic district or property included on the State Historic Resources Inventory, a city or county landmark or historic property or district.

In addition,

- The proposed urban lot split would not require demolition or alteration of any kind.
- The parcel has not been established through prior exercise of an urban lot split as provided for in the statute.
- Neither the owner of the parcel being subdivided nor any person acting in concert with the owner has previously subdivided an adjacent parcel using an urban lot split as provided for in the statute.

**B. The exception is necessary for the preservation and enjoyment of a substantial property right of the petitioner.**

The TIC ownership arrangements and conditions for the subject parcel has caused and will continue causing enormous financial injury to the two property owners, thereby depriving them of privileges enjoyed by other property owners in the vicinity and in the same zoning district.

2147 Yale Street was on the market for 28 days (June 28<sup>th</sup> – July 25<sup>th</sup>, 2021) at a significant discount (relative to existing comps) in recognition of negative market perceptions of TIC ownership structures. Six buyers agreed to put in offers pending review of requested disclosures.

In each case, buyers refused to proceed because of the TIC structure and conditions. Prospective buyers could not overcome their concerns with an unacquainted neighbor owning a 50% interest in the home that they would occupy as well as substantial liability exposure for the neighboring property and the TIC. Moreover, there is only one lender willing to work with TICs for Palo Alto properties. Consequently, its lending rates are at a substantial premium

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<sup>1</sup> In Palo Alto, the RMD (NP) allows for single-family home use and two-family home use, per the Palo Alto Zoning Map Regulations. Courts will likely decide whether SB9 applies to single-family home use in this zoning type.

relative to regular home financing options. Also, the lender does not allow for home equity lines of credit for TIC properties in Palo Alto. The lender will only approve home equity lines of credit for TIC properties in San Francisco and other TIC saturated, lender-covered regions outside of California.

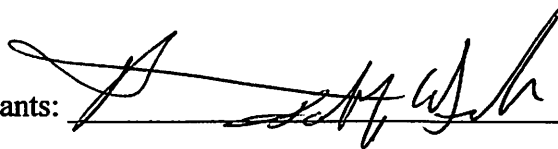
**C. The granting of the exception will not be detrimental to the public welfare or injurious to other property in the territory in which the property is situated.**

This exception calls for ministerial action only. There are no proposed physical modifications to the lots or the two homes. Thus, the granting of this exception would not be detrimental or injurious to property, improvements in the vicinity, public health, safety, general welfare, or convenience.

**D. The granting of the exception will not violate the requirements, goals, policies, or spirit of the law.**

The requested exceptions will better align the parcel's characteristics with Palo Alto Municipal Codes and California Statutes. By rotating the property lines, the zoning map will better reflect the development of the parcel, as currently constituted. The subdivision would also remedy the non-compliant development of 2 detached, single family homes within the RMD (NP) zoning district. Moreover, the splitting of the lot would rectify the City of Palo Alto's unrecorded merger of the 2 lots within the parcel in contravention of state statute. Finally, the requested subdivision fits perfectly within the parameters of SB9 for acceptable lot splits and achieves the legislature's clear intent.

Signature of Applicants:



Date:

10/03/2022

**Order No.**  
2202070389

**Ref No.**  
2147 Yale

**Guarantee No.**  
A04016-CTG-318104

**CONDITION OF TITLE GUARANTEE**

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, AND THE GUARANTEE CONDITIONS ATTACHED HERETO AND MADE A PART OF THIS GUARANTEE,



**OLD REPUBLIC NATIONAL  
TITLE INSURANCE COMPANY**

**GUARANTEES**

the Assured named in Schedule A of this Guarantee against loss or damage not exceeding the Amount of Liability stated in Schedule A sustained by the Assured by reason of any incorrectness in the Assurances set forth in Schedule A:


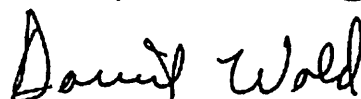
Dated: September 23rd, 2022 at 7:30:00 AM

**OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY**  
A Corporation  
400 Second Avenue South, Minneapolis, Minnesota 55401  
(612) 371-1111

Countersigned:

By   
\_\_\_\_\_

Validating Officer

By  *C. Monroe* President  
Attest  *David Wald* Secretary

**Schedule A**

<b>Order No.</b>	2202070389
<b>Ref. No.</b>	2147 Yale
<b>Guarantee No.</b>	A04016-CTG-318104
<b>Liability</b>	\$ 500.00
<b>Date of Guarantee</b>	September 23rd, 2022 at 7:30:00 AM
<b>Fee</b>	\$ 400.00

## 1. Name of Assured:

MCB Remodeling LLC

## 2. The estate or interest in the Land which is covered by this Guarantee is:

Fee

## 3. The Land referred to in this Guarantee is situated in the County of Santa Clara, City of Palo Alto, State of California, and is described as follows:

Lots 1 and 2, Block 48, Tract entitled College Terrace, as shown on a Map recorded in [Book E, Page 121 of Maps](#), Record of Santa Clara County, California.

APN: 137-01-038

## 4. Assurances:

According to the Public Records as of the Date of Guarantee,

## a. Title to the estate or interest in the Land is vested in:

Kathryn E. Gelman, Trustee of the Kathryn E. Gelman Trust dated July 8, 2009, and any amendments thereto as to an undivided 50% interest

Firth Griffith and Yuqing Li, Trustees of the Firth Griffith and Yuqing Li Trust dated October 29th, 1999 as to an undivided 50% interest, as Tenants in Common

## b. Title to the estate or interest is subject to defects, liens or encumbrances shown in Schedule B which are not necessarily shown in the order of their priority.

## Schedule B

<b>Order No.</b>	2202070389
<b>Ref. No.</b>	2147 Yale
<b>Guarantee No.</b>	A04016-CTG-318104
<b>Liability</b>	\$ 500.00
<b>Date of Guarantee</b>	September 23rd, 2022 at 7:30:00 AM
<b>Fee</b>	\$ 400.00

1. Taxes and assessments, general and special, for the fiscal year 2022 - 2023, a lien, but not yet due or payable.

2. Taxes and assessments, general and special, for the fiscal year 2021 - 2022, as follows:

Assessor's Parcel No	:	137-01-038	
Bill No.	:	137-01-038-00	
Code No.	:	006-001	
1st Installment	:	\$18,049.60	Marked Paid
2nd Installment	:	\$18,049.60	Marked Paid
Land Value	:	\$1,574,200.00	
Imp. Value	:	\$1,384,821.00	
Exemption	:	\$7,000.00	Homeowners

3. The lien of supplemental taxes, if any, assessed pursuant to the provisions of Section 75, et seq., of the Revenue and Taxation Code of the State of California.

4. Matters as contained or referred to in an instrument,

Entitled	:	Memorandum of Agreement and Non-Partition Covenant
Executed By	:	N.D. Bokum, et al
Dated	:	May 11, 2011
Recorded	:	<a href="#">May 17, 2011 in Official Records under Recorder's Serial Number 21180670</a>
Which Among Other Things Provides	:	(a) For restrictions on the rights of all owners to transfer or encumber any portion of or interest in the property without the consent of the other owners, and (b) Options and rights of first refusal granted by each owner to the other owners in the event of any proposed transfer of any portion of or interest in the property
Returned to Address	:	560 San Antonio Road #104 Palo Alto, CA 94306

5. Terms and provisions as contained in an instrument,

Entitled : Memorandum of Tenancy-In-Common Agreement  
Executed By : Firth Griffith individually and as Trustee of the Firth Griffith and Yuqing Li 1999 Trust dated October 29, 1999 and Yuqing Li, individually and as Trustee of the Firth Griffith and Yuqing Li 1999 Trust dated October 29, 1999  
Dated : June 7, 2011  
Recorded : [June 10, 2011 in Official Records under Recorder's Serial Number 21203486](#)  
Returned to Address : 2149 Yale Street, Palo Alto, CA 94306

6. Deed of Trust to secure an indebtedness of the amount stated below and any other amounts payable under the terms thereof,

Amount : \$362,000.00  
Trustor/Borrower : Kathryn Gelman, an unmarried woman  
Trustee : Chicago Title Company  
Beneficiary/Lender : Sterling Bank & Trust, F.S.B.  
Dated : December 2, 2014  
Recorded : [December 12, 2014 in Official Records under Recorder's Serial Number 22798431](#)  
Loan No. : 000010598

Said matters affect an undivided 50% interest

7. Any present or future consequences of the tenancy in common the vestees share with one another.

8. Rights, interests, and obligations of the tenants in common or co-owners of the building(s) whether or not those rights, interests and obligations appear in the public record.

Vesting Deed



NOTE: The last recorded transfer or agreement to transfer the land described herein is as follows:

Instrument  
Entitled : Grant Deed  
By/From : Kevin L Anderson and Shannon L. Anderson, Trustees of Alamo Financial Insurance Services, Inc., Profit Sharing Plan dated 10-62006; and Pensco Trust Co., FBO C. Marquette IRA; and A. Wheeler, an unmarried woman; and Steward C. Walter, Trustee of S. C. Waiter Trust dated 9-5-2001; and C. R. Williams, Trustee of C. R. Williams Trust dated 8-3-2001; and N. D. Bokum, a single woman; and A. Balardi, a married woman; and M. Williams and P. Williams, husband and wife; and Claude Marquette, an unmarried man  
To : Firth Griffith and Yuqing U, Trustees of the Firth Griffith and Yuqing Li 1999 Trust dated October 29, 1999  
Dated : June 2, 2011  
Recorded : [June 10, 2011 in Official Records under Recorder's Serial Number 21203485](#)

NOTE: The last recorded transfer or agreement to transfer the land described herein is as follows:

Instrument  
Entitled : Grant Deed  
By/From : Kathryn Gelman, an unmarried woman  
To : Kathryn E. Gelman, Trustee of the Kathryn E. Gelman Trust dated July 8, 2009, and any amendments thereto  
Dated : June 25, 2021  
Recorded : [June 28, 2021 in Official Records under Recorder's Serial Number 25009664](#)

## **EXCLUSIONS FROM COVERAGE (Revised 06-05-14)**

Except as expressly provided by the assurances in Schedule A, the Company assumes no liability for loss or damage by reason of the following:

- (a) Defects, liens, encumbrances, adverse claims or other matters affecting the title to any property beyond the lines of the Land.
- (b) Defects, liens, encumbrances, adverse claims or other matters, whether or not shown by the Public Records
  - (1) that are created, suffered, assumed or agreed to by one or more of the Assureds; or
  - (2) that result in no loss to the Assured.
- (c) Defects, liens, encumbrances, adverse claims or other matters not shown by the Public Records.
- (d) The identity of any party shown or referred to in any of the schedules of this Guarantee.
- (e) The validity, legal effect or priority of any matter shown or referred to in any of the schedules of this Guarantee.
- (f) (1) Taxes or assessments of any taxing authority that levies taxes or assessments on real property; or,
  - (2) proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not the matters excluded under (1) or (2) are shown by the records of the taxing authority or by the Public Records.
- (g) (1) Unpatented mining claims;
  - (2) reservations or exceptions in patents or in Acts authorizing the issuance thereof;
  - (3) water rights, claims or title to water, whether or not the matters excluded under (1), (2) or (3) are shown by the Public Records.

## **GUARANTEE CONDITIONS**

### **1. DEFINITION OF TERMS**

The following terms when used in the Guarantee mean:

- (a) "the Assured": the party or parties named as the Assured in this Schedule A, or on a supplemental writing executed by the Company.
- (b) "Land": the Land described or referred to in Schedule A, and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule A, nor any right, title, interest estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways.
- (c) "Mortgage": mortgage, deed of trust, trust deed, or other security instrument.
- (d) "Public Records": those records established under state statutes at Date of Guarantee for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge.
- (e) "Date of Guarantee": the Date of Guarantee set forth in Schedule A.
- (f) "Amount of Liability": the Amount as stated in Schedule A.

### **2. NOTICE OF CLAIM TO BE GIVEN BY ASSURED**

An Assured shall notify the Company promptly in writing in case knowledge shall come to the Assured of any assertion of facts, or claim of title or interest that is contrary to the assurances set forth in Schedule A and that might cause loss or damage for which the Company may be liable under this Guarantee. If prompt notice shall not be given to the Company, then all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of the Assured under this Guarantee unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

### **3. NO DUTY TO DEFEND OR PROSECUTE**

The Company shall have no duty to defend or prosecute any action or proceeding to which the Assured is a party, notwithstanding the nature of any allegation in such action or proceeding.

### **4. COMPANY'S OPTION TO DEFEND OR PROSECUTE ACTIONS; DUTY OF ASSURED TO COOPERATE**

Even though the Company has no duty to defend or prosecute as set forth in Paragraph 3 above:

- (a) The Company shall have the right, at its sole option and cost, to institute and prosecute any action or proceeding, interpose a defense, as limited in Paragraph 4(b), or to do any other act which in its opinion may be necessary or desirable to establish the correctness of the assurances set forth in Schedule A or to prevent or reduce loss or damage to the Assured. The Company may take any appropriate action under the terms of this Guarantee, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this Guarantee. If the Company shall exercise its rights under this paragraph, it shall do so diligently.
- (b) If the Company elects to exercise its options as stated in Paragraph 4(a) the Company shall have the right to select counsel of its choice (subject to the right of the Assured to object for reasonable cause) to represent the Assured and shall not be liable for and will not pay the fees of any other counsel, nor will the Company pay any fees, costs or expenses incurred by an Assured in the defense of those causes of action which allege matters not covered by this Guarantee.
- (c) Whenever the Company shall have brought an action or interposed a defense as permitted by the provisions of this Guarantee, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from an adverse judgment or order.

## **GUARANTEE CONDITIONS (Continuation)**

(d) In all cases where this Guarantee permits the Company to prosecute or provide for the defense of any action or proceeding, the Assured shall secure to the Company the right to so prosecute or provide for the defense of any action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of such Assured for this purpose. Whenever requested by the Company, the Assured, at the Company's expense, shall give the Company all reasonable aid in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or lawful act which in the opinion of the Company may be necessary or desirable to establish the correctness of the assurances set forth in Schedule A or to prevent or reduce loss or damage to the Assured. If the Company is prejudiced by the failure of the Assured to furnish the required cooperation, the Company's obligations to the Assured under the Guarantee shall terminate.

### **5. PROOF OF LOSS OR DAMAGE**

(a) In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Assured furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

(b) In addition, the Assured may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Guarantee, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Assured shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the Assured provided to the Company pursuant to this paragraph shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Assured to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in the above paragraph, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this Guarantee to the Assured for that claim.

### **6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS: TERMINATION OF LIABILITY**

In case of a claim under this Guarantee, the Company shall have the following additional options:

(a) To pay or tender payment of the Amount of Liability together with any costs, attorneys' fees, and expenses incurred by the Assured that were authorized by the Company

up to the time of payment or tender of payment and that the Company is obligated to pay.

(b) To pay or otherwise settle with the Assured any claim assured against under this Guarantee. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Assured that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay; or

(c) To pay or otherwise settle with other parties for the loss or damage provided for under this Guarantee, together with any costs, attorneys' fees, and expenses incurred by the Assured that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in 6 (a), (b) or (c) of this paragraph the Company's obligation to the Assured under this Guarantee for the claimed loss or damage, other than the payments required to be made, shall terminate, including any duty to continue any and all litigation initiated by the Company pursuant to Paragraph 4.

### **7. LIMITATION OF LIABILITY**

(a) This Guarantee is a contract of Indemnity against actual monetary loss or damage sustained or incurred by the Assured claimant who has suffered loss or damage by reason of reliance upon the assurances set forth in Schedule A and only to the extent herein described, and subject to the Exclusions From Coverage of this Guarantee.

(b) If the Company, or the Assured under the direction of the Company at the Company's expense, removes the alleged defect, lien or, encumbrance or cures any other matter assured against by this Guarantee in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(c) In the event of any litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom.

(d) The Company shall not be liable for loss or damage to the Assured for liability voluntarily assumed by the Assured in settling any claim or suit without the prior written consent of the Company.

### **8. REDUCTION OF LIABILITY OR TERMINATION OF LIABILITY**

All payments under this Guarantee, except payments made for costs, attorneys' fees and expenses pursuant to Paragraph 4 shall reduce the Amount of Liability under this Guarantee pro tanto.

### **9. PAYMENT OF LOSS**

(a) No payment shall be made without producing this Guarantee for endorsement of the payment unless the Guarantee has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

## **GUARANTEE CONDITIONS (Continuation)**

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions, the loss or damage shall be payable within thirty (30) days thereafter.

### **10. SUBROGATION UPON PAYMENT OR SETTLEMENT**

Whenever the Company shall have settled and paid a claim under this Guarantee, all right of subrogation shall vest in the Company unaffected by any act of the Assured claimant. The Company shall be subrogated to and be entitled to all rights and remedies which the Assured would have had against any person or property in respect to the claim had this Guarantee not been issued. If requested by the Company, the Assured shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The Assured shall permit the Company to sue, compromise or settle in the name of the Assured and to use the name of the Assured in any transaction or litigation involving these rights or remedies. If a payment on account of a claim does not fully cover the loss of the Assured the Company shall be subrogated to all rights and remedies of the Assured after the Assured shall have recovered its principal, interest, and costs of collection.

### **11. ARBITRATION**

Either the Company or the Assured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Assured arising out of or relating to this Guarantee, any service of the Company in connection with its issuance or the breach of a Guarantee provision, or to any other controversy or claim arising out of the transaction giving rise to this Guarantee. All arbitrable matters when the amount of liability is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Assured. All arbitrable matters when the amount of liability is in excess of \$2,000,000 shall be arbitrated only when agreed to by both the Company and the Assured. Arbitration pursuant to this Guarantee and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.

### **12. LIABILITY LIMITED TO THIS GUARANTEE; GUARANTEE ENTIRE CONTRACT**

- (a) This Guarantee together with all endorsements, if any, attached hereto by the Company is the entire Guarantee and contract between the Assured and the Company. In interpreting any provision of this Guarantee, this Guarantee shall be construed as a whole.
- (b) Any claim of loss or damage, whether or not based on negligence, or any action asserting such claim, shall be restricted to this Guarantee.

(c) No amendment of or endorsement to this Guarantee can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

### **13. SEVERABILITY**

In the event any provision of this Guarantee, in whole or in part, is held invalid or unenforceable under applicable law, the Guarantee shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

### **14. CHOICE OF LAW; FORUM**

- (a) Choice of Law: The Assured acknowledges the Company has underwritten the risks covered by this Guarantee and determined the premium charged therefore in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of Guaranties of the jurisdiction where the Land is located. Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims that are adverse to the Assured and to interpret and enforce the terms of this Guarantee. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.
- (b) Choice of Forum: Any litigation or other proceeding brought by the Assured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

### **15. NOTICES, WHERE SENT**

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this Guarantee and shall be addressed to the Company at the office which issued this Guarantee or to its Home Office at 400 Second Avenue South, Minneapolis, Minnesota 55401-2499, (612) 371-1111.

Order No.  
2202070389

Ref No.  
2147 Yale

Guarantee No.  
A04016-CTG-318104

### CONDITION OF TITLE GUARANTEE

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, AND THE GUARANTEE CONDITIONS ATTACHED HERETO AND MADE A PART OF THIS GUARANTEE,



## OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY


### GUARANTEES


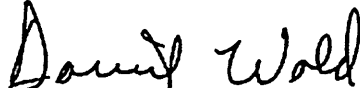
the Assured named in Schedule A of this Guarantee against loss or damage not exceeding the Amount of Liability stated in Schedule A sustained by the Assured by reason of any incorrectness in the Assurances set forth in Schedule A:

Dated: September 23rd, 2022 at 7:30:00 AM

**OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY**  
A Corporation  
400 Second Avenue South, Minneapolis, Minnesota 55401  
(612) 371-1111

Countersigned:

By   
\_\_\_\_\_  
Validating Officer

By  *C. Monroe* President  
Attest  *David Wald* Secretary

**Schedule A**

<b>Order No.</b>	2202070389
<b>Ref. No.</b>	2147 Yale
<b>Guarantee No.</b>	A04016-CTG-318104
<b>Liability</b>	\$ 500.00
<b>Date of Guarantee</b>	September 23rd, 2022 at 7:30:00 AM
<b>Fee</b>	\$ 400.00

## 1. Name of Assured:

MCB Remodeling LLC

## 2. The estate or interest in the Land which is covered by this Guarantee is:

Fee

## 3. The Land referred to in this Guarantee is situated in the County of Santa Clara, City of Palo Alto, State of California, and is described as follows:

Lots 1 and 2, Block 48, Tract entitled College Terrace, as shown on a Map recorded in Book E, Page 121 of Maps, Record of Santa Clara County, California.

APN: 137-01-038

## 4. Assurances:

According to the Public Records as of the Date of Guarantee,

## a. Title to the estate or interest in the Land is vested in:

Kathryn E. Gelman, Trustee of the Kathryn E. Gelman Trust dated July 8, 2009, and any amendments thereto as to an undivided 50% interest

Firth Griffith and Yuqing Li, Trustees of the Firth Griffith and Yuqing Li Trust dated October 29th, 1999 as to an undivided 50% interest, as Tenants in Common

## b. Title to the estate or interest is subject to defects, liens or encumbrances shown in Schedule B which are not necessarily shown in the order of their priority.

## Schedule B

<b>Order No.</b>	2202070389
<b>Ref. No.</b>	2147 Yale
<b>Guarantee No.</b>	A04016-CTG-318104
<b>Liability</b>	\$ 500.00
<b>Date of Guarantee</b>	September 23rd, 2022 at 7:30:00 AM
<b>Fee</b>	\$ 400.00

1. Taxes and assessments, general and special, for the fiscal year 2022 - 2023, a lien, but not yet due or payable.

2. Taxes and assessments, general and special, for the fiscal year 2021 - 2022, as follows:

Assessor's Parcel No	:	137-01-038	
Bill No.	:	137-01-038-00	
Code No.	:	006-001	
1st Installment	:	\$18,049.60	Marked Paid
2nd Installment	:	\$18,049.60	Marked Paid
Land Value	:	\$1,574,200.00	
Imp. Value	:	\$1,384,821.00	
Exemption	:	\$7,000.00	Homeowners

3. The lien of supplemental taxes, if any, assessed pursuant to the provisions of Section 75, et seq., of the Revenue and Taxation Code of the State of California.

4. Matters as contained or referred to in an instrument,

Entitled	:	Memorandum of Agreement and Non-Partition Covenant
Executed By	:	N.D. Bokum, et al
Dated	:	May 11, 2011
Recorded	:	May 17, 2011 in Official Records under Recorder's Serial Number 21180670
Which Among Other Things Provides	:	(a) For restrictions on the rights of all owners to transfer or encumber any portion of or interest in the property without the ocnsent of the other owners, and (b) Options and rights of first refusal granted by each owner to the other owners in the event of any proposed transfer of any portion of or interest in the property
Returned to Address	:	560 San Anotonio Road #104 Palo Alto, CA 94306

5. Terms and provisions as contained in an instrument,

Entitled : Memorandum of Tenancy-In-Common Agreement  
Executed By : Firth Griffith individually and as Trustee of the Firth Griffith and Yuqing Li 1999 Trust dated October 29, 1999 and Yuqing Li, individually and as Trustee of the Firth Griffith and Yuqing Li 1999 Trust dated October 29, 1999  
Dated : June 7, 2011  
Recorded : June 10, 2011 in Official Records under Recorder's Serial Number 21203486  
Returned to Address : 2149 Yale Street, Palo Alto, CA 94306

6. Deed of Trust to secure an indebtedness of the amount stated below and any other amounts payable under the terms thereof,

Amount : \$362,000.00  
Trustor/Borrower : Kathryn Gelman, an unmarried woman  
Trustee : Chicago Title Company  
Beneficiary/Lender : Sterling Bank & Trust, F.S.B.  
Dated : December 2, 2014  
Recorded : December 12, 2014 in Official Records under Recorder's Serial Number 22798431  
Loan No. : 000010598

Said matters affect an undivided 50% interest

7. Any present or future consequences of the tenancy in common the vestees share with one another.

8. Rights, interests, and obligations of the tenants in common or co-owners of the building(s) whether or not those rights, interests and obligations appear in the public record.

Vesting Deed



NOTE: The last recorded transfer or agreement to transfer the land described herein is as follows:

Instrument  
Entitled : Grant Deed  
By/From : Kevin L Anderson and Shannon L. Anderson, Trustees of Alamo Financial Insurance Services, Inc., Profit Sharing Plan dated 10-62006; and Pensco Trust Co., FBO C. Marquette IRA; and A. Wheeler, an unmarried woman; and Steward C. Walter, Trustee of S. C. Waiter Trust dated 9-5-2001; and C. R. Williams, Trustee of C. R. Williams Trust dated 8-3-2001; and N. D. Bokum, a single woman; and A. Balardi, a married woman; and M. Williams and P. Williams, husband and wife; and Claude Marquette, an unmarried man  
To : Firth Griffith and Yuqing U, Trustees of the Firth Griffith and Yuqing Li 1999 Trust dated October 29, 1999  
Dated : June 2, 2011  
Recorded : June 10, 2011 in Official Records under Recorder's Serial Number 21203485

NOTE: The last recorded transfer or agreement to transfer the land described herein is as follows:

Instrument  
Entitled : Grant Deed  
By/From : Kathryn Gelman, an unmarried woman  
To : Kathryn E. Gelman, Trustee of the Kathryn E. Gelman Trust dated July 8, 2009, and any amendments thereto  
Dated : June 25, 2021  
Recorded : June 28, 2021 in Official Records under Recorder's Serial Number 25009664

## **EXCLUSIONS FROM COVERAGE (Revised 06-05-14)**

Except as expressly provided by the assurances in Schedule A, the Company assumes no liability for loss or damage by reason of the following:

- (a) Defects, liens, encumbrances, adverse claims or other matters affecting the title to any property beyond the lines of the Land.
- (b) Defects, liens, encumbrances, adverse claims or other matters, whether or not shown by the Public Records
  - (1) that are created, suffered, assumed or agreed to by one or more of the Assureds; or
  - (2) that result in no loss to the Assured.
- (c) Defects, liens, encumbrances, adverse claims or other matters not shown by the Public Records.
- (d) The identity of any party shown or referred to in any of the schedules of this Guarantee.
- (e) The validity, legal effect or priority of any matter shown or referred to in any of the schedules of this Guarantee.
- (f) (1) Taxes or assessments of any taxing authority that levies taxes or assessments on real property; or,
  - (2) proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not the matters excluded under (1) or (2) are shown by the records of the taxing authority or by the Public Records.
- (g) (1) Unpatented mining claims;
  - (2) reservations or exceptions in patents or in Acts authorizing the issuance thereof;
  - (3) water rights, claims or title to water, whether or not the matters excluded under (1), (2) or (3) are shown by the Public Records.

## **GUARANTEE CONDITIONS**

### **1. DEFINITION OF TERMS**

The following terms when used in the Guarantee mean:

- (a) "the Assured": the party or parties named as the Assured in this Schedule A, or on a supplemental writing executed by the Company.
- (b) "Land": the Land described or referred to in Schedule A, and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule A, nor any right, title, interest estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways.
- (c) "Mortgage": mortgage, deed of trust, trust deed, or other security instrument.
- (d) "Public Records": those records established under state statutes at Date of Guarantee for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge.
- (e) "Date of Guarantee": the Date of Guarantee set forth in Schedule A.
- (f) "Amount of Liability": the Amount as stated in Schedule A.

### **2. NOTICE OF CLAIM TO BE GIVEN BY ASSURED**

An Assured shall notify the Company promptly in writing in case knowledge shall come to the Assured of any assertion of facts, or claim of title or interest that is contrary to the assurances set forth in Schedule A and that might cause loss or damage for which the Company may be liable under this Guarantee. If prompt notice shall not be given to the Company, then all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of the Assured under this Guarantee unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

### **3. NO DUTY TO DEFEND OR PROSECUTE**

The Company shall have no duty to defend or prosecute any action or proceeding to which the Assured is a party, notwithstanding the nature of any allegation in such action or proceeding.

### **4. COMPANY'S OPTION TO DEFEND OR PROSECUTE ACTIONS; DUTY OF ASSURED TO COOPERATE**

Even though the Company has no duty to defend or prosecute as set forth in Paragraph 3 above:

- (a) The Company shall have the right, at its sole option and cost, to institute and prosecute any action or proceeding, interpose a defense, as limited in Paragraph 4(b), or to do any other act which in its opinion may be necessary or desirable to establish the correctness of the assurances set forth in Schedule A or to prevent or reduce loss or damage to the Assured. The Company may take any appropriate action under the terms of this Guarantee, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this Guarantee. If the Company shall exercise its rights under this paragraph, it shall do so diligently.
- (b) If the Company elects to exercise its options as stated in Paragraph 4(a) the Company shall have the right to select counsel of its choice (subject to the right of the Assured to object for reasonable cause) to represent the Assured and shall not be liable for and will not pay the fees of any other counsel, nor will the Company pay any fees, costs or expenses incurred by an Assured in the defense of those causes of action which allege matters not covered by this Guarantee.
- (c) Whenever the Company shall have brought an action or interposed a defense as permitted by the provisions of this Guarantee, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from an adverse judgment or order.

## **GUARANTEE CONDITIONS (Continuation)**

(d) In all cases where this Guarantee permits the Company to prosecute or provide for the defense of any action or proceeding, the Assured shall secure to the Company the right to so prosecute or provide for the defense of any action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of such Assured for this purpose. Whenever requested by the Company, the Assured, at the Company's expense, shall give the Company all reasonable aid in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or lawful act which in the opinion of the Company may be necessary or desirable to establish the correctness of the assurances set forth in Schedule A or to prevent or reduce loss or damage to the Assured. If the Company is prejudiced by the failure of the Assured to furnish the required cooperation, the Company's obligations to the Assured under the Guarantee shall terminate.

### **5. PROOF OF LOSS OR DAMAGE**

(a) In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Assured furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

(b) In addition, the Assured may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Guarantee, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Assured shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the Assured provided to the Company pursuant to this paragraph shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Assured to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in the above paragraph, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this Guarantee to the Assured for that claim.

### **6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS: TERMINATION OF LIABILITY**

In case of a claim under this Guarantee, the Company shall have the following additional options:

(a) To pay or tender payment of the Amount of Liability together with any costs, attorneys' fees, and expenses incurred by the Assured that were authorized by the Company

up to the time of payment or tender of payment and that the Company is obligated to pay.

(b) To pay or otherwise settle with the Assured any claim assured against under this Guarantee. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Assured that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay; or

(c) To pay or otherwise settle with other parties for the loss or damage provided for under this Guarantee, together with any costs, attorneys' fees, and expenses incurred by the Assured that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in 6 (a), (b) or (c) of this paragraph the Company's obligation to the Assured under this Guarantee for the claimed loss or damage, other than the payments required to be made, shall terminate, including any duty to continue any and all litigation initiated by the Company pursuant to Paragraph 4.

### **7. LIMITATION OF LIABILITY**

(a) This Guarantee is a contract of Indemnity against actual monetary loss or damage sustained or incurred by the Assured claimant who has suffered loss or damage by reason of reliance upon the assurances set forth in Schedule A and only to the extent herein described, and subject to the Exclusions From Coverage of this Guarantee.

(b) If the Company, or the Assured under the direction of the Company at the Company's expense, removes the alleged defect, lien or, encumbrance or cures any other matter assured against by this Guarantee in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(c) In the event of any litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom.

(d) The Company shall not be liable for loss or damage to the Assured for liability voluntarily assumed by the Assured in settling any claim or suit without the prior written consent of the Company.

### **8. REDUCTION OF LIABILITY OR TERMINATION OF LIABILITY**

All payments under this Guarantee, except payments made for costs, attorneys' fees and expenses pursuant to Paragraph 4 shall reduce the Amount of Liability under this Guarantee pro tanto.

### **9. PAYMENT OF LOSS**

(a) No payment shall be made without producing this Guarantee for endorsement of the payment unless the Guarantee has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

## **GUARANTEE CONDITIONS (Continuation)**

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions, the loss or damage shall be payable within thirty (30) days thereafter.

### **10. SUBROGATION UPON PAYMENT OR SETTLEMENT**

Whenever the Company shall have settled and paid a claim under this Guarantee, all right of subrogation shall vest in the Company unaffected by any act of the Assured claimant. The Company shall be subrogated to and be entitled to all rights and remedies which the Assured would have had against any person or property in respect to the claim had this Guarantee not been issued. If requested by the Company, the Assured shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The Assured shall permit the Company to sue, compromise or settle in the name of the Assured and to use the name of the Assured in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the Assured the Company shall be subrogated to all rights and remedies of the Assured after the Assured shall have recovered its principal, interest, and costs of collection.

### **11. ARBITRATION**

Either the Company or the Assured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Assured arising out of or relating to this Guarantee, any service of the Company in connection with its issuance or the breach of a Guarantee provision, or to any other controversy or claim arising out of the transaction giving rise to this Guarantee. All arbitrable matters when the amount of liability is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Assured. All arbitrable matters when the amount of liability is in excess of \$2,000,000 shall be arbitrated only when agreed to by both the Company and the Assured. Arbitration pursuant to this Guarantee and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.

### **12. LIABILITY LIMITED TO THIS GUARANTEE; GUARANTEE ENTIRE CONTRACT**

(a) This Guarantee together with all endorsements, if any, attached hereto by the Company is the entire Guarantee and contract between the Assured and the Company. In interpreting any provision of this Guarantee, this Guarantee shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, or any action asserting such claim, shall be restricted to this Guarantee.

(c) No amendment of or endorsement to this Guarantee can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

### **13. SEVERABILITY**

In the event any provision of this Guarantee, in whole or in part, is held invalid or unenforceable under applicable law, the Guarantee shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

### **14. CHOICE OF LAW; FORUM**

(a) Choice of Law: The Assured acknowledges the Company has underwritten the risks covered by this Guarantee and determined the premium charged therefore in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of Guaranties of the jurisdiction where the Land is located. Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims that are adverse to the Assured and to interpret and enforce the terms of this Guarantee. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.

(b) Choice of Forum: Any litigation or other proceeding brought by the Assured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

### **15. NOTICES, WHERE SENT**

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this Guarantee and shall be addressed to the Company at the office which issued this Guarantee or to its Home Office at 400 Second Avenue South, Minneapolis, Minnesota 55401-2499, (612) 371-1111.

**City of Palo Alto**

**Subdivider's Statement**

**Address of the Subject Property:** 2147 and 2149 Yale Street (formerly 586 College Ave)

**Zone District:** RMD (NP)

- a. **Existing Use(s):** Two, comparable, detached single-family homes under the Multiple Family Residential Land Use designation.
- b. **Proposed Use(s):** No change.
- c. **Improvements and public utilities proposed and the time at which such improvement is proposed for completion:** No change.
- d. **Provisions for sewerage and sewage disposal:** Not Applicable
- e. **Public areas proposed:** None.
- f. **Tree Disclosures:** None.
- g. **Proposed street lighting or any other outdoor lighting:** None.
- h. **Existing restrictive covenants, leases, right-of-way, licenses, and encumbrance affecting use of the land:** None.
- i. **Requested Exceptions to any requirements of the Subdivision Ordinance.**

**Exceptions requested:** We request the following two exceptions:

- (1) The minimum lot size in the RMD zone is 5,000 sq ft. Each of the two lots will be 2885 square feet. We need a minimum lot size exception.

A lot line adjustment for Lots 1 and 2, Block 48, Tract entitled College Terrace, as shown on a Map recorded in Book E, Page 121 of Maps, Record of Santa Clara County, California, is to be moved 45 ° NW. The current lot line is oriented perpendicular to College Avenue. The proposed lot line would be perpendicular to Yale Street. Both dwellings were built to face Yale Street to comply with the 1983 change of the two lots from commercial to RMD zoning.

- (2) The minimum depth required for lots in this zone is 83 feet. Each of the lots will have a depth of 50.15 feet. We need a minimum depth exception.

**1. There are special circumstances or conditions affecting the property.**

The Architectural Review Board approved a project on September 6, 2007, to demolish the then extant single-family home at 586 College Avenue and build a "...two-story Duplex w/Basement & Attached Garages" under common ownership as required within the RMD (NP) zoning designation. A new construction permit (Permit #080000-00000-00136) was approved on 1/22/2008. The permit to demolish the single-family home was approved (Permit # 080000-00000-01678) on 07/09/2008. The final building inspection was issued for the "New 2 Story Duplex w/ Basement & Attached Garages on 10/06/2009.

The two lots in the parcel face College Avenue. However, the Board and the new construction permit disregarded the lot lines by approving side-by-side, detached single-family homes facing Yale Street. The modification was necessary to give both homes equal access to the street as well as ensuring a more natural continuance with regards to neighboring residences. Nonetheless, the City did not rotate and revise mapping of the lots to reflect the new development positioning.

In December 2010, a developer acquired the parcel from an auction sale. Without further permitting, the “New 2-story Duplex with Basement & Attached Garages” was somehow developed as two detached, single-family homes, each situated, including setbacks, on approximately 2885 square feet lots. Each home has its own basement, attached garage, two stories above the basement, mailing address, utility billing account, driveway. Only a third driveway for guest parking is shared.

The developer successfully marketed the two dwelling units as separate, single-family homes for owner occupation, violating the intent of the City’s urgency in establishing an ordinance, on September 20, 2006, against the “individual sales of second dwellings”. On May 11, 2011, KATHRYN E GELMAN AND THE KATHRYN E GELMAN FAMILY TRUST purchased 2147 Yale Street. Concurrent with the sale of the first home, the developer and investors converted ownership to a Tenancy in Common (TIC) to comply with the single owner RMD (NP) requirement. On June 10, 2011, F J GRIFFITH & Y LI CO-TTEES FIRTH GRIFFITH & YUQING LI 1999 TRUST U/A DTD 10/29/99 aka Firth Griffith & Yuqing Li Trust purchased 2149 Yale Street. The home purchasers had each bought an undivided 50% TIC interest, replacing the developer as co-owners of the TIC.

The RMD district was intended to minimize incentives to replace existing single-family dwellings. (See Ordinance 18.10.010c) Yet, the project at 586 College Avenue led to the demolition of a single-family home in favor of two detached single family homes. RMD (NP) zoning was intended to create incentives to invest in properties to capture rents from tenants in the form of detached Accessory and Junior Accessory Dwelling Units or attached additions. It is true that the zoning ordinance (See 18.12.070) in effect at the time of the development did not specify the type or size of the second dwelling unit for RMD (NP) parcels. Still, in the R-2 district with which RMD (NP) was categorized, there was a stated limit of 450 square feet for the 2<sup>nd</sup> dwelling unit on lots of 6000 to 7500 square feet. RMD (NP) lots have smaller footprints, thereby implying a comparable, if not smaller, maximum size for their second dwelling units. Clearly, it was not intended for a 2300 square foot single family home as the second dwelling unit. Accordingly, the revised ordinances of 2017 did establish, for RMD (NP) zoning, a maximum square footage for detached second dwelling units of 1000 square feet for 2-bedroom, detached ADUs/JADUs. (City of Palo Alto Ordinance 18.10.070)

The subject property is the only one within Palo Alto’s two RMD (NP) zoning districts with TIC ownership and two single-family homes, evidencing that this development does not fit with the zoning designation. Also, the 1983 rezoning of the two lots into RMD (NP) created an unrecorded merger of the two lots by requiring single ownership, enabling the TIC to unmerge the lots into separate parcels via the 2020 California Government Code - Section 66451.30-66451.33: Article 1.7. Unmerger Of Parcels.

Finally, the split of the property into two separately owned lots conforms with the intent of SB9. Excepting the zoning designation<sup>1</sup>, the proposed lot split complies with all SB9 requirements.

Each lot:

- is roughly equal in size to the other;
- exceeds 1,200 square feet;
- meets the definition of an urban lot; and,
- is not located within a historic district or property included on the State Historic Resources Inventory, a city or county landmark or historic property or district.

In addition,

- The proposed urban lot split would not require demolition or alteration of any kind.
- The parcel has not been established through prior exercise of an urban lot split as provided for in the statute.
- Neither the owner of the parcel being subdivided nor any person acting in concert with the owner has previously subdivided an adjacent parcel using an urban lot split as provided for in the statute.

**2. The exception is necessary for the preservation and enjoyment of a substantial property right of the petitioner.**

The TIC ownership arrangements and conditions for the subject parcel has caused and will continue causing enormous financial injury to the two property owners, thereby depriving them of privileges enjoyed by other property owners in the vicinity and in the same zoning district.

2147 Yale Street was on the market for 28 days (June 28<sup>th</sup> – July 25<sup>th</sup>, 2021) at a significant discount (relative to existing comps) in recognition of negative market perceptions of TIC ownership structures. Six buyers agreed to put in offers pending review of requested disclosures.

In each case, buyers refused to proceed because of the TIC structure and conditions. Prospective buyers could not overcome their concerns with an unacquainted neighbor owning a 50% interest in the home that they would occupy as well as substantial liability exposure for the neighboring property and the TIC. Moreover, there is only one lender willing to work with TICs for Palo Alto properties. Consequently, its lending rates are at a substantial premium

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<sup>1</sup> In Palo Alto, the RMD (NP) allows for single-family home use and two-family home use, per the Palo Alto Zoning Map Regulations. Courts will likely decide whether SB9 applies to single-family home use in this zoning type.

relative to regular home financing options. Also, the lender does not allow for home equity lines of credit for TIC properties in Palo Alto. The lender will only approve home equity lines of credit for TIC properties in San Francisco and other TIC saturated, lender-covered regions outside of California.

**3. The granting of the exception will not be detrimental to the public welfare or injurious to other property in the territory in which the property is situated.**

This exception calls for ministerial action only. There are no proposed physical modifications to the lots or the two homes. Thus, the granting of this exception would not be detrimental or injurious to property, improvements in the vicinity, public health, safety, general welfare, or convenience.

**4. The granting of the exception will not violate the requirements, goals, policies, or spirit of the law.**

The requested exceptions will better align the parcel's characteristics with Palo Alto Municipal Codes and California Statutes. By rotating the property lines, the zoning map will better reflect the development of the parcel, as currently constituted. The subdivision would also remedy the non-compliant development of 2 detached, single family homes within the RMD (NP) zoning district. Moreover, the splitting of the lot would rectify the City of Palo Alto's unrecorded merger of the 2 lots within the parcel in contravention of state statute. Finally, the requested subdivision fits perfectly within the parameters of SB9 for acceptable lot splits and achieves the legislature's clear intent.

**j. Requested preliminary mapping exceptions from any of the requirements of the Zoning Ordinance.**

The current RMD (NP) zoning ordinance requires a minimum of a 5000 square foot lot for a single-family home or a two-unit family home. The granting of this exception would cause a substandard lot exception by splitting the parcel into two (2) 2885 square foot lots.

**Reasons and Justifications:** See two paragraphs above.

**k. Statement regarding the compliance of the subdivision with those applicable elements of the Palo Alto Comprehensive Plan, or the manner in which such compliance, will be attained, when relevant and not otherwise ascertainable from the Tentative Map or other contents of the subdivider's statements. (Such information shall include, but not be limited to, a statement of how the housing policies of the Palo Alto Comprehensive Plan will be met):**


The parcel's 2010 development was already assessed to comply with the requirements, goals, policies, and spirit of the Palo Alto Comprehensive Plan. Since the requested exception, does not affect the physical property in any way, the requested ministerial action will not run afoul of the plan. To the extent that subdividing the lots falls outside of the plan, the resulting benefits of reconciling the zoning map to reflect the reality of the parcel's development, comply with other laws



and their intents, and end the deprivation of the parcel owners' rights relative to others in the zoning district more than justify the exceptions. Furthermore, the subdivision of the parcel to substandard lot sizes will prevent owners from adding ADUs or JADUs as the development of these dwelling units requires standard size lots per City of Palo Alto ordinance.

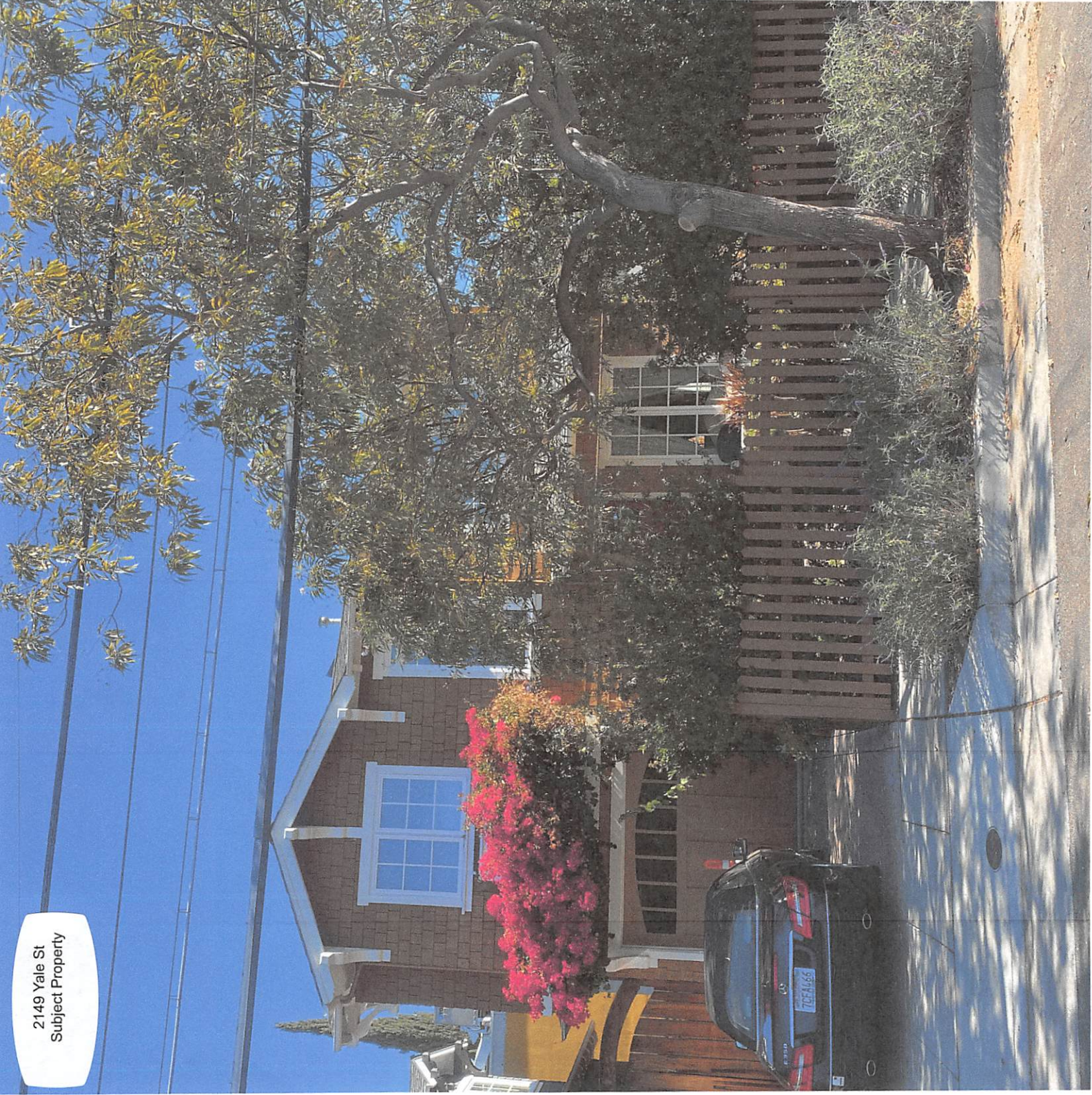
- 1. Any additional information regarding the subdivision as may be deemed necessary by the Director of Planning and Community Environment.**

To the best of my knowledge, this application is in conformance with the Zoning Ordinance/Subdivision Ordinance, and Comprehensive Plan as submitted or included exceptions or variances as indicated in (i) or (j) above.

Signature of Applicants:  Date: 10/03/2022



2149 Yale St  
Subject Property





2147 Yale St  
Subject Property

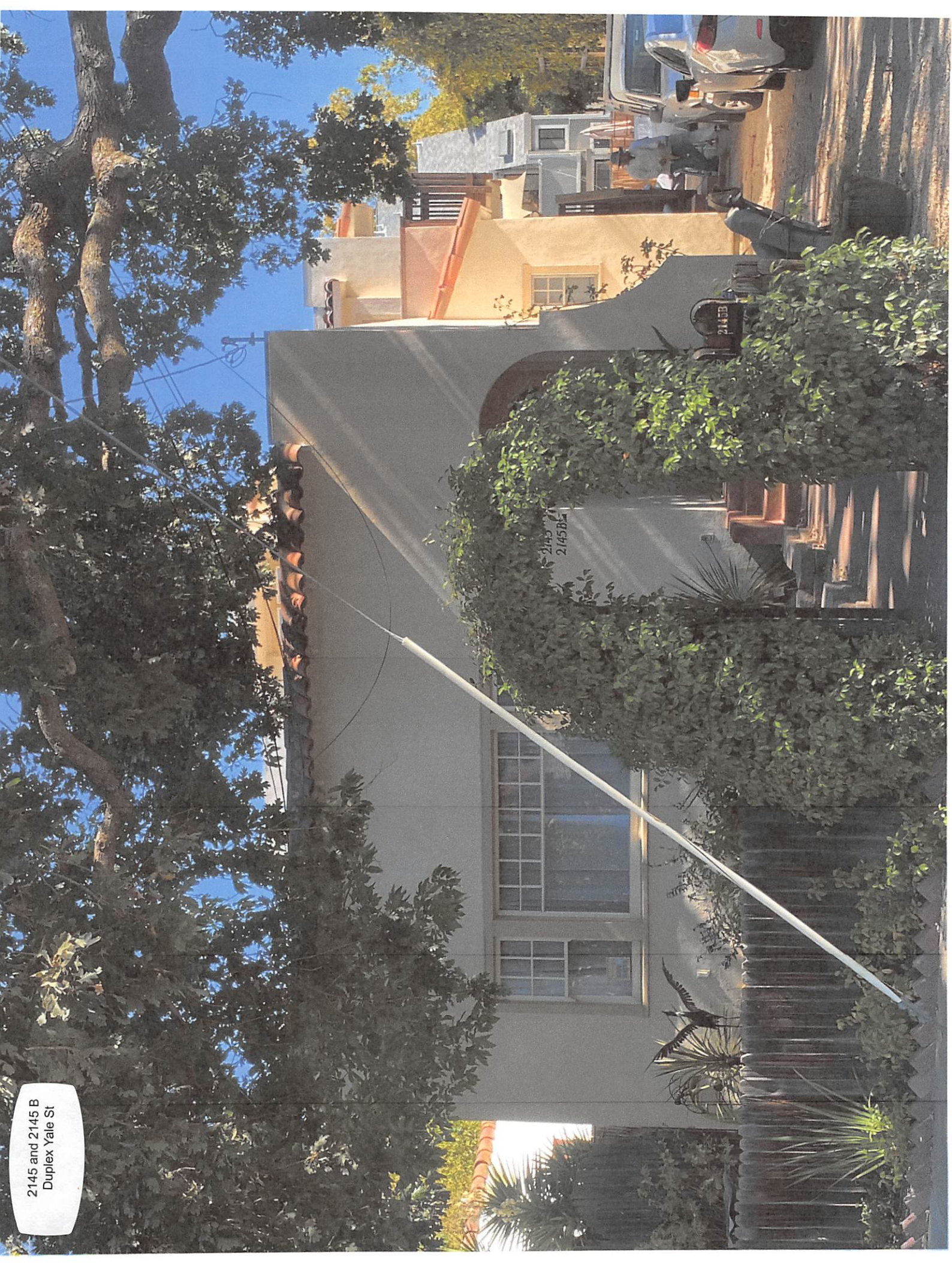




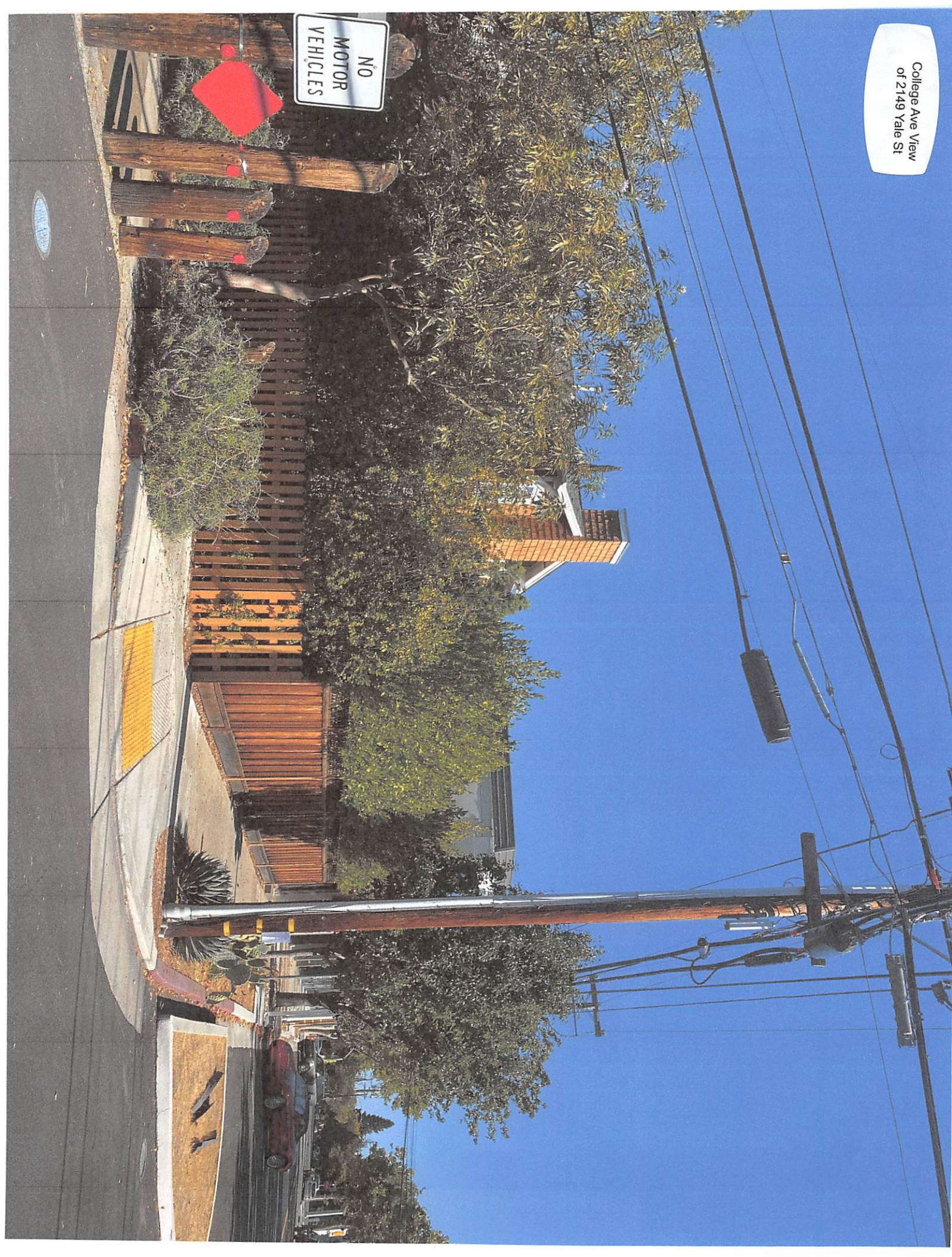




2145 and 2145 B  
Duplex Yale St









Apartments across  
from Subject  
Properties





Substandard Lot on  
Yale across street  
from subject  
properties

