



Metro

**PLANNING AND PROGRAMMING COMMITTEE
MARCH 19, 2008**

SUBJECT: TAYLOR YARD JOINT DEVELOPMENT

ACTION: AUTHORIZE THE EXECUTION OF VARIOUS REAL ESTATE AND DEVELOPMENT AGREEMENTS RELATED NECESSARY FOR THE DEVELOPMENT OF A PORTION OF OUR TAYLOR YARD PROPERTY

RECOMMENDATION

Authorize the Chief Executive Officer (“CEO”) to: (a) enter into a Joint Development Agreement (“JDA”) with McCormack Baron Salazar, Inc., or one or more of their affiliates (“MBS”), covering the development of an approximately 17.2-acre portion of Taylor Yard Parcel C (the “Site”); and (b) pursuant to the JDA, enter into and execute ground leases, grant deeds and other related documents with MBS, all in accordance with the key terms and conditions set forth on Attachment A.

ISSUE

Staff has negotiated the key terms and conditions relating to development of the Site by MBS. These key terms and conditions are detailed on Attachment A. While the minimum compensation to be provided to us by MBS has been determined, our final compensation will be determined by re-appraisal of the Site and confirmation of the cost to remediate certain hazardous materials now known to be on the Site.

Even though the final total compensation has yet to be determined, Board authorization to execute the documents detailed in the Recommendation will allow MBS to apply for certain public financing for the project that will become available in April of this year. In addition, it will allow MBS to move ahead early with their plans to secure equity investors and other public and private financing for the proposed development.

BACKGROUND

In April 2005, the Board authorized the CEO to enter into an Exclusive Negotiation Agreement with MBS for development of the Site.

We are the owner of the Site, consisting of a total of 17.2 acres. The proposed development that is to be constructed on the Site and will include approximately 295 for-sale condominiums (a third of which will be targeted for workforce housing), approximately 68 affordable apartment units and approximately 108 affordable senior apartment units, as well as approximately 29,500 square feet of retail space, a recreation building and street improvements and open space.

The for-sale units will be constructed on the approximately 11.5 acre portion of the property, as depicted in Exhibit B and denominated "Sale Property", while the affordable and affordable senior units as well as the retail-serving portion of the development and recreation building will be constructed on the approximately 3.0 acre portion of the Site and the approximately 2.7 acre portion of the Site, each depicted on Exhibit B and denominated "Premises A" and "Premises B", respectively. The total development will also contain approximately 3.43 acres of open space and street and public improvements.

An appraisal of the property was completed in 2005 and resulted in an initial value for the Sale Property of \$11.216 million. An updated appraisal is now in progress and MBS will pay us for the Sale property the greater of \$11.216 million or the amount indicated by the re-appraisal at closing. In addition, we will receive 1.5% of the sale price of all for-sale condominium units constructed on the Sale Property in perpetuity, beginning with the second sale thereof. The percentage payments to be paid to us will be memorialized by notation on the grant deed for each sold unit.

The affordable and affordable senior units, as well as the retail space and recreational building, will be constructed on the Premises A and Premises B parcels pursuant to ground leases with 67 year terms. Ground rent under the two residential ground leases covering the residential portions of the Development on the Premises A and Premises B parcels will be capitalized and ground rent for the commercial portion of the Development on the Premises B parcel will be equal to 3% of the gross commercial/retail income generated, all as set forth more fully on Attachment A.

POLICY IMPLICATIONS

The recommended action is consistent with the goals of the Joint Development Policies and Procedures approved by the Board at its April, 2002 meeting. The goals of the Joint Development Program are to promote and enhance transit ridership, enhance and protect the transportation corridor and its environs, enhance the land use and economic development goals of surrounding communities, conform to local and regional development plans, and generate value based on a fair market return on public investment. Staff has concluded that the proposal meets the goals contained in the policies and procedures.

OPTIONS

The Board could choose not to authorize execution of the ground leases, grant deeds and other related documents with MBS, reject the current terms and conditions and elect to offer the Site to other potential developers. Staff is not recommending this option because:

1. It would delay development of the Site and forego the opportunity for public financing opportunities that will become available in April of this year;
2. It is not likely that a more appropriate transit-serving development will be proposed for the Site.

The terms and conditions as listed in Attachment A provide us with a fair and reasonable financial return.

FINANCIAL IMPACT

Funding for the joint development activities is included in the FY07-08 Budget under Project 610011 task 01.01 in cost center 2210. Revenues from Ground Lease rent and Developer deposits will support continued staff and consultant related costs. Our financial returns over the term of the JDA and Ground Lease are detailed in Attachment A.

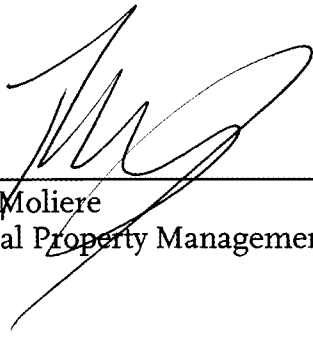
NEXT STEPS

Upon approval of the recommended actions, staff will complete and execute the JDA, the ground leases, the grant deed(s) and related documents in accordance with the terms and conditions set forth in Attachment A. Upon execution of the JDA, MBS will complete the process of securing the appropriate entitlements from the City of Los Angeles necessary to construct the Development consistent with the attached terms and conditions.

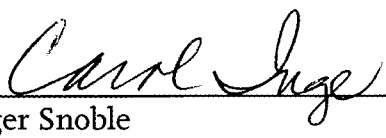
ATTACHMENTS

- A. Summary Terms and Conditions of the Development Agreement and Ground Lease
- B. Plat of Taylor Yard showing the Site, the Sale Property, Premises A, Premises B and the Remainder Parcel
- C. Conceptual Plan for the Proposed Development

Prepared by: Greg Angelo, Director of Real Property Management & Development



Roger S. Moliere
Chief, Real Property Management and Development

for 

Roger Snoble
Chief Executive Officer

**Summary of Key Terms and Conditions
Relating to the Taylor Yard Joint Development Project
with McCormack Baron Salazar, Inc.**

GENERAL DESCRIPTION:

- Developer:** McCormack Baron Salazar, Inc. and/or one or more of their affiliates (“**MBS**”).
- Site:** Approximately 17.2 acres of Los Angeles County Metropolitan Transportation Authority (“**LACMTA**”)-owned property located within Taylor Yard, as depicted on Attachment B (the “**Site**”).
- Sale Property:** An approximate 11.5-acre portion of the Site, as depicted on Attachment B (the “**Sale Property**”).
- Premises A:** An approximate 3.0-acre portion of the Site, as depicted on Attachment B (“**Premises A**”).
- Premises B:** An approximate 2.7-acre portion of the Site, as depicted on Attachment B (“**Premises B**”).
- Site Value:** A May 2005 appraisal confirmed a value of for the Site of \$16,775,000. Since the forgoing appraisal is approximately three (3) years old, staff and MBS have agreed to reappraise the Site to determine its current market value. The reappraisal has yet to be completed, but will be used to set the Sale Property Value, the Phase A Ground Lease Initial Capitalized Rent the Phase B Residential Ground Lease Initial Capitalized Rent (each as defined and described below).
- Proposed Development:** The proposed development (the “**Development**”) will be constructed by MBS at its sole cost and expense and is as follows:
- Between 280 and 300 for-sale condominiums (with a current target of 295 condominiums) to be constructed on the Sale Property;

- Between 64 and 70 affordable apartments (with a current target of 68 apartments) to be constructed on the Premises A;
- Between 100 and 110 affordable, senior apartments (with a current target of 108 apartments) and between 25,000 and 33,000 square feet of retail space (with a current target of 29,417 square feet) to be constructed on the Premises B.

Plans and renderings detailing the proposed development in concept (the “**Conceptual Plan**”) are included in Attachment C. The Development will be constructed in multiple phases.

JOINT DEVELOPMENT AGREEMENT:

JDA - Generally:

After staff and MBS reach agreement on the specific terms and conditions to be contained therein, LACMTA and Developer will enter into a joint development agreement (“**JDA**”) containing terms and conditions that are consistent with those set forth in this Summary of Key Terms and Conditions, as the same may be modified by the LACMTA Board. The JDA will contain certain escrow instructions related to the transactions contemplated herein, as well as certain conditions (“**Closing Conditions**”) that must be met before LACMTA will (1) enter into the Ground Leases (as defined and described below) with MBS, or (2) sell the Sale Property to MBS or exchange the Sale Property for other property to be acquired by MBS for LACMTA (as described below). The Closing Conditions for the sale/swap of the Sale Property and the ground lease of Premises A and Premises B will require, among other things, that MBS (a) obtain all necessary entitlements and permits for the construction and operation of that portion of the Development that is to be situated on the Sale Property, Premises A or Premises B (as applicable); (b) obtain construction financing sufficient to fund the construction of that portion of the Development that is to be situated on the Sale Property, Premises A or Premises B (as applicable); (c) receive LACMTA and City of Los Angeles approval of full, complete and final construction documents for the that portion of the Development that is to be situated on the Sale Property, Premises A or Premises B (as applicable); (d) receive a “Ready to Issue” letter from the City of Los Angeles for all building permits necessary for the construction of that portion of the Development that is to be situated on the Sale Property, Premises A or Premises B (as applicable); and

(e) provide LACMTA with the Financial Assurances (defined and described below).

**JDA Term/
Predevelopment Period:**

The term of the JDA shall be three (3) years (the “**Predevelopment Period**”) commencing on the date that the JDA is mutually executed and delivered (the “**JDA Effective Date**”); provided that (a) such Predevelopment Period shall be extended automatically for Unavoidable Delay (as defined below) and may be extended by LACMTA, if LACMTA determines in its sole and absolute discretion that MBS is making commercially reasonable efforts to promptly satisfy the Closing Conditions. Notwithstanding anything to the contrary set forth herein, no extension of the initial three (3) year Predevelopment Period shall singularly or cumulatively extend the Predevelopment Period more than two (2) years.

JDA Closing:

The JDA may contemplate multiple closings (each a “**Closing**”), as follows: (1) one Closing for the sale/swap of the Sale Property, upon satisfaction or waiver by the appropriate party of all the Closing Conditions relative to such sale/swap; (2) one Closing for the ground lease of Premises A to MBS, upon satisfaction or waiver by the appropriate party of all the Closing Conditions relative to the ground leasing of Premises A; and (3) one Closing for the ground leasing of Premises B to MBS, upon satisfaction or waiver by the appropriate party of all the Closing Conditions relative to the ground leasing of Premises B. At the sale/swap Closing, LACMTA will sell the Sale Property to MBS or will swap the Sale Property for other property to be acquired for LACMTA by MBS (as detailed below). At either of the ground lease closings, LACMTA will ground lease the applicable premises to MBS. Documents related to each of the Closings, including deeds, ground leases, reciprocal easement agreements and other development and real estate related documents and agreements will be executed by the parties as is necessary to properly effectuate the Closing.

**JDA Consideration/
Holding Rent:**

During the Predevelopment Period, Developer will pay annual holding rent (“**Holding Rent**”) to LACMTA under the JDA equal to the greater of the following: (a) One Hundred Twenty Five Thousand Dollars (\$125,000) per year, or (b) [_____]. Holding Rent shall commence to accrue on the earlier to occur of (i) the JDA Effective Date) or (b) October 1, 2008, and will continue until the JDA Closing. The Holding Rent shall be increased

annually in accordance with increases in the Consumer Price Index.

Design Review:

The design of each portion of the proposed Development (i.e.; that portion of the Development that is to be situated on the Sale Property, that portion that is to be situated on Premises A and that portion that is to be situated on Premises B) will be advanced during the Predevelopment Period and, except as approved in writing by LACMTA in its sole and absolute discretion: (i) will be consistent with the initial Development concept set forth above in the “Proposed Development” section of this Summary of Key Terms and Conditions; and (ii) will be a logical evolution of the initial conceptual design for the proposed Development attached hereto as Attachment C. LACMTA’s approval of final construction documents for the each portion of the Development will be a condition precedent to Closing relative to such portion of the Development.

Financial Assurances:

Prior to any Closing, and, as a condition to such Closing, MBS shall provide, for the benefit of LACMTA, financial assurances that guarantee, among other things, the completion of that portion of the Development contemplated by the Closing in the event of a default by Developer (“**Financial Assurances**”). The Financial Assurances shall (a) be acceptable to LACMTA in all respects, (b) clearly demonstrate Developer’s ability to construct and operate that portion of the Development contemplated by the Closing, (c) survive the Closing, and (d) if required by LACMTA, in its sole and absolute discretion, be included in the Premises A Ground Lease, the Premises B Ground Leases and a covenant affecting the Sale Property (as applicable).

GROUND LEASES:

Ground Leases – Generally:

At a Closing covering the ground leasing of Premises A, MBS, as tenant, and LACMTA, as ground lessor, will enter into a ground leases covering Premises A that will provide for the construction and operation of that portion of the Development to be constructed and operated on Premises A (the “**Premises A Ground Lease**”). At a Closing covering the ground leasing of Premises B, MBS, as tenant, and LACMTA, as ground lessor, will enter into two ground leases covering Premises B that will provide for the construction and operation of that portion of the Development to be constructed and operated on Premises B.

These ground leases will be as follows: (1) a ground lease covering the affordable, senior apartments to be constructed on the Premises B. (the “**Premises B Apartment Ground Lease**”), and (2) a ground lease covering the retail space to be constructed on the Premises B (the “**Premises B Retail Ground Lease**”). The Premises A Ground Lease, the Premises B Apartment Ground Lease and the the Premises B Retail Ground Lease shall collectively be referred to herein as the “**Ground Leases**” and individually as a “**Ground Lease**.” Each Ground Lease will contain terms and conditions that are consistent with those set forth in this Summary of Key Terms and Conditions, as the same may be modified by the LACMTA Board.

Unsubordinated Ground Leases:

LACMTA’s interests under each Ground Lease will be *unsubordinated* to any interests developer or its lenders will have in the Site.

Ground Lease Commencement:

The term of the Premises A Ground Lease will commence on the date that the Closing covering the ground leasing of Premises A occurs (the “**Phase A Ground Lease Commencement Date**”). The term of the Premises B Ground Leases will commence on the date that the Closing covering the ground leasing of Premises B occurs (the “**Phase B Ground Lease Commencement Date**”).

Ground Lease Term:

The first Ground Lease to be executed shall have a term of Sixty-seven (67) years. Each of the other two ground Leases shall have a term that is coterminous with the first Ground Lease to be executed.

Construction Period:

The portion of the development to be constructed under each Ground Lease shall take approximately twenty four (24) months to complete.

Capitalized Base Rent (For First 57 Years of the Residential Ground Leases):

Phase A Ground Lease: Developer will pay LACMTA, on the Phase A Ground Lease Commencement Date, a one-time payment (“**Phase A Ground Lease Initial Capitalized Rent**”) equal to the greater of the following: (a) Two Million Nine Hundred Twenty Five Thousand Eight Hundred Seventy Two Dollars (\$2,925,872), or (b) [_____]. Phase A Ground Lease Initial Capitalized Rent shall cover

only the first fifty seven (57) years of the term of the Phase A Ground Lease.

Phase B Residential Ground Lease: Developer will pay to LACMTA, on the Phase B Ground Lease Commencement Date, a one-time payment (“**Phase B Residential Ground Lease Initial Capitalized Rent**”) equal to the greater of the following: (a) Two Million Six Hundred Thirty Three Thousand Two Hundred Eighty Five Dollars (\$2,633,285), or (b) [_____]. Phase B Residential Ground Lease Initial Capitalized Rent shall cover only the first fifty seven (57) years of the term of the Phase B Residential Ground Lease.

Capitalized Base Rent (End of Term):

Phase A Ground Lease: MBS shall pay LACMTA, on the fifty eighth (58th) annual anniversary of the Phase A Ground Lease Commencement Date, a one-time payment (“**Phase A Ground Lease Terminal Capitalized Rent**”) equal to [_____] [such amount shall be based on the “Market Value” of the Phase A Premises at such time, where the term “Market Value” is as defined below.]

Phase B Residential Ground Lease: MBS shall pay LACMTA, on the fifty eighth (58th) annual anniversary of the Phase B Ground Lease Commencement Date, a one-time payment (“**Phase B Residential Ground Lease Terminal Capitalized Rent**”) equal to [_____] [such amount shall be based on the “Market Value” of the Phase B Premises at such time, where the term “Market Value” is as defined below.]

The term “**Market Value**” means that value of the Phase A Premises or the Phase B Premises (as applicable) determined be an appraisal, assuming that such Phase A Premises or Phase B Premises are vacant and usable only for those uses permitted under the applicable Ground Lease(s), consistent with the improvements then constructed on the Phase A Premises or the Phase B Premises (as applicable), provided that such improvements have been approved by LACMTA and have been properly maintained, each in accordance with the applicable Ground Lease(s).

Phase B Commercial Ground Lease Percentage Rent:

MBS shall pay LACMTA, annually throughout the term of the Phase B Commercial Ground Lease, percentage rent

(“Phase B Commercial Ground Lease Percentage Rent”) in an amount equal to three percent (3%) of the gross sales received by MBS from all retail and other economic activity conducted on the Phase B Commercial Premises.

Reversion:

At the expiration of the Lease Term (including the Option Period, if exercised) and at LACMTA’s election, Developer will be responsible, at its sole cost and expense, for the demolition and removal of the Development and any other improvements then located on the Premises and for returning the Premises to LACMTA in its original condition.

Demolition Reserves:

At least five (5) years prior to the expiration of the Lease Term, Developer will demonstrate to LACMTA’s reasonable satisfaction that the required demolition reserve (the funding schedule and the procedure for determining the amounts to be funded are to be set forth by LACMTA in the Ground Lease) is adequate to demolish and remove the Development, and any subsequent improvements, from the Premises at the end of the Lease Term, and Developer will be required to immediately fund any shortfall in such reserves.

Renovation Fund:

Beginning on the sixth anniversary of the Completion Date and continuing annually each year thereafter, Developer shall deposit funds in an amount equal to one percent (1%) of gross revenues received by Developer during the preceding year into a renovation fund held by LACMTA or a third-party escrow holder (the **“Renovation Fund”**). Funds may be withdrawn by Developer from the Renovation Fund for the purpose of performing capital improvements to the Development; provided, however, unless LACMTA informs Developer in writing that LACMTA will elect to have Developer demolish the Development at the end of the Lease Term, Developer must expend all funds remaining in the Renovation Fund by performing capital improvements prior to the expiration of the Lease Term (including the Option Period, if exercised).

Encumbrances:

Subject to LACMTA’s reasonable approval, Developer may encumber its leasehold estate with mortgages, deeds of trust or other financing instruments. The Ground Lease will include mutually acceptable mortgagee protection provisions. In no event will LACMTA’s fee title or rent payable to LACMTA, or any portion thereof, be subordinated or subject to Developer’s financing or other claims or liens.

Assignment and Subletting: With limited permitted exceptions, to be set forth in the Ground Lease, Developer's right to assign the Ground Lease (a) prior to the Completion Date will be subject to LACMTA's approval at its sole and absolute discretion and (b) after the Completion Date will be subject to LACMTA's approval at its reasonable discretion, including LACMTA's satisfaction as to any proposed assignee's creditworthiness, experience and moral standing. LACMTA will provide any of Developer's retail subtenants, who have subleased space in excess of twenty-five hundred (2,500) square feet for a period of at least five (5) years, a non-disturbance agreement.

Other: Other customary provisions contained in recent LACMTA ground leases (including provisions setting forth the Retained Rights, transit proximity waivers and signage liability indemnities) will be included in the Ground Lease.

CERTAIN DEFINITIONS:

"CEQA" means the California Environment Quality Act, California Public Resources Code §§ 21000 *et seq.*

"CEQA Documents" means (a) all final and unappealable environmental impact reports certified or approved by the LACMTA and/or the City of Los Angeles (each an **"EIR"**), (b) all mitigated negative declarations, (c) all supplemental EIRs, and (d) all other documents or instruments as may be required under CEQA for the construction of the Development.

"Force Majeure Event" means (a) a strike or labor dispute; (b) inclement weather (which causes a suspension of work) in excess of the ten (10) year average for metropolitan Los Angeles during the month or months when work was suspended; (c) an earthquake or other natural disaster resulting in suspension of work, (d) inability to procure or general shortage of labor, equipment, materials, or supplies in the open market, or failure of transportation (but, in each case, not attributable to a mere increase in price or MBS's acts or failure to act), (e) acts of a public enemy, insurrections, riots, mob violence, sabotage, acts of terrorism, and malicious mischief, or (f) casualty (including earthquake) causing substantial damage to previously constructed portions of the Development.

"Governmental Approval" means any entitlement, license, permit, approval, declaration, certification, designation, or other ministerial or discretionary approval required from any Governmental Authority for the development, construction and operation of any portion of the Development, including any CEQA Document, development agreement, tract map, zone change, zoning variance, density bonus, or conditional use permit that may be required in connection with the Development.

"Governmental Authority" means any federal, state, county, municipal, and local governmental and quasi-governmental body or authority (excluding LACMTA) having or

exercising jurisdiction over the MBS, LACMTA, the Site or the Development.

“**Person**” means and includes an individual, partnership, firm, association, limited liability company, government agency, joint venture, corporation, or any other form of entity, private or public.

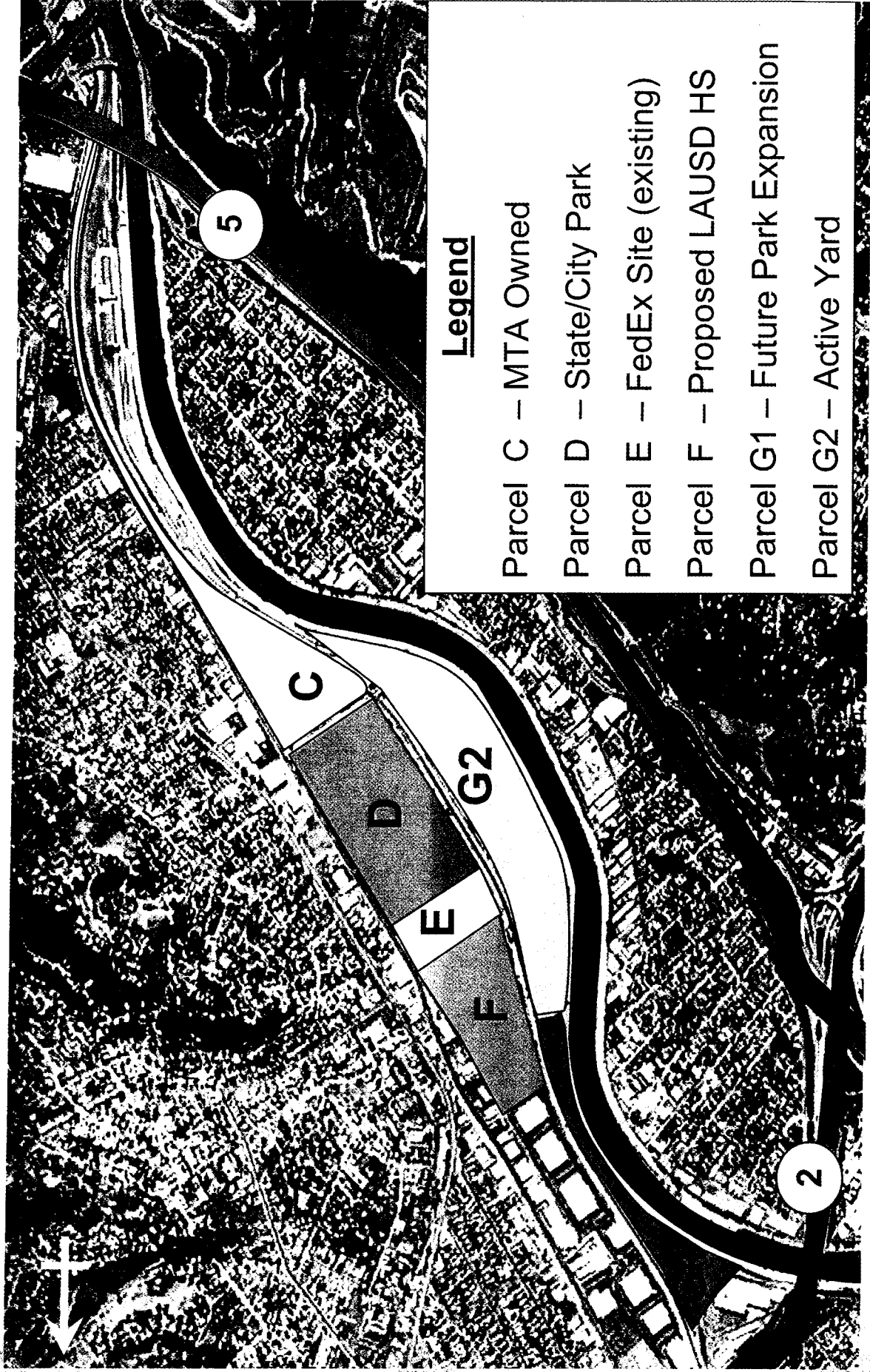
“**Unavoidable Delay**” means a delay beyond the control of MBS, and must satisfy each of the following requirements:

- (a) The delay would prevent or hinder the performance or satisfaction of a Closing Condition or any other obligation under the JDA by any reasonable Person similarly situated and shall not apply to a delay peculiar to MBS (such as the failure to order materials in a timely fashion).
- (b) The delay must arise out of:
 - (i) A Force Majeure Event;
 - (ii) Governmental restrictions or a delay in the issuance of any Governmental Approval that could not be reasonably anticipated (including without limitation any unusual or uncommon delay by the City of Los Angeles in processing or approving any application made by MBS in connection with the Development); provided, however, any delay in the issuance of a Governmental Approval pertaining to Development of a scope materially different than that described in the [Conceptual Plan] shall not constitute an Unavoidable Delay;
 - (iii) Delay in performance of any term, covenant, condition or obligation under the JDA as a result of a breach, default or delay of LACMTA under the JDA, whether in rendering approvals or otherwise; or
 - (iv) Any lawsuit, action or other proceeding by any Person (other than by or at the direction of MBS or any Affiliate of MBS) that is filed after the effective date of the JDA that challenges (1) any CEQA Document or other Governmental Approval or (2) any action taken by or the ability of MBS to take any action under or in connection with the JDA; provided, however, that any lawsuit, action or other proceeding pertaining to or arising out of a Governmental Approval pertaining to Development of a scope materially different than that described in the Conceptual Plan shall not constitute an Unavoidable Delay.
- (c) The delay is detailed in a written notice given by MBS to LACMTA within fifteen (15) days after MBS reasonably should have known of the event giving rise to the claim of delay, which notice shall, at a minimum, reasonably specify the (i) nature of the delay, (ii) the date the delay commenced and (if not ongoing) ended and (iii) the reason(s) such delay is an Unavoidable Delay.

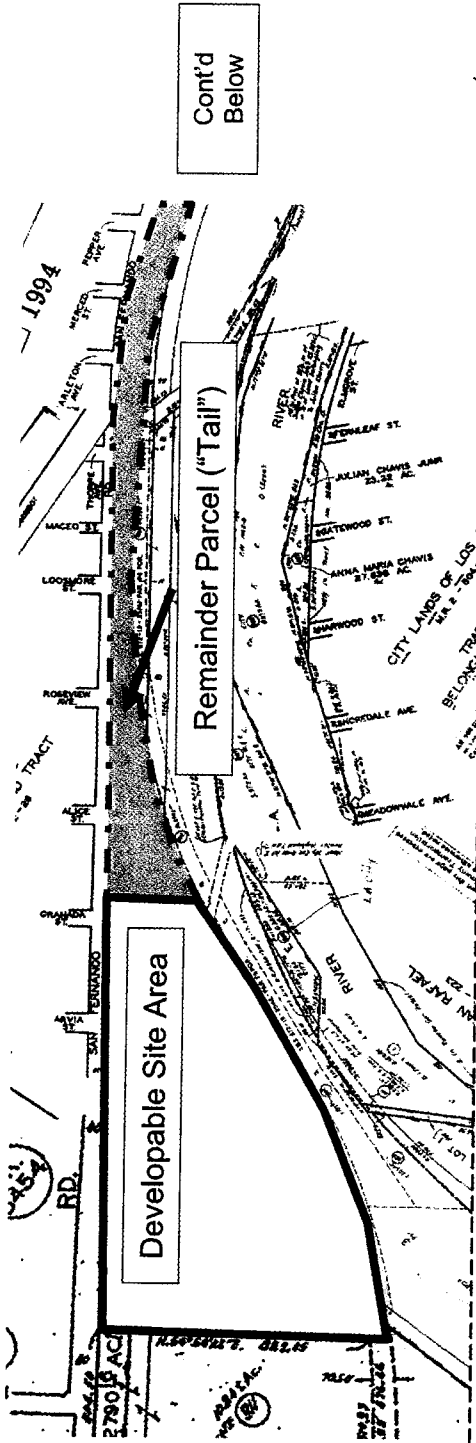
ATTACHMENT B

**Plats of Taylor Yard
Showing
the Site, the Sale Property, Premises A, Premises B and the Remainder Parcel**

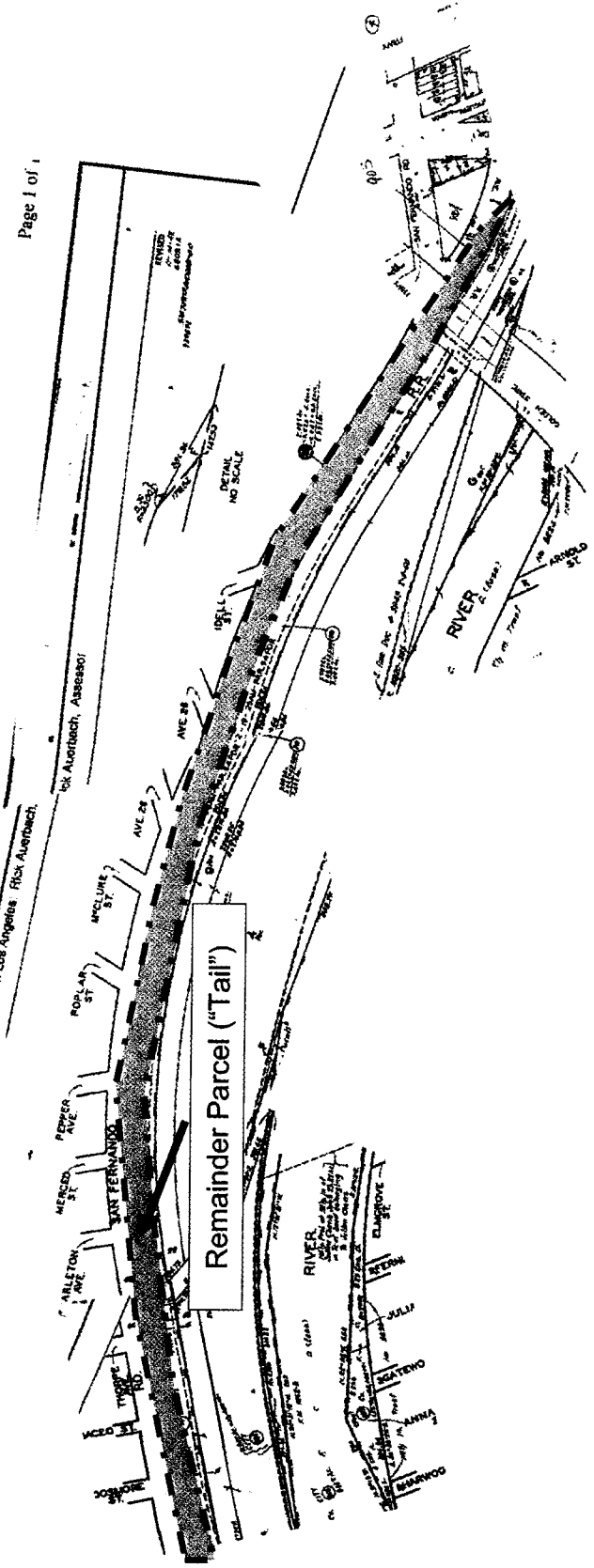
Taylor Yard Parcels



Taylor Yard Parcel C Developable Site & Remainder Parcel ("Tail")

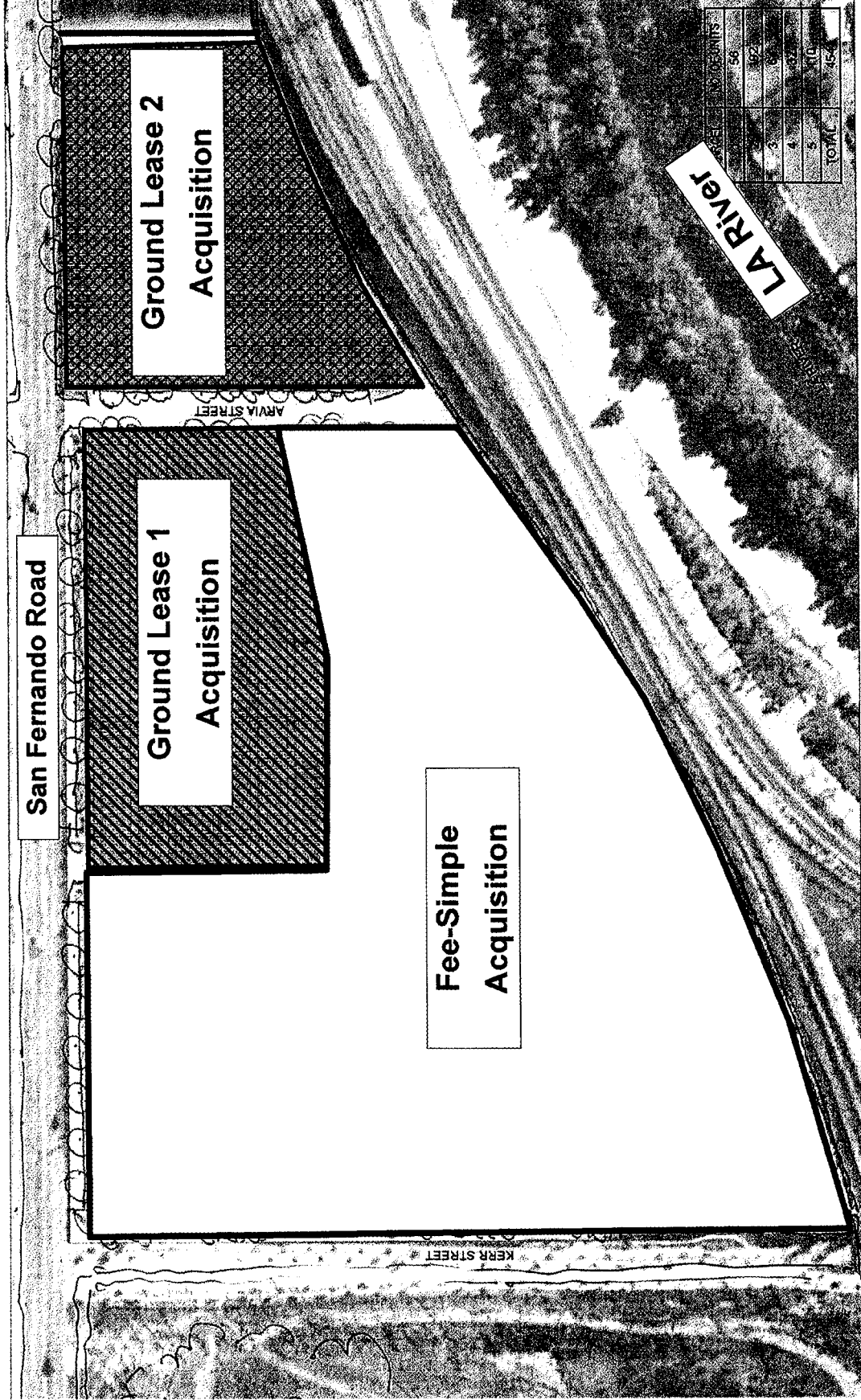


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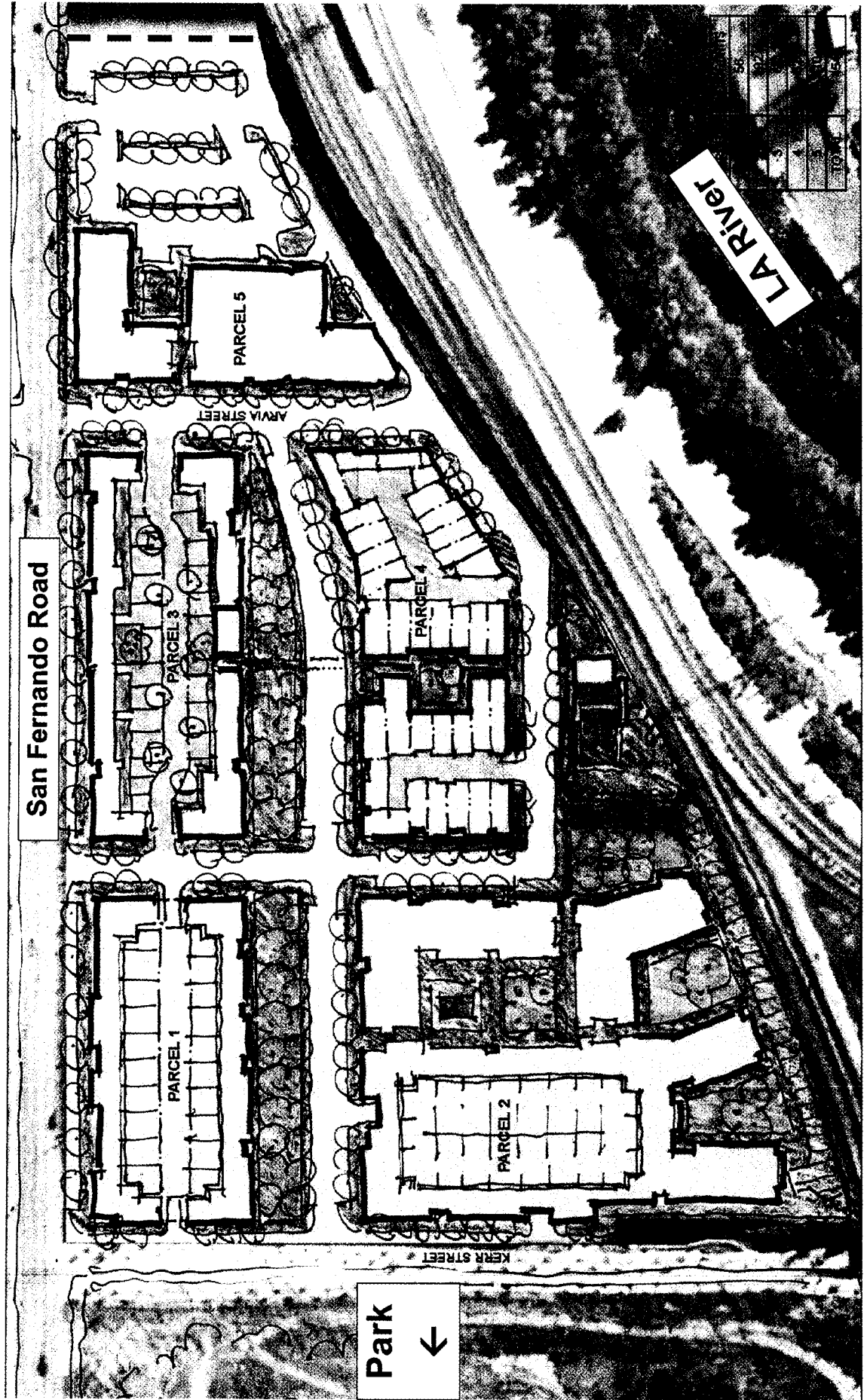
Taylor Yard Parcel C

Proposed Acquisition Plan

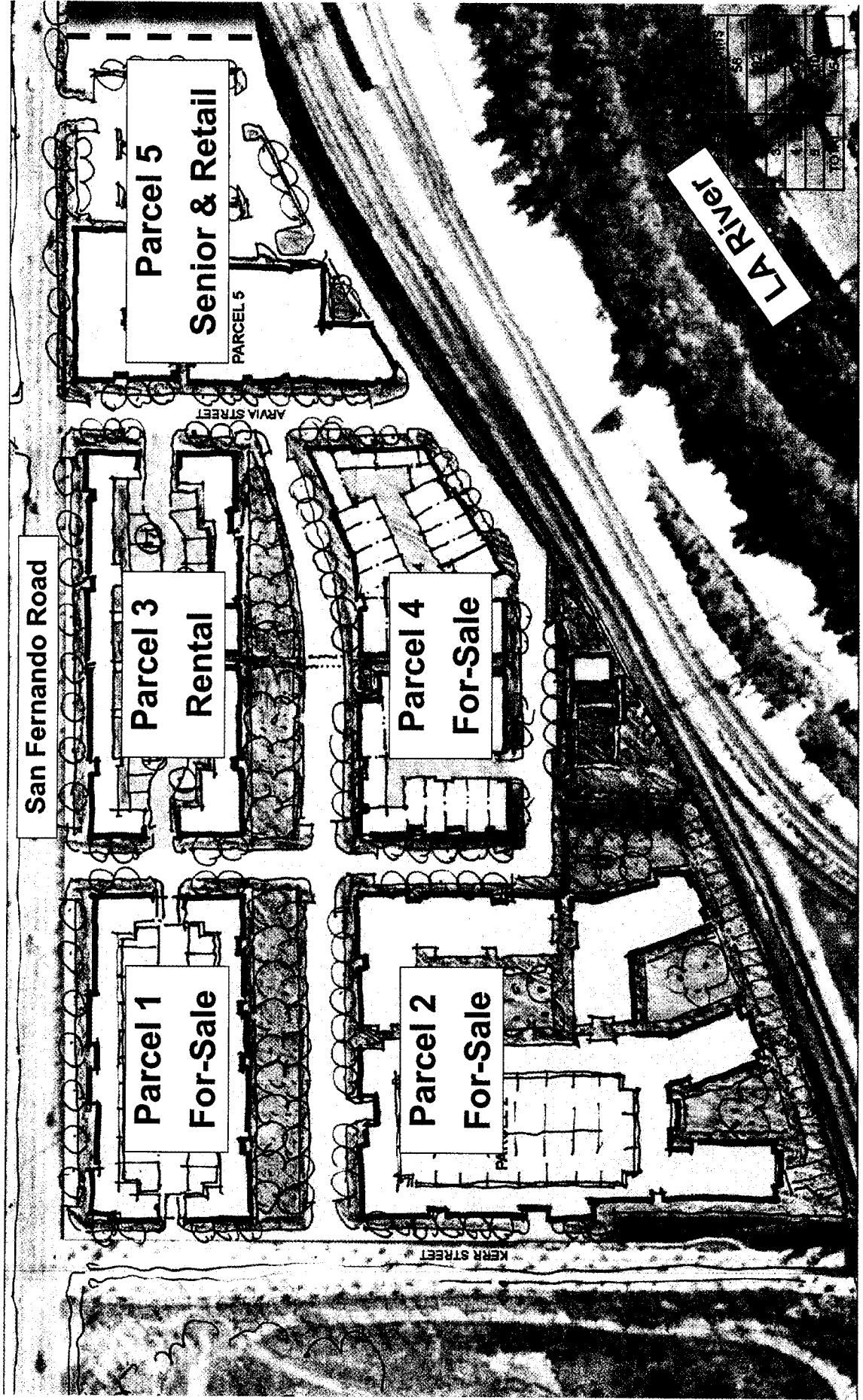


Conceptual Plan for the Proposed Development

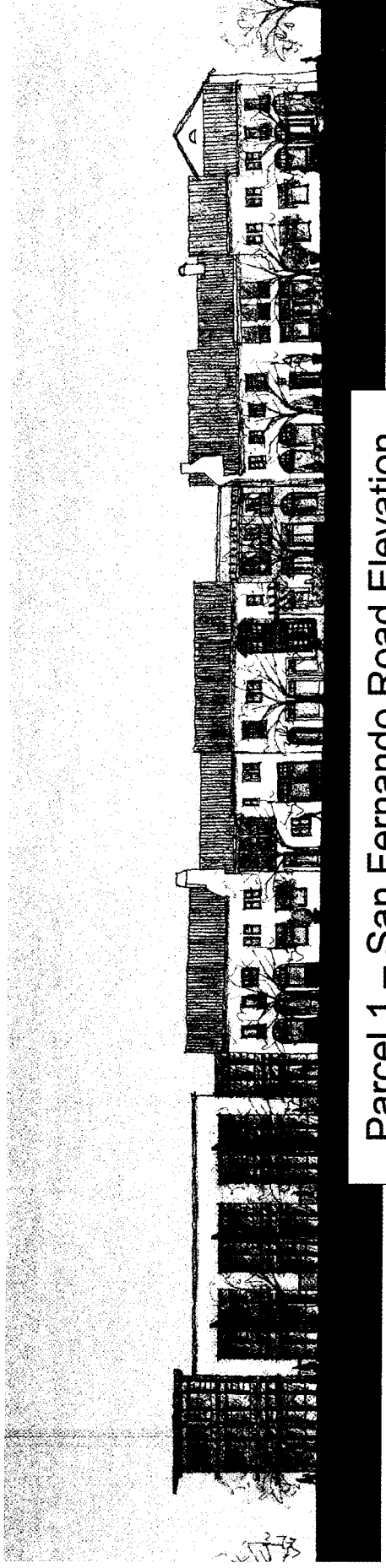
Taylor Yard Parcel C Proposed Site Plan



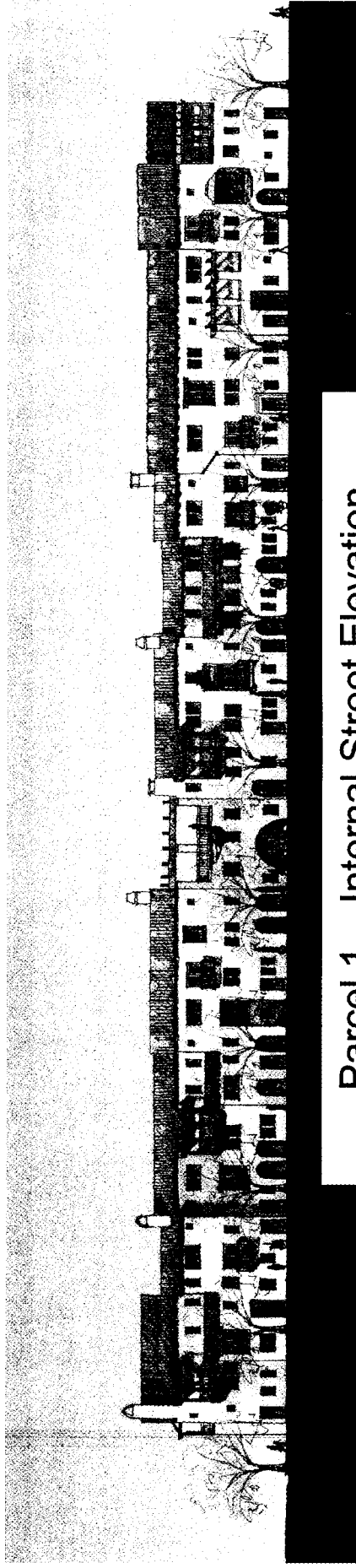
Taylor Yard Parcel C Proposed Site Plan



Taylor Yard Parcel C - Elevations

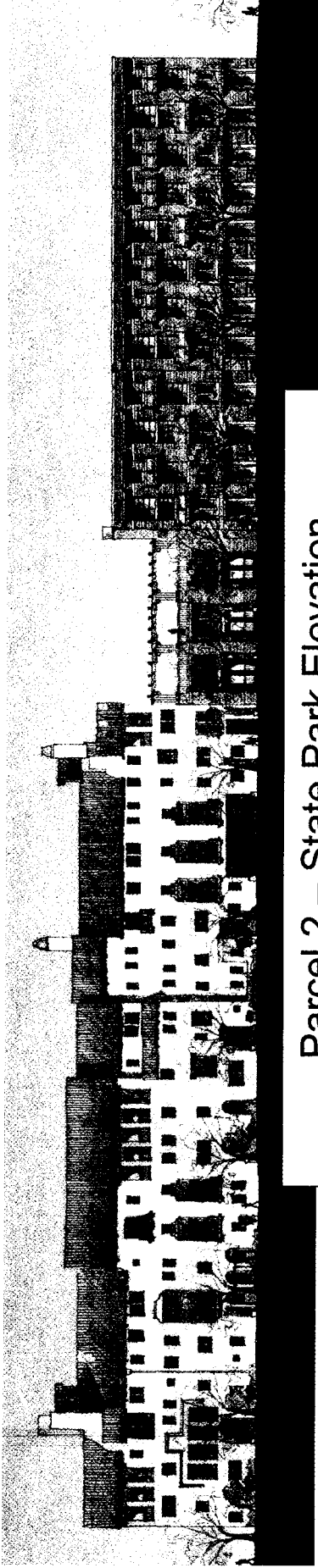


Parcel 1 – San Fernando Road Elevation

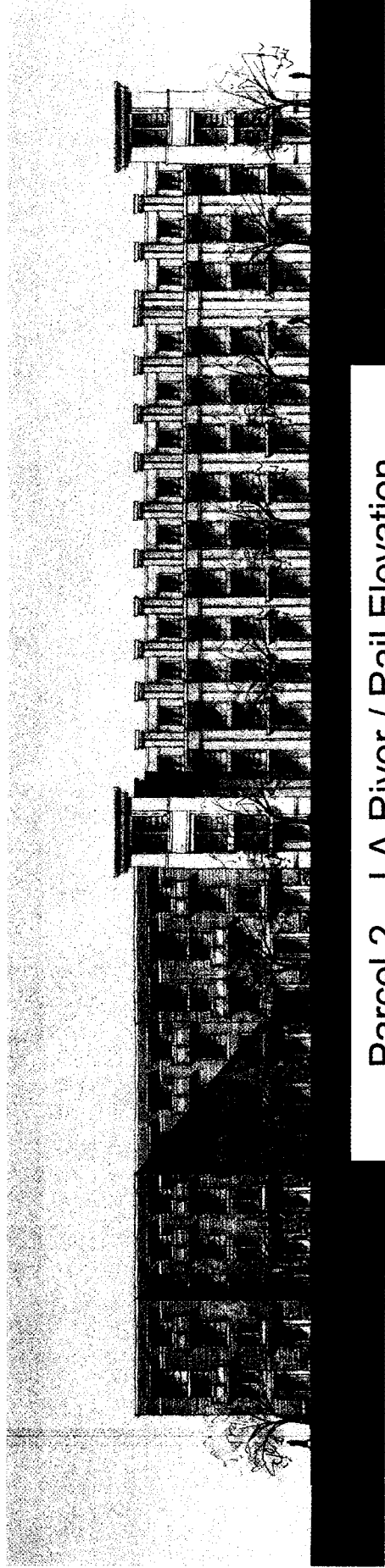


Parcel 1 – Internal Street Elevation

Taylor Yard Parcel C - Elevations

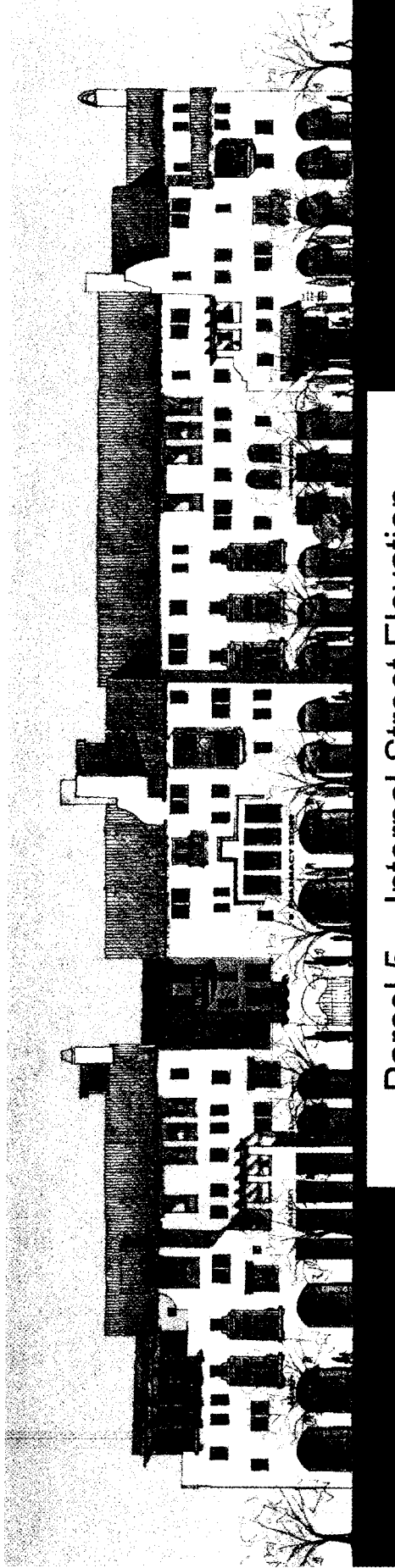


Parcel 2 – State Park Elevation

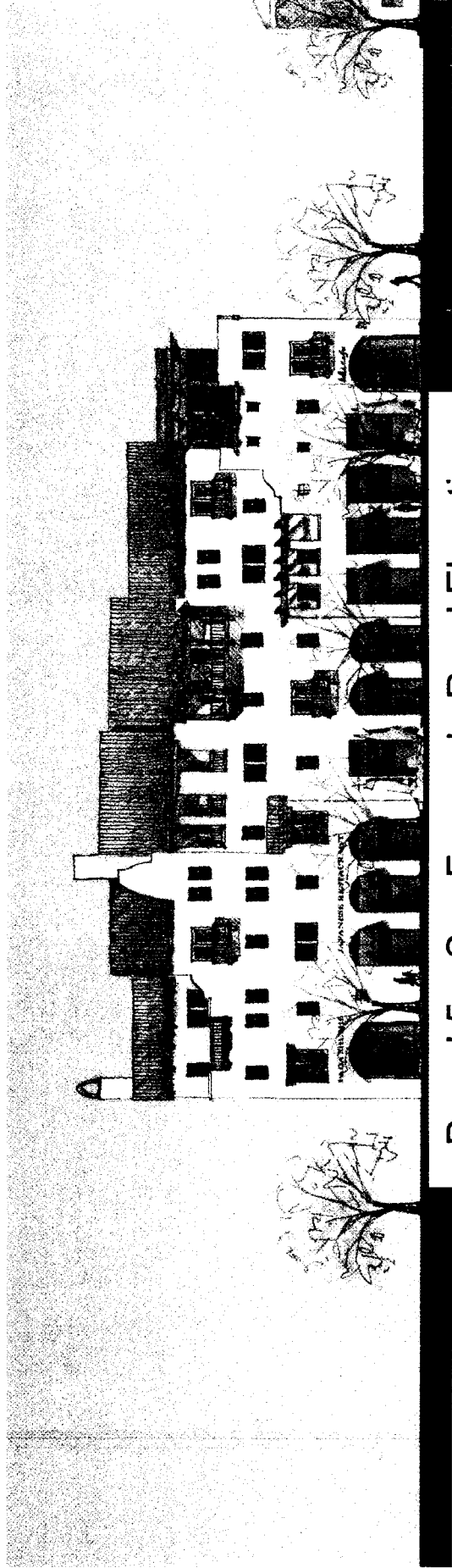


Parcel 2 – LA River / Rail Elevation

Taylor Yard Parcel C - Elevations



Parcel 5 – Internal Street Elevation



Parcel 5 – San Fernando Road Elevation