



Planning and Development Department
Land Use Planning Division

A D M I N I S T R A T I V E U S E P E R M I T

CITY OF BERKELEY ZONING ORDINANCE
Berkeley Municipal Code, Title 23

AUP #2014-0046

Property Address:

1313 NINTH STREET, SUITE 130

Permittee Name:

PIC WALKER

Use and/or Construction Permitted: To allow the creation of a 3,129 sq. ft., quick service restaurant with incidental beer and wine service and outdoor seating with hours of operation from 11:30 AM to 10 PM Sunday-Thursday & 11:30 AM to 11 PM Friday-Saturday, pursuant to:

- Section 23E.64.030 to establish a quick-serve food service establishment with more than 1,500 square feet of floor area;
- Section 23E.64.030 to establish outdoor seating; and
- Section 23E.64.030 to allow the incidental sales of beer and wine within a quick-serve restaurant.

FINDINGS, CONDITIONS AND APPROVED PLANS ATTACHED

Following the expiration of the mandatory appeal period set forth in Section 23B.28.040 of the Berkeley Municipal Code, with no timely appeal being filed, the Administrative Use Permit described herein has been duly granted by the Zoning Officer on September 3, 2014.

Attest: Carol Johnson
Carol Johnson, Land Use Planning Mgr.

September 3, 2014
Effective Date

ATTACHMENT 1

FINDINGS AND CONDITIONS

AUGUST 13, 2014

1313 NINTH STREET, SUITE 130

Administrative Use Permit #AUP2014-0046

CEQA FINDINGS

1. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq.) pursuant to Section 15303 of the CEQA Guidelines (“New construction or conversion of small structures”).

FINDINGS FOR APPROVAL

2. As required by Section 23B.28.050.A of the Zoning Ordinance, the 3,129 sq. ft., quick service restaurant with incidental beer and wine service and outdoor seating, with hours of operation from 11:30 AM to 10 PM Sunday-Thursday & 11:30 AM to 11 PM Friday-Saturday, under the circumstances of this particular case existing at the time at which the application is granted, will not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City because:
 - The use would provide a commercial activity that would improve the quality of this West Berkeley shopping area to serve both local and city-wide clientele. .
 - The use is compatible with the other nearby commercial uses.
 - The outdoor seating will add an amenity for clientele visiting the use who wish to dine outdoors and will create a connection between the use and pedestrians casually passing by.
 - The use is subject to the standard conditions for food service and incidental service for beer and wine to ensure that that quick service restaurant is a good neighbor.

STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS

1. Conditions Shall be Printed on Plans

The conditions of this Permit shall be printed on the first sheet of each plan set submitted for a building permit pursuant to this Use Permit, under the title 'Use Permit Conditions'. The second sheet may also be used if the first sheet is not of sufficient size to list all of the conditions. The sheet(s) containing the conditions shall be of the same size as those sheets containing the construction drawings; 8-1/2" by 11" sheets are not acceptable.

2. Applicant Responsible for Compliance with Conditions

The applicant shall ensure compliance with all of the following conditions, including submittal to the project planner of required approval signatures at the times specified. Failure to comply with any condition may result in construction being stopped, issuance of a citation, and/or modification or revocation of the Use Permit.

3. Uses Approved Deemed to Exclude Other Uses (BMC Section 23B.56.010)

- A. This Permit authorizes only those uses and activities actually proposed in the application and excludes other uses and activities.
- B. Except as expressly specified herein, this Permit terminates all other uses at the location subject to it.

4. Modification of Permits (BMC Section 23B.56.020)

No change in the use or structure for which this Permit is approved is permitted unless the Permit is modified by the Zoning Adjustments Board, in conformance with Section 23B.56.020.A.

5. Plans and Representations Become Conditions (BMC Section 23B.56.030)

Except as expressly specified herein, the site plan, floor plans, building elevations and any additional information or representations submitted by the applicant during the Staff review and public hearing process leading to the approval of this Permit, whether oral or written, which indicated the proposed structure or manner of operation are deemed conditions of approval.

6. Subject to all City and Other Regulations (BMC Section 23B.56.040)

The approved use and/or construction are subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies.

7. Exercised Permit for Use Survives Vacancy of Property (BMC Section 23B.56.080)

Once a Permit for a use is exercised and the use is established, that use is legally recognized, even if the property becomes vacant, except as set forth in Standard Condition #8 below.

- 8. Exercise and Lapse of Permits (BMC Section 23B.56.100)**
- A. A permit for the use of a building or a property is exercised when, if required, a valid City business license has been issued, and the permitted use has commenced on the property.
 - B. A permit for the construction of a building or structure is deemed exercised when a valid City building permit, if required, is issued, and construction has lawfully commenced.
 - C. A permit may be declared lapsed and of no further force and effect if it is not exercised within one year of its issuance, except that permits for construction or alteration of structures or buildings may not be declared lapsed if the permittee has (1) applied for a building permit or (2) made substantial good faith efforts to obtain a building permit and begin construction, even if a building permit has not been issued and/or construction has not begun.
- 9.** The applicant shall hold the City of Berkeley and its officers harmless in the event of any legal action related to the granting of this Permit, shall cooperate with the City in defense of such action, and shall indemnify the City for any award of damages or attorneys fees that may result.

PRIOR TO ISSUANCE OF OCCUPANCY PERMIT OR FINAL INSPECTION:

- 10.** Prior to issuance of occupancy permit or final inspection, all construction at the subject property shall substantially conform to the approved Use Permit drawings or to modifications approved by the Zoning Officer.
- 11.** All landscape, site and architectural improvements shall be completed per the attached approved drawings dated **AUGUST 7, 2014**.
- 12.** All exterior lighting shall be shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
- 13.** Noise and exterior lighting shall be controlled so as to prevent verified complaints from the surrounding neighborhood. This shall include noise created by employees working on the premises before or after patrons arrive.
- 14.** This permit is subject to review, imposition of additional conditions, or revocation if factual complaint is received by the Zoning Officer that the maintenance or operation of this establishment is violating any of these or other required conditions or is detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the neighborhood or is detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City.
- 15.** Changes to the building's facade, including doors or windows, site plans, landscaping, signage, and awnings are subject to Design Review and approval prior to issuance of a building permit.

FOOD SERVICE CONDITIONS:

(These requirements are in addition to any other requirements under the City's Building, Health or Fire Codes or by agencies such as the Alcoholic Beverage Control Department of the State of California. The applicant is responsible for contacting these and other departments and agencies to identify and secure all applicable permits and licenses).

16. The approved floor plan, including the number of seats, shall be followed and the operation shall be conducted as depicted on the approved floor plan. The maximum occupancy shall be as specified in the application unless otherwise required by applicable regulations.
17. The hours of operation shall be limited to: **7:00 AM to 11:00 Daily**. Hours of operation refer to arrival of the first patron and departure of the last patron. Hours of operation are subject to review and amendment to avoid detriment to the neighborhood or to achieve conformance with revised City standards or policies.
18. Cooking odors, noise, exterior lighting and operation of any parking area shall be controlled so as to prevent verified complaints from the surrounding neighborhood. This shall include noise created by employees working on the premises before or after patrons arrive.
19. Smoke and odor control equipment approved by the City Environmental Health Division and providing adequate protection to residential uses above and to the east of the restaurant shall be installed prior to issuance of an Occupancy Permit.
20. Any establishment selling beverages in cans or bottles that are subject to the State of California Container Deposit Law shall recycle such containers.
21. Garbage and trash containers that are suitably enclosed and screened from view shall be provided subject to approval of the Zoning Officer, the Health Department and, where applicable, the Design Review Planner. Any establishment selling beverages in cans or bottles that are subject to the State of California Container Deposit Law shall provide separate bins or cans for the placement of such cans or bottles to ensure recycling of such containers.
22. Containers used for the dispensing of prepared food shall identify the establishment. Polystyrene foam food packing is prohibited by Section 11.60.030 of the Berkeley Municipal Code.
23. The operator of the restaurant shall place a waste receptacle near the entry way and shall insure that garbage on the sidewalk in front of the establishment and within 50 feet thereof will be picked up periodically during each day, so that the sidewalk remains clean.
24. The applicant shall reimburse employees the maximum non-taxable cost of commuting to and from work on public transportation (e.g., monthly passes) if they so commute, and a notice informing employees of the availability of such subsidy shall be permanently displayed in the employee area.

25. The owner or operator of the establishment shall take reasonable measures to prevent disturbances by patrons in the immediate vicinity. The operator shall give surveillance to public areas near the establishment, keep such areas free of trash and litter, provide lighting, and otherwise attempt to prevent conduct that might disturb the peace and quiet of residences in the vicinity. Furthermore, the operator shall assume reasonable responsibility for ensuring that patrons do not block the entrance or interfere with pedestrian activity on the adjacent public sidewalk.

INCIDENTAL BEER AND WINE SERVICE CONDITIONS:

(These requirements are in addition to any other requirements under the City's Building, Health or Fire Codes or by agencies such as the Alcoholic Beverage Control Department of the State of California. The applicant is responsible for contacting these and other departments and agencies to identify and secure all applicable permits and licenses).

26. All employees selling and/or serving alcohol, or directly supervising such sales and/or service, shall complete the Licensee Education on Alcohol and Drugs (LEAD) program, or another equivalent program offered or certified by the California Department of Alcoholic Beverage Control within 6 months of employment at the establishment. Employees who have completed the course within the last five (5) years shall be exempt from this requirement.
27. Alcoholic beverage service shall be "incidental" to the primary food service use, as defined in Zoning Ordinance 23F.04.010. An incidental use shall not exceed twenty-five percent (25%) of the floor area of the primary use, and if it consists of the commercial sales of a different line of products or services than the primary use, such incidental use may not generate gross receipts in excess of thirty-three percent (33%) of the gross receipts generated by the primary use. In addition, the California Department of Alcohol Beverage Control (ABC) allows this alcohol use only as part of a "bona fide eating place" making "actual and substantial sales of meals," and stringently enforces this requirement.
28. The establishment shall comply with all applicable regulations of the California Department of Alcoholic Beverage Control.
29. Any establishment selling beverages in cans or bottles that are subject to the State of California Container Deposit Law shall recycle such containers.
30. A Berkeley Police Department Crime Prevention Through Environmental Design (CPTED) survey shall be completed prior to commencing alcohol service.
31. Employees shall not serve alcohol to patrons who appear to be inebriated or otherwise unable to behave in an orderly manner upon consuming alcohol.
32. Any operator of the licensed establishment shall not have had a prior licensed establishment that was the subject of verified complaints or violations regarding alcohol, public safety or nuisance statutes or regulations to be confirmed by the Zoning Officer prior to issuance or transfer of a business license at this location.
33. The applicant shall comply with ABC regulations for License Type 41, which requires that the food establishment operate as a bona fide eating place, make actual and substantial

sales of meals during normal meal hours, and that the establishment operate at least five days a week. In addition, the applicant shall request that the ABC place the following conditions on the ABC permit for this site, and this Use Permit shall only be operative for as long as these conditions are placed on the associated ABC license:

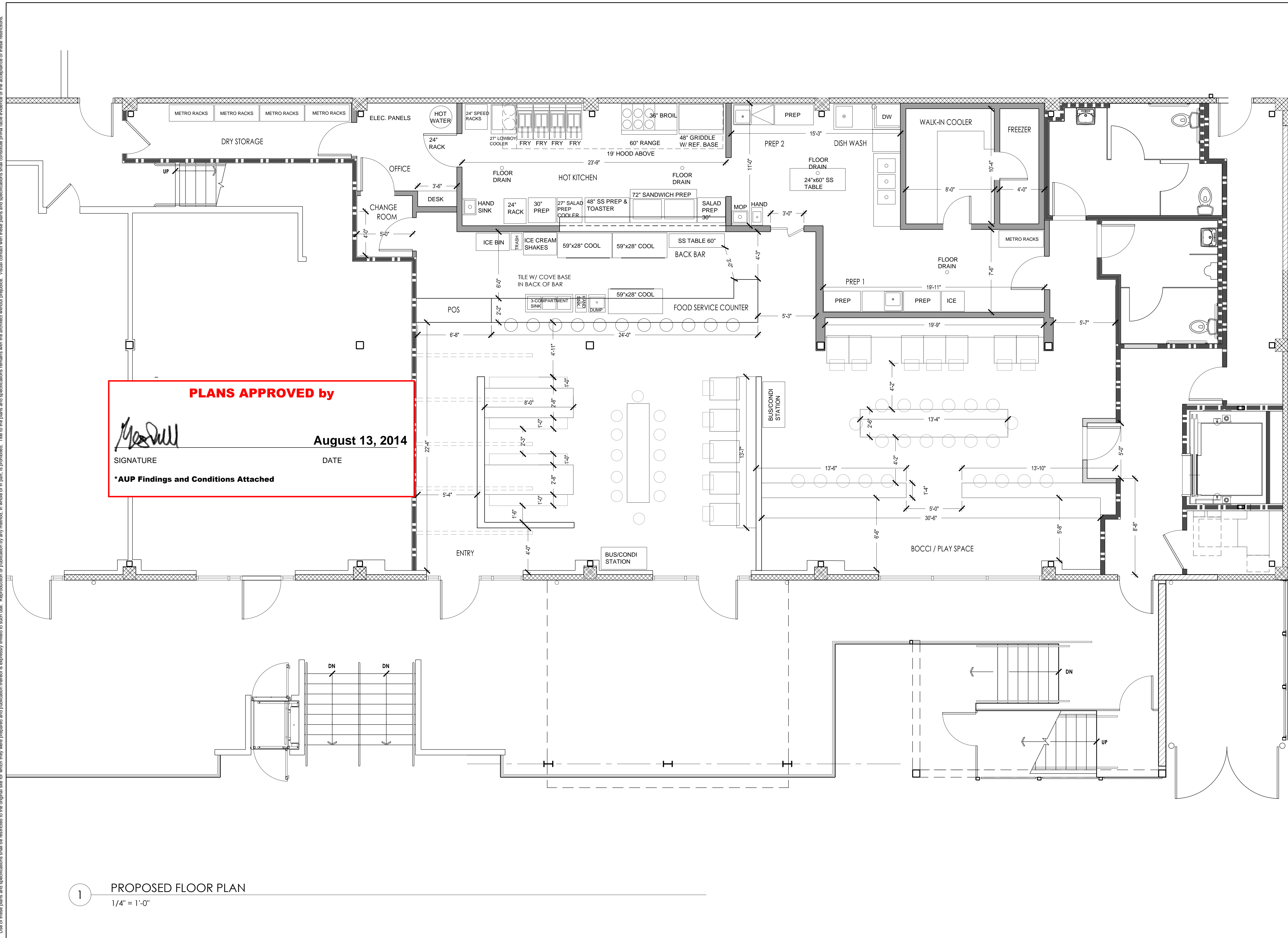
- A. The sale of alcoholic beverages for consumption off the premises is strictly prohibited;
- B. There shall be no bar or lounge area upon the licensed premises maintained for the sole purpose of sales, service or consumption of alcoholic beverages directly to patrons for consumption;
- C. During operating hours, 100% of the service area shall be designed and used for and must possess the necessary utensils, and condiment dispensers with which to serve meals to the public;
- D. There shall be no exterior advertising or sign of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs which are clearly visible to the exterior shall constitute a violation of this condition.

- 34. Fortified alcohol products (e.g., malt liquor), shall not be sold on the premises.
- 35. Neither alcohol-dispensing facilities nor sign(s) advertising alcoholic beverages shall be visible from the public right-of-way.
- 36. All alcohol served to patrons must be served in durable restaurant tableware – i.e. either cups or glasses. No alcohol may be distributed in its original bottle or can, or in any other potentially disposable container.
- 37. There shall be no service or consumption of alcohol on the public right-of-way.
- 38. No alcohol may be transported off-site from the establishment to any other establishment or to the public right-of-way.
- 39. The applicant shall establish cash handling procedures to reduce the likelihood of robberies and theft.
- 40. This Use Permit, including these and all other required conditions, shall be posted in conspicuous location, available for viewing by any interested party.



Prepared by: Greg Powell
For Eric Angstadt, Planning Director

Use of these plans and specifications shall be restricted to the original site for which they were prepared and publication thereof is expressly limited to such use. Reproduction or publication by any method, in whole or in part, is prohibited. Title to the plans and specifications remains with the architect without prejudice. Visual contact with these plans and specifications shall constitute prima facie evidence of the acceptance of these restrictions.



PLANS APPROVED by
Maxwell
SIGNATURE
August 13, 2014
DATE
***AUP Findings and Conditions Attached**

1 PROPOSED FLOOR PLAN
1/4" = 1'-0"

FARM BURGER RESTAURANT
GILMAN DISTRICT
1313 9TH STREET, SUITE 130
BERKELEY, CA 94710

DRAFT: NOT FOR CONSTRUCTION

ISSUED
REVISED
3.27.2014

FLOOR PLAN

1/16" = 1'-0"

A1.0