When Recorded, Mail to:

City Clerk
City of San Mateo
330 West 20th Avenue
San Mateo, California 94403-1388

DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF SAN MATEO
AND
TRANSWESTERN HINES SAN MATEO, L.P.
RELATIVE TO THE DEVELOPMENT KNOWN AS
400-450 CONCAR

THIS DEVELOPMENT AGREEMENT (this "**Agreement**") is made and entered into this 16 day of August 2010, by and between the **CITY OF SAN MATEO**, a political subdivision of the State of California (the "**City**"), and **TRANSWESTERN HINES SAN MATEO, L.P.**, a Delaware limited partnership ("**Developer**"), pursuant to the authority of sections 65864 through 65869.5 of the Government Code of the State of California (the "**Development Agreement Statutes**") and City Council Resolution No. 120 (1990) (the "**Development Agreement Resolution**").

RECITALS

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California enacted the Development Agreement Statutes, authorizing municipalities to enter into development agreements in connection with the development of real property within their jurisdiction with persons having a legal or equitable interest in such real property.

B. The purpose of the Development Agreement Statutes is to authorize municipalities, in their discretion, to establish certain development rights in real property for a period of years regardless of intervening changes in land use regulations.

C. As authorized by Government Code section 65865(c), the City has adopted the Development Agreement Resolution establishing the procedures and requirements for the consideration of development agreements within the City.

D. Developer owns fee title to that certain real property located at 450 Concar Drive (formerly known as 1830 South Delaware Street), San Mateo, California, and more particularly described in Exhibit A attached hereto (the "**East Property**") and 400 Concar Drive (formerly known as 470 Concar Drive), San Mateo, California, and more

DUPLICATE ORIGINAL

particularly described in Exhibit B attached hereto (the "**West Property**," and together with the East Property, the "**Property**").

E. The City and 1830 South Delaware, L.P., a California limited partnership ("**Original Developer**"), entered into that certain Development Agreement dated February 17, 2004, and recorded April 4, 2004, as Instrument No. 2004-062186 in the Official Records of San Mateo County (the "**Original Development Agreement**") in connection with the City's approval of Original Developer's planning applications for the construction of two new office buildings and related improvements on the Property totaling 98,150 square feet (the "**Original Project**").

F. On July 6, 2005, the City Council of the City (the "**City Council**") adopted the San Mateo Rail Corridor Transit-Oriented Development Plan (the "**Corridor Plan**"), a plan formulated with the express goal of pursuing transit-oriented development within the transportation corridor along the Caltrain right-of-way. The Corridor Plan permits greater densities and higher building heights than were permitted at the time the Original Development Agreement became effective.

G. On May 7, 2007, the City Council adopted an ordinance amending the City's zoning regulations by establishing a transit-oriented development district (the "**TOD District**") in which all uses must be consistent with the development standards, policies and guidelines specified in the Corridor Plan, and by rezoning those properties (including the Property) designated as Transit Oriented Development in the Corridor Plan.

H. Developer purchased the Property in 2008 and acquired Original Developer's rights, and assumed Original Developer's obligations, under the Original Development Agreement, which assignment and assumption was approved by the City pursuant to that certain consent dated June 16, 2008, and recorded June 20, 2008, as Instrument No. 2008-071775 in the original records of San Mateo County.

I. Developer desires to modify the Original Project to provide the transit-oriented development and high-density office use encouraged and permitted by the General Plan, the Corridor Plan and the TOD District, and to that end has filed Planning Application No. 09-009 with the City (the "**Planning Application**") to construct a new 190,440 square foot office building and related improvements ("**Building East**") on the East Property and a new 86,027 square foot office building and related improvements ("**Building West**") on the West Property. Building East and Building West are collectively referred to hereafter as the "**Project**."

J. Developer and Original Developer have developed or contributed to, or have committed on the terms and conditions set forth in this Agreement to develop or contribute to, significant public infrastructure improvements and other public benefits in excess of what Developer and Original Developer could otherwise be legally required to provide (the "**Public Benefits**"). Developer's Public Benefit obligations under this Agreement consist of the following, each as described in greater detail in Section 3.A below: (1) demolition of the existing "pork chop" pedestrian island, construction of a

new right turn lane and two new crosswalks, installation of new signal equipment and installation and maintenance of pedestrian landscaping at the intersection of South Delaware Street and Concar Drive, (2) construction and maintenance of safety and aesthetic improvements within the Caltrans rights-of-way between the Property and the adjacent Highway 92 on- and off-ramps, (3) construction and maintenance of landscaping and sidewalk improvements adjacent to the Property alongside Concar Drive and South Delaware Street, (4) contributions to the City totaling $100,000 to fund two preliminary engineering studies (one for the 16th Avenue channel and one for the 19th Avenue channel), and (5) a $93,400 contribution to the City to implement new bikeways. In addition, pursuant to the Original Development Agreement, Original Developer has completed the following Public Benefits: (X) construction of sidewalk and landscaping improvements alongside Concar Drive between the Hayward Park Caltrain station and Shell gas station and (Y) a $30,000 contribution to the City to study and form a neighborhood transportation demand management association.

K. In exchange for the Public Benefits, Developer desires this Agreement with the City to assure that Developer shall, at the time of application, be issued building permits and shall be entitled to proceed to construct and complete the Project and the Public Benefits at any time within the Term (as defined in Section 1.B below), subject only to the terms and conditions set forth in this Agreement. The City finds a substantial public benefit in the completion of the Public Benefits and the other benefits set forth in this Agreement.

L. The City has determined that the Project is a development for which a development agreement is appropriate. A development agreement will eliminate uncertainty in the City's land use planning for the Property, assure installation of necessary improvements and mitigation appropriate to the development of the Project, assure attainment of the maximum effective utilization of resources within the City at the least economic cost to its citizens, secure public improvements and other amenities that could not otherwise be obtained and otherwise achieve the goals and purposes for which the Development Agreement Resolution was enacted by the City.

M. The City has examined the environmental effects of the Project, the Public Benefits and this Agreement in that certain Negative Declaration prepared for the Planning Application pursuant to the California Environmental Quality Act ("**CEQA**"). On July 12, 2010, by Resolution No. 97 (2010), the City Council reviewed and adopted the Negative Declaration as adequate to assess the environmental effects of the Project, the Public Benefits and this Agreement. The terms and conditions of this Agreement are consistent with and within the scope of the Negative Declaration. Because no further discretionary actions by the City are needed in order for Developer to construct and complete the Project and the Public Benefits pursuant to the terms and conditions of this Agreement, no further environmental review or documentation will be required under CEQA. However, further environmental review and documentation may be required under CEQA in order for the City to approve future changes or additions to the Project or the Public Benefits.

N. After conducting duly noticed public hearings on June 8 and June 22, 2010, the Planning Commission of the City reviewed, considered and recommended approval of (1) the termination of the Original Development Agreement, (2) the execution of this Agreement, and (3) the Site Plan and Architectural Review permits for the Project and the Public Benefits and the Site Development permit for the Project.

O. After conducting a duly noticed public hearing on August 16, 2010, and after independent review and consideration, the City Council approved (1) by Ordinance No. _____ (the "**Enacting Ordinance**"), the termination of the Original Development Agreement and the execution of this Agreement, and (2) by Resolution No. 97 (2010), the Site Plan and Architectural Review permits for the Project and the Public Benefits and the Site Development permit for the Project. In accordance with section 7 of the Development Agreement Resolution, the City Council also found that the provisions of this Agreement are consistent with the City's General Plan, are compatible with the requirements of the City's zoning ordinance and provide substantial public benefits to persons residing or owning property outside the boundaries of the Project, beyond the exactions for public benefits required in the normal development review process under federal, state or local law.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth and the foregoing recitals, which are incorporated herein by reference and made a part of this Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City and Developer hereby agree as follows:

ARTICLE 1
GENERAL PROVISIONS

A. City and State Laws. This Agreement is subject to applicable law pertaining to development agreements, specifically the Development Agreement Resolution and the Development Agreement Statutes.

B. Term. The term of this Agreement ("**Term**") shall commence upon the Effective Date and shall expire as to each part of the Project and Property as follows: (1) as to Building East and the East Property, upon the sooner to occur of (a) eight years after the Effective Date or (b) the completion of Building East and the Public Benefits therefor (excluding Developer's maintenance obligations described in Section 3.A(1) below), as evidenced by the issuance of a certificate of occupancy or other final building approval for Building East and written confirmation from the City that such Public Benefits have been completed, which written confirmation shall not be unreasonably withheld or delayed, and (2) as to Building West and the West Property, upon the sooner to occur of (a) eight years after the Effective Date or (b) the completion of Building West and the Public Benefits therefor (excluding Developer's maintenance obligations described in Section 3.A(1) below), as evidenced by the issuance of a certificate of occupancy or other final building approval for Building West and written confirmation from the City that such Public Benefits have been completed, which written confirmation shall not be unreasonably withheld or delayed. All Site Plan and Architectural Review permits, Site

Development permits, use permits and other land use permits and approvals for the Project and the Public Benefits shall be effective and valid for the duration of the Term.

C. Development of Property. The City approves and consents to the development of the Property and to the construction of the Project at any time during the Term, but only on the condition that:

1. Developer complies with all conditions of approval of the Planning Application ("**Conditions of Approval**"); and

2. Developer complies with its obligations with respect to Public Benefits.

D. Vested Rights. Developer shall have the vested right to develop the Property, and construct the Project and the Public Benefits, in accordance with the Planning Application, the Conditions of Approval, the terms of this Agreement and the Existing City Laws (as defined in Section 3.B(2) below). Without limiting the foregoing, Developer shall have the right to apply for and receive separate building permits for Building East and Building West.

E. Police Powers. Except as otherwise provided in this Agreement, the City reserves its police powers unto itself.

ARTICLE 2
DEFINITIONS

A. "**Effective Date**" means the later of (1) the date the Enacting Ordinance takes effect pursuant to the City's ordinances and charter or (2) if the Enacting Ordinance is subject to a valid referendum proceeding pursuant to Elections Code §§ 3500 et seq., the date the Enacting Ordinance is upheld pursuant to such referendum proceeding.

B. "**Execution Date**" means the date specified in the preamble of this Agreement.

C. "**General Plan**" means the General Plan for the City, titled "General Plan", adopted by the City Council on January 13, 1997, and subsequently amended, as in effect on the Execution Date.

D. "**Mortgage**" means (1) any mortgage or deed of trust or other transaction in which the Property, or a portion thereof or a direct or indirect ownership or other interest therein, or any improvements thereon, is conveyed or pledged as security, or (2) a sale and leaseback arrangement in which the Property, or a portion thereof, or any improvements thereon, is sold and leased back concurrently therewith.

E. "**Mortgagee**" means any holder of a beneficial interest (or the owner and landlord in the case of any sale and leaseback arrangement) under a Mortgage.

F. **"Processing Fees"** means all application, processing and inspection fees imposed by a public entity that (1) are payable in connection with an application for a permit or approval, (2) apply generally to similar private projects or works within the City, and (3) cover only the estimated actual processing and inspection costs of such public entity in connection with such application.

ARTICLE 3
OBLIGATIONS OF DEVELOPER AND CITY

A. Obligations of Developer.

1. Public Benefits.

a. Developer shall, subject to the terms and conditions of this Agreement, complete the Public Benefits for Building East or Building West, as the case may be, within the time periods set forth below. With respect to the Public Benefits, the City agrees that it will cooperate with Developer and use reasonable best efforts to obtain any non-City governmental approvals. The City will be the applicant for any California Department of Transportation (**"Caltrans"**) encroachment permits and other approvals and shall use reasonable best efforts to apply for Caltrans approvals having a term of at least two years and to apply for any extensions to such approvals that may be necessary in order to allow Developer to construct the Public Benefits within the time periods set forth below. Developer shall be solely responsible for the preparation and submittal of all drawings, specifications and other materials required in connection with any such application, and shall pay all design, engineering and other costs and fees related thereto. In the event the Public Benefits for Building East or Building West must be modified or redesigned to obtain or satisfy any non-City approval, the City and Developer agree to make reasonable modifications provided the overall design intent is generally maintained and the costs of such Public Benefits are not substantially increased. The term **"complete"**, as used throughout this Agreement with respect to the Public Benefits, shall mean substantially and, if applicable, functionally complete to the reasonable satisfaction of the City's Public Works Director or his or her designee.

b. Building West. The Public Benefits for Building West are as follows:

i. West Property Neighborhood Safety and Aesthetic Improvements. Within the applicable time period set forth in this paragraph and subject to obtaining the requisite Caltrans approvals, Developer shall construct the **"West Property Neighborhood Safety and Aesthetic Improvements"** within the Caltrans right-of-way between the West Property and the adjacent Highway 92 on-ramp in accordance with the drawing and notes attached hereto as Exhibit D, in the area delineated on Exhibit D-West attached hereto. The City shall apply for all Caltrans permits and other approvals necessary for Developer to construct the West Property Neighborhood Safety and Aesthetic Improvements. Developer shall commence construction of the West Property Neighborhood Safety and Aesthetic Improvements within 18 months after the later to occur of (I) the date upon which Developer receives a building permit for Building West

and (II) the date upon which the City obtains such Caltrans approvals. If the City has not obtained such Caltrans approvals within 12 months after Developer receives a building permit for Building West, then the in-lieu contribution provisions set forth in Section 3.A(1)(e) below shall apply.

ii. Maintenance of West Property Neighborhood Safety and Aesthetic Improvements. Prior to Developer commencing construction of the West Property Neighborhood Safety and Aesthetic Improvements, Developer shall enter into an agreement with the City, in form and substance reasonably acceptable to both parties, and the City shall enter into an agreement with Caltrans, in form and substance reasonably acceptable to both parties, for the maintenance of Zone 1 by Developer (as indicated on Exhibit D and Exhibit D-West attached hereto) of the West Property Neighborhood Safety and Aesthetic Improvements. The maintenance agreement between Developer and the City shall provide that if Developer fails to maintain the West Property Neighborhood Safety and Aesthetic Improvements in accordance with the maintenance standards set forth therein, then the City may assume responsibility for such maintenance obligations and Developer shall reimburse the City for all out-of-pocket costs incurred by the City directly in connection therewith.

iii. West Property Landscaping and Sidewalk Improvements. Within 18 months after Developer receives a building permit for Building West, Developer shall commence construction of landscaping and sidewalk improvements adjacent to the West Property alongside Concar Drive in accordance with the drawing and notes attached hereto as Exhibit E-West (the **"West Property Landscaping and Sidewalk Improvements"**). Developer shall provide to the City a commercially reasonable, two-year warranty that warrants the plants comprising a portion of the West Property Landscaping and Sidewalk Improvements to be in healthy condition when installed.

iv. Maintenance of West Property Landscaping and Sidewalk Improvements. Prior to Developer commencing construction of the West Property Landscaping and Sidewalk Improvements, Developer shall enter into an agreement with the City, in form and substance reasonably acceptable to both parties, for the maintenance by Developer of the West Property Landscaping and Sidewalk Improvements in the locations noted on Exhibit E-West attached hereto.

v. West Property Bikeway Improvement Contribution. Within ten business days after Developer receives a building permit for Building West, Developer shall contribute $45,000 to the City to be applied toward the implementation of new bikeways in the vicinity of the Project consistent with the City's adopted bicycle master plan.

vi. West Property Preliminary Engineering Study Contributions. Developer shall contribute $30,000 in the aggregate to the City pursuant to Section 3.A(1)(d) below.

c. Building East. The Public Benefits for Building East are as follows:

i. East Property Neighborhood Safety and Aesthetic Improvements. Within the applicable time period set forth in this paragraph and subject to obtaining the requisite Caltrans approvals, Developer shall construct the "**East Property Neighborhood Safety and Aesthetic Improvements**" within the Caltrans rights-of-way between the East Property and the adjacent Highway 92 off-ramp, and between such off-ramp and the Highway 92 on-ramp, in accordance with the drawing and notes attached hereto as Exhibit D, in the area delineated on Exhibit D-East attached hereto. The City shall apply for all Caltrans permits and other approvals necessary for Developer to construct the East Property Neighborhood Safety and Aesthetic Improvements. Developer shall commence construction of the East Property Neighborhood Safety and Aesthetic Improvements within 18 months after the later to occur of (I) the date upon which Developer receives a building permit for Building East and (II) the date upon which the City obtains such Caltrans approvals. If the City has not obtained such Caltrans approvals within 12 months after Developer receives a building permit for Building East, then the in-lieu contribution provisions set forth in Section 3.A(1)(e) below shall apply.

ii. Maintenance of East Property Neighborhood Safety and Aesthetic Improvements. Prior to Developer commencing construction of the East Property Neighborhood Safety and Aesthetic Improvements, Developer shall enter into an agreement with the City, in form and substance reasonably acceptable to both parties, and the City shall enter into an agreement with Caltrans, in form and substance reasonably acceptable to both parties, for the maintenance of Zone 1 (as indicated on Exhibit D and Exhibit D-East attached hereto) of the East Property Neighborhood Safety and Aesthetic Improvements by Developer. The maintenance agreement between Developer and the City shall provide that if Developer fails to maintain the East Property Neighborhood Safety and Aesthetic Improvements in accordance with the maintenance standards set forth therein, then the City may assume responsibility for such maintenance obligations and Developer shall reimburse the City for all out-of-pocket costs incurred by the City directly in connection therewith.

iii. East Property Landscaping and Sidewalk Improvements. Within the applicable time period set forth in this paragraph and subject to obtaining the requisite Caltrans approvals, Developer shall construct landscaping and sidewalk improvements adjacent to the East Property alongside South Delaware Street and Concar Drive in accordance with the drawing and notes attached hereto as Exhibit E-East (the "**East Property Landscaping and Sidewalk Improvements**"). The City shall apply for all Caltrans permits and other approvals necessary for Developer to construct the East Property Landscaping and Sidewalk Improvements. Developer shall commence construction of the East Property Landscaping and Sidewalk Improvements within 18 months after the later to occur of (I) the date upon which Developer receives a building permit for Building East and (II) the date upon which the City obtains such Caltrans approvals. If the City has not obtained such Caltrans approvals within 12 months after Developer receives a building permit for Building East, then Developer shall commence

construction of that portion of the East Property Landscaping and Sidewalk Improvements for which Caltrans approvals are not required within 18 months after such 12-month period has elapsed. Developer shall provide to the City a commercially reasonable, two-year warranty that warrants the plants comprising a portion of the East Property Landscaping and Sidewalk Improvements to be in healthy condition when installed.

iv. Maintenance of East Property Landscaping and Sidewalk Improvements. Prior to Developer commencing construction of the East Property Landscaping and Sidewalk Improvements, Developer shall enter into an agreement with the City, in form and substance reasonably acceptable to both parties, and, if applicable, the City shall enter into an agreement with Caltrans, in form and substance reasonably acceptable to both parties, for the maintenance of the East Property Landscaping and Sidewalk Improvements in the locations noted on Exhibit E-East attached hereto by Developer.

v. East Property Bikeway Improvement Contribution. Within ten business days after Developer receives a building permit for Building East, Developer shall contribute $48,400 to the City to be applied toward the implementation of new bikeways in the vicinity of the Project consistent with the City's adopted bicycle master plan.

vi. East Property Preliminary Engineering Study Contributions. Developer shall contribute $70,000 in the aggregate to the City pursuant to Section 3.A(1)(d) below.

vii. Pedestrian Safety Project. Within the applicable time period set forth in this paragraph and subject to obtaining the requisite Caltrans approvals, Developer shall (I) demolish the existing "pork chop" pedestrian island located at the southwest corner of the intersection of South Delaware Street and Concar Drive, (II) construct a new right turn lane and two new crosswalks at such intersection and (III) install new signal equipment and pedestrian landscaping at such intersection (collectively, the **"Pedestrian Safety Project"**), all in accordance with the drawing and notes attached hereto as Exhibit F. The City shall apply for a Caltrans encroachment permit and all other Caltrans approvals necessary for Developer to complete the Pedestrian Safety Project. Developer shall commence construction of the Pedestrian Safety Project within 18 months after the later to occur of (I) the date upon which Developer receives a building permit for Building East and (II) the date upon which the City obtains such Caltrans approvals. If the City has not obtained such Caltrans approvals within 12 months after Developer receives a building permit for Building East, then the in-lieu contribution provisions set forth in Section 3.A(1)(e) below shall apply. If, pursuant to said Section 3.A(1)(e), Developer elects to contribute the in-lieu contribution for the Pedestrian Safety Project, then the City itself may complete, or allow to be completed, the Pedestrian Safety Project provided that it is completed in accordance with the drawing and notes attached hereto as Exhibit F. The foregoing condition shall survive the expiration of this Agreement. The City acknowledges that the Pedestrian Safety

Project, if constructed, will benefit other pending and future development projects in the vicinity of the Project. Accordingly, the City agrees to use reasonable best efforts to condition its land use approvals of such other projects on prompt payment to the City of their fair share of the estimated costs to complete the Pedestrian Safety Project, which payments shall be applied by the City to promptly reimburse Developer for such costs as and when they are incurred.

viii. Maintenance of Pedestrian Safety Project. Prior to Developer commencing installation of the new pedestrian landscaping component of the Pedestrian Safety Project, Developer and the City shall enter into an agreement, in form and substance reasonably acceptable to both parties, and the City and Caltrans shall enter into an agreement, in form and substance reasonably acceptable to both parties, for the maintenance of such landscaping by Developer.

d. Preliminary Engineering Studies. Developer shall contribute $100,000 in the aggregate ($30,000 for Building West and $70,000 for Building East) to the City to be applied toward the funding requirements for two preliminary engineering studies, one for the 16th Avenue channel and one for the 19th Avenue channel (the "**Preliminary Engineering Studies**"). Portions of such contribution shall be made *pro rata* (*i.e.*, 30% for Building West and 70% for Building East) from time to time as and when, and in such amounts as, the City incurs third-party, out-of-pocket costs directly in connection with the Preliminary Engineering Studies; provided, however, that Developer shall not be required to so contribute more than $50,000 in the aggregate ($15,000 for Building West and $35,000 for Building East) during the first year after Developer receives the first Contribution Notice (as hereinafter defined); and provided, further, that Developer shall not be required to so contribute more than $50,000 in the aggregate ($15,000 for Building West and $35,000 for Building East) during the second year after Developer receives the first Contribution Notice. Subject to the foregoing limitations, Developer shall make each such contribution within 30 days after Developer receives written notice (each, a "**Contribution Notice**") from the City of such incurred costs (which costs shall exclude those for which a contribution was previously made by Developer pursuant to this Section 3.A(1)(d), and which notice shall be accompanied by evidence of such costs reasonably satisfactory to Developer, including copies of all related invoices, statements of services or similar documentation). If the City has incurred less than $100,000 of such costs in the aggregate by the end of the two-year period following Developer's receipt of the first Contribution Notice, the City shall so notify Developer in writing, and Developer shall, within 30 days after receiving such notice, contribute the difference (30% thereof for Building West and 70% thereof for Building East). Notwithstanding the foregoing, if the City at any time prior to delivering the first Contribution Notice determines that the Preliminary Engineering Studies are unnecessary or undesirable, the City may elect to require Developer to contribute $100,000 ($30,000 for Building West and $70,000 for Building East) to the City to be applied toward the implementation of new bikeways in the vicinity of the Project consistent with the City's adopted bicycle master plan, which contribution shall be in lieu and satisfaction of Developer's obligation to contribute $100,000 toward the funding requirements for the Preliminary Engineering Studies and shall be made within ten business days after Developer receives a building permit for

Building West (with respect to such $30,000 in-lieu contribution for Building West) or ten business days after Developer receives a building permit for Building East (with respect to such $70,000 in-lieu contribution for Building East).

e. Significant Delay in Obtaining Caltrans Permits. If the City has not obtained the Caltrans permits and other approvals necessary for Developer to construct the West Property Neighborhood Safety and Aesthetic Improvements or the East Property Neighborhood Safety and Aesthetic Improvements, as the case may be, within 12 months after Developer receives a building permit for Building West or Building East, as applicable, then Developer or the City may, at any time thereafter with at least 90 days' prior written notice to the other party, elect to contribute (or to require Developer to contribute, if the City is the electing party) the applicable amount below to the City in lieu and satisfaction of Developer's obligation to construct such Public Benefit. If the City has not obtained the Caltrans permits and other approvals necessary for Developer to construct the Pedestrian Safety Project within 12 months after Developer receives a building permit for Building East, then Developer (in its sole and absolute discretion) may, at any time thereafter with at least 90 days' prior written notice to the City, elect to contribute the applicable amount below to the City in lieu and satisfaction of Developer's obligation to construct the Pedestrian Safety Project. If the City has not obtained the Caltrans approvals for any such Public Benefit within 36 months after Developer receives a building permit for Building West or Building East, as applicable, then the applicable in-lieu contribution for such Public Benefit will become mandatory and shall be made within ten business days after such 36-month period has elapsed. Any such in-lieu contribution for the West Property Neighborhood Safety and Aesthetic Improvements or the East Property Neighborhood Safety and Aesthetic Improvements shall be applied toward the implementation of new bikeways in the vicinity of the Project consistent with the City's adopted bicycle master plan. Any such in-lieu contribution for the Pedestrian Safety Project shall be applied, at the City's election (in its sole and absolute discretion), toward the future completion of the Pedestrian Safety Project or the implementation of new bikeways in the vicinity of the Project consistent with the City's adopted bicycle master plan. The foregoing conditions shall survive the expiration of this Agreement.

i. West Property Neighborhood Safety and Aesthetic Improvements: $95,000.

ii. East Property Neighborhood Safety and Aesthetic Improvements: $145,000.

iii. Pedestrian Safety Project: $116,600.

f. Contributions at End of Term. If Developer has not received a building permit for Building East or Building West, as the case may be, by the end of the Term, then Developer shall contribute the applicable amount below to the City within ten business days after the end of the Term. Such contribution shall be applied toward the implementation of new bikeways in the vicinity of the Project consistent with the City's

adopted bicycle master plan. Developer's obligation to make such contribution shall survive the expiration of this Agreement.

i. Building West: $140,000.

ii. Building East: $310,000.

2. Phasing. Developer shall have the right to develop Building East and Building West in such order and at such times as Developer deems appropriate in its sole and absolute discretion, but only on the condition that (a) Developer complies with all Conditions of Approval for such portion of the Project and (b) Developer complies with its obligations with respect to the Public Benefits applicable to such portion of the Project.

3. Development Not Required. Notwithstanding anything to the contrary contained herein, Developer shall not be obligated to develop the Project, and shall be entitled to make repairs, improvements and renovations to the existing structures, landscaping and infrastructure on the Property pending demolition and construction of the Project provided any required permits and approvals are obtained from the City.

B. Obligations of the City.

1. Development Plan Shall Not Be Diminished by the City. The City agrees that during the Term, the timing, size, scope and Conditions of Approval of the Project shall not be affected, modified, delayed or diminished despite any increased burden of pending or future developments on public facilities, including, without limitation, roads, water systems, roadways, intersections, sanitary sewers, storm sewers, utilities, traffic signals, curb gutters, sidewalks, parks, amenities, recreation areas, landscaping, schools, landfill and other off-site improvements except for requirements imposed by State or Federal law, and that no further CEQA compliance will be required of the Project as it is described in the Planning Application.

2. City Laws. Except as provided herein, the City's General Plan, ordinances, resolutions, codes, rules, regulations and official policies governing the permitted uses of land, density and intensity of use, maximum height, bulk, size, design, location and construction standards and specifications applicable to this Agreement, the Project, the Property, the Public Benefits and the property on which the Public Benefits will be constructed (collectively, the "**City Laws**") shall be only those City Laws in effect as of the Execution Date, without regard to any amendments or modifications thereto that become effective after the Execution Date (the "**Existing City Laws**"). The City acknowledges and agrees that under the Existing City Laws, Developer shall be entitled to build and occupy the Project on the Property. If Developer applies for changes to the Existing City Laws during the Term, the City agrees that it will process such applications pursuant to State law and the San Mateo Municipal Code.

3. Recording. Pursuant to Government Code section 65868.5, within ten days after this Agreement is approved and executed by the parties hereto, the City shall submit a complete original of the Agreement to the San Mateo County Recorder to be recorded and shall provide Developer with a certified copy of such recordation.

ARTICLE 4
DEVELOPMENT OF PROPERTY

A. Applicable Future Laws and Regulations. Notwithstanding Section 3.B(2) above, the City may apply the following new City Laws to this Agreement, the Project, the Property, the Public Benefits and the property on which the Public Benefits will be constructed:

1. New City Laws that (a) are not inconsistent with and do not conflict with the Existing City Laws, the Planning Application or the Conditions of Approval, (b) do not diminish any of Developer's rights granted in this Agreement or increase any of Developer's obligations with respect to the Project and (c) are not inconsistent with and do not conflict with any of the terms or conditions of this Agreement;

2. New City Laws that are specifically mandated and required by changes in State or Federal laws and regulations; and

3. New City Laws that are applicable to the following and are in effect at the time Developer submits an application for a building permit for the Project:

a. Procedural requirements for building and occupancy permit application submittal and issuance;

b. Construction standards pursuant to all Uniform Building Codes incorporated by the San Mateo Municipal Code;

c. Engineering specifications for construction of any public improvements such as curbs, gutters and sidewalks;

d. Building security requirements adopted pursuant to Title 23 of the San Mateo Municipal Code;

e. Any requirements applicable upon issuance of a building permit for which the City acts as an administering agent for another governing agency; and

f. Any Processing Fees.

B. Moratoria. In the event any ordinance, resolution, general plan, specific plan or other measure is enacted, whether by action of the City, by initiative, referendum or otherwise, which relates to the timing of development, the size or scope of all or any part of the Project, or the conditions, mitigation measures, exactions or impact fees to be

imposed on all or any part of the Project, the City agrees that such ordinance, resolution, general plan, specific plan or other measure shall not apply to the Project, the Property, the Public Benefits, the property on which the Public Benefits will be constructed or this Agreement. Without limiting the foregoing or Sections 3.B(2) and 4.A above, the City agrees that no moratorium or other limitation (whether relating to the timing or sequencing of the development, or the size, scope, conditions or construction, of all or any part of the Project) affecting building permits or other entitlements to use which are approved or to be approved, issued or granted within the City, or portions of the City, shall apply to the Project, the Property, the Public Benefits, the property on which the Public Benefits will be constructed or this Agreement, unless such moratorium or other limitation has been adopted by the City as an emergency ordinance on the basis of its finding that such action is a health or safety necessity. Developer reserves the right to challenge any such limitation in a court of law should it become necessary to protect or enforce the provisions and intent of this Agreement.

C. Commercial Linkage Fee. The City may, in the future, implement a new development impact fee (the "**Commercial Linkage Fee**") that would be imposed on new commercial development throughout the City to offset the impacts of such development on affordable housing supply. In the event that the City enacts the Commercial Linkage Fee by an ordinance that becomes effective (1) prior to the date upon which Developer receives a building permit for Building West, with respect to Building West, or (2) prior to the date upon which Developer receives a building permit for Building East, with respect to Building East, and in either case the Commercial Linkage Fee would apply to such portion of the Project but for the restrictions on further Exactions set forth in Section 4.D below, then Developer shall pay the Commercial Linkage Fee with respect to such portion of the Project as a condition to receiving a building permit therefor; provided, however, that such fee shall be paid at a rate equal to one dollar per square foot of floor area of such portion of the Project, regardless of the rate at which the Commercial Linkage Fee, as enacted, would otherwise be calculated.

D. No Further Exactions. Except as expressly provided in Sections 4.A and 4.C above and the Conditions of Approval, Developer shall have no obligation to participate in, pay, contribute, dedicate, provide, complete or satisfy any development impact fees or other monetary or non-monetary exactions, conditions or requirements (collectively, "**Exactions**") imposed by the City after the Execution Date in connection with the construction and completion of the Project and the Public Benefits. Notwithstanding Section 3.B(2) above, this provision will not preclude City-wide increases or decreases in those development impact fees, which fees are in existence on the Execution Date and set forth on Schedule 1 attached hereto; provided, however, that any such increases shall apply generally to similar private projects or works within the City. The Exactions applicable to the Project and the Public Benefits as provided in this Agreement and the Conditions of Approval shall not be modified or renegotiated by the City as a result of any amendment to the Planning Application or this Agreement that does not increase the density or intensity of development.

ARTICLE 5
AMENDMENT

A. Amendments to Agreement (Developer and the City). This Agreement may be amended, or cancelled in whole or in part, by mutual consent of the parties in writing, in accordance with the provisions of Government Code section 65868 upon notice of intention to amend or cancel in the manner provided by Government Code section 65867, and adoption of an ordinance amending or cancelling the Agreement; provided, however, that following the execution of an Assumption Agreement in connection with a Transfer concerning less than the entire Project pursuant to Article 11 below, this Agreement may be so amended or cancelled as it relates solely to one portion of the Project without the consent of the Developer of any other portion of the Project.

B. State or Federal Laws and Regulations. In the event that State or Federal laws or regulations enacted after the Execution Date prevent or preclude compliance with one or more provisions of this Agreement or require changes in plans or permits approved or issued by the City, this Agreement shall be suspended or, with Developer's written consent, modified or extended as necessary to comply with such laws or regulations. Promptly following the enactment of any such law or regulation, Developer and the City shall meet and confer in good faith to determine the feasibility of any such modification, extension or suspension based on the effect such modification, extension or suspension would have on the purposes and intent of this Agreement and the cost to Developer of constructing and completing the Project. In addition, Developer shall have the right to challenge such law or regulation, and in the event such challenge is successful, this Agreement shall remain unmodified and in full force and effect.

ARTICLE 6
INDEMNIFICATION

Developer agrees to defend, indemnify, release and hold harmless the City and its elected and appointed officials and employees from any litigation, claim, action or court proceeding brought against any of the foregoing individuals or entities (the "**Indemnified Parties**"), the purpose of which is to attack, set aside, void or annul this Agreement. This indemnification shall include, without limitation, damages, costs, expenses, court-awarded attorney fees or expert witness fees that may be asserted or incurred by the Indemnified Parties, arising out of or in connection with the approval of this Agreement. If Developer is required to defend the Indemnified Parties in connection with any litigation, claim, action or court proceeding, then the City shall retain the right to approve counsel retained by Developer as well as any and all settlements proposed by Developer, which approval shall not be unreasonably withheld, conditioned or delayed. Developer shall also have the right to approve any and all settlements of any such matters proposed by the City and relating to this Agreement, which approval shall not be unreasonably withheld, conditioned or delayed. The City agrees to cooperate with Developer in the defense of the claim, action or proceeding. Nothing in this Article 6 shall be construed to mean that Developer shall defend, indemnify, release or hold harmless the Indemnified Parties from any claims of personal injury, death or property damage arising from, or

alleged to arise from, the maintenance or repair by the Indemnified Parties of improvements that have been offered for dedication and accepted by the City, or for the Indemnified Parties' negligence or willful misconduct. Following the execution of an Assumption Agreement in connection with a Transfer concerning less than the entire Project pursuant to Article 11 below, the Developers of the resulting portions of the Project shall be severally, but not jointly, liable for "Developer's" obligations under this Article 6 only to the extent that such obligations relate to their respective portions of the Project.

ARTICLE 7
MORTGAGEE PROTECTION AND ESTOPPEL CERTIFICATES

A. Mortgagee Protection.

1. This Agreement shall be superior and senior to any lien placed upon the Property, or any portion thereof, including the lien of any Mortgage. Notwithstanding the foregoing, no breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any such Mortgage made in good faith and for value, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against any person or entity that acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise.

2. Notwithstanding the provisions of Section 7.A(1) above, no Mortgagee shall have any obligation or duty (a) under this Agreement to construct or complete the construction of improvements, or to guarantee such construction or completion, or (b) under Article 6 above; provided, however, that a Mortgagee shall not be entitled to devote the Property to uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by this Agreement.

3. If the City receives a written notice from a Mortgagee requesting a copy of any notice of default given to Developer hereunder and specifying the address for service thereof, then the City shall deliver to such Mortgagee, concurrently with service thereon to Developer, any notice of default or determination of noncompliance given to Developer. Each Mortgagee shall have the right (but not the obligation) for a period of 90 days after the receipt of such notice from the City to cure or remedy the default claimed or the areas of noncompliance set forth in the City's notice. If such default or noncompliance is of a nature that it can only be cured or remedied by such a Mortgagee upon obtaining possession of the Property, then such Mortgagee may seek to obtain possession with diligence and continuity through a receiver or otherwise, and shall within 90 days after obtaining possession cure or remedy such default or noncompliance. If such default or noncompliance cannot with diligence be cured or remedied within either such 90 day period, then such Mortgagee shall have such additional time as may be reasonably necessary to cure or remedy such default or noncompliance if such Mortgagee commences such cure or remedy during such 90 day period and thereafter diligently pursues completion of such cure or remedy to the extent possible.

B. Estoppel Certificates. Either party may, at any time, and from time to time, deliver written notice to the other party requesting such party to certify in writing that, to the actual knowledge of the certifying party, (1) this Agreement is in full force and effect and a binding obligation of the parties, (2) this Agreement has not been amended or modified either orally or in writing (or else identifying any such amendments or modifications), and (3) the requesting party is not in default in the performance of its obligations under this Agreement (or else describing the nature and amount of any such defaults). A party receiving a request hereunder shall execute and return such certificate within 30 days following the receipt thereof. The City acknowledges that a certificate hereunder may be relied upon by transferees and Mortgagees.

ARTICLE 8
ANNUAL REVIEWS

A. Annual Reviews. At least once every 12 months, Developer shall demonstrate its good faith compliance with the terms hereof by contacting the City and requesting the scheduling of a hearing before the Planning Commission in order to demonstrate such good faith compliance. **"Good faith compliance"** shall mean that Developer has sufficiently followed the terms of this Agreement so as to carry out the intent of the parties in entering into it. The City shall provide Developer with notice of such hearing and a copy of all staff reports and related exhibits as soon as available, but in no event later than five days prior to the hearing.

B. Notice of Default. If either party finds evidence of default by the other party during the course of any such review, it shall give written notice to the other party specifying the nature of the default and the manner in which it may be satisfactorily cured, and the parties shall have the rights set forth in Section 9.A below.

C. Planning Commission Determination of Good Faith Compliance. If, as a result of any such review, the Planning Commission determines, on the basis of substantial evidence, that this Agreement has been complied with in good faith, such determination shall be subject to appeal in accordance with the procedures set forth in San Mateo Municipal Code section 27.08.090.

D. Non-Compliance; Health or Safety Danger. If as the result of any such review the Planning Commission determines, on the basis of substantial evidence, that this Agreement has not been complied with in good faith or, subject to Section 3.B and Article 4 above, that the failure of the City to terminate or modify the provisions hereof would place the residents of the City in a condition dangerous to their health or safety (a **"Health or Safety Danger"**), or both, the Planning Commission shall specify on the record the respects in which Developer has failed to so comply with this Agreement or the factual basis for finding a Health or Safety Danger. Any such failure to so comply with this Agreement shall constitute an Event of Default (as defined in Section 9.A(1) below) if (1) Developer does not cure such failure within 30 days after receiving written notice of such failure from the City, where such failure is of a nature that can be cured

within such 30-day period, or (2) if such failure is not of a nature which can be cured within such 30-day period, Developer does not within such 30-day period commence substantial efforts to cure such failure, or thereafter does not within a reasonable time prosecute to completion with diligence and continuity the curing of such failure. Upon any such finding of a Health or Safety Danger, the Planning Commission shall make recommendations to the City Council regarding modifications to or termination of this Agreement, and the City Council shall hold a public hearing to consider terminating or modifying this Agreement. Notice of such hearing shall be given as set forth in section 6 of the Development Agreement Resolution. If the City Council determines, on the basis of substantial evidence, that a Health or Safety Danger exists, the City Council may terminate or, with Developer's written consent and in accordance with Section 5.A above, modify this Agreement. Any challenge to the City's termination of this Agreement on account of a Health or Safety Danger shall be subject to review in the Superior Court of the County of San Mateo.

E. Enforced Delay Extension of Time of Performance. No party shall be deemed to be in default or noncompliance under this Agreement, or suffer a termination of this Agreement (or any rights hereunder), where the alleged default, noncompliance or terminating event or delay is due to any event described in Section 10.E below. If written notice of any such default, noncompliance or terminating event or delay is given to either party within 30 days after the commencement thereof, an extension of time for such cause will be granted for the period of the enforced default, noncompliance or terminating event or delay, or longer if the parties mutually agree.

ARTICLE 9
DEFAULT; REMEDIES; TERMINATION

A. Events of Default and Remedies.

1. Events of Default. Subject to any extensions of time by mutual written consent of the parties, and subject to the provisions of Sections 8.E above and 10.E below regarding force majeure delays, any failure by either party to perform any material terms or provisions of this Agreement (including any failure to comply in good faith with the terms of this Agreement) shall constitute an event of default (an "**Event of Default**") (a) if such defaulting party does not cure such failure within 30 days after receiving written notice of default from the other party, where such failure is of a nature that can be cured within such 30-day period, or (b) if such failure is not of a nature which can be cured within such 30-day period, the defaulting party does not within such 30-day period commence substantial efforts to cure such failure, or thereafter does not within a reasonable time prosecute to completion with diligence and continuity the curing of such failure.

2. Remedies. If an Event of Default occurs, the nondefaulting party may not exercise any rights or remedies unless and until it has first requested in writing that the parties schedule a meeting to occur before a neutral mediator to attempt to mediate and resolve the dispute. The nondefaulting party shall submit a list of three neutral mediators

and dates the mediators are available at the time it requests the meeting. The defaulting party shall select the neutral mediator from the list provided. If the dispute is not resolved within 45 days after the nondefaulting party has requested a meeting, and the nondefaulting party has provided at least three available business days for such a meeting at which its own representative and the neutral mediator are available at a location within the City of San Mateo, regardless of whether the parties have actually met to mediate the dispute, the nondefaulting party shall have the right to (a) bring any proceeding in the nature of specific performance, injunctive relief, declaratory relief or mandamus and/or (b) bring any action at law or in equity to compensate the nondefaulting party for all the detriment proximately caused by the defaulting party's Event of Default; provided, however, that (x) Developer's sole remedy will be specific performance and Developer shall not have the right to recover monetary damages (compensatory, consequential or punitive) against the City other than attorneys' fees to the extent provided in Section 10.I below and (y) the City shall only have the right to recover actual, direct (and not consequential or punitive) damages against Developer. In addition, the nondefaulting party shall have the right to terminate this Agreement in accordance with the procedures set forth in Section 9.B below, but any such termination shall not affect such party's right to seek any remedy permitted by this Agreement on account of the Event of Default for which this Agreement has been terminated.

B. Termination. If either party determines that it has the right pursuant to Section 9.A(2) above to terminate this Agreement as it relates to all or a portion of the Property or Project and elects to exercise that right, then it shall give written notice thereof to the other party. If the City is the party that delivers any such termination notice, the City Council shall hold a public hearing to consider terminating this Agreement. Notice of such hearing shall be given as set forth in section 6 of the Development Agreement Resolution. At such hearing the City shall demonstrate on the record the grounds and basis on which it claims the right to terminate this Agreement. Upon conclusion of such public hearing, the City Council shall direct the City Manager to take whatever action the City Council deems necessary or appropriate in connection with the City's termination notice, including terminating this Agreement. If Developer is the party that delivers any such termination notice, then this Agreement shall automatically terminate upon such delivery. The provisions of this Section 9.B shall not be construed so as to place additional noticing requirements upon the termination of this Agreement pursuant to Section 8.D above.

C. Judicial Proceeding to Challenge Termination. Any challenge to a party's termination of this Agreement on account of an Event of Default by the other party shall be subject to review in the Superior Court of the County of San Mateo.

D. No Cross-Default. Following the execution of an Assumption Agreement in connection with a Transfer concerning less than the entire Project pursuant to Article 11 below, no default of the Developer of one portion of the Project hereunder shall constitute a default of the Developer of any other portion of the Project hereunder, and the City shall have no recourse under this Article 9 or otherwise against any such non-defaulting Developer and no right under this Article 9 to terminate or modify this

Agreement as it relates to any portion of the Property, and any portion of the Project thereon, owned by any such non-defaulting Developer.

ARTICLE 10
MISCELLANEOUS

A. Enforceability. Except as otherwise provided herein, the rights of the parties under this Agreement shall be enforceable notwithstanding any change subsequent to the Execution Date in any applicable General Plan, specific plan or building, zoning, subdivision or other land use ordinance.

B. Default by Developer/Withholding of Building Permit. The City may, at its discretion, refuse to issue a building permit for any structure within the geographical confines of the Property as the same is defined at the time of said application, if Developer has failed and refuses to complete any requirement enumerated therefor in accordance with the terms of this Agreement. No building permit shall be issued or building permit application accepted for the building shell of any structure on the Property if the permit applicant owns or controls any property subject to this Agreement, and if such applicant or any entity or person controlling such applicant is in default of the terms and conditions of this Agreement as determined pursuant to Article 8 or Article 9 above; provided, however, that following the execution of an Assumption Agreement in connection with a Transfer concerning less than the entire Project pursuant to Article 11 below, no default of the Developer of one portion of the Project hereunder shall constitute a default of the Developer of any other portion of the Project hereunder or affect the issuance of a building permit or acceptance of a building permit application for any such other portion of the Project.

C. Covenants. The provisions of this Agreement shall constitute covenants which shall run with the land comprising the Property. The burdens and benefits hereof shall bind and inure to the benefit of all successors in interest to the parties hereto.

D. No waiver. No failure, delay or omission by a party in exercising or asserting any right, power or remedy hereunder shall impair such right, power or remedy, and no failure, delay or omission by a party occurring upon the other party's noncompliance with or failure to perform the terms and conditions of this Agreement shall be construed as a waiver thereof. A waiver by either party of any failure on the part of the other party to perform any of the terms or conditions to be performed by such other party shall not be construed as a waiver of any succeeding failure of the same or other terms or conditions hereof, nor shall any failure, delay or omission by a party in asserting any of its rights or remedies hereunder deprive such party of its right to institute and maintain any action or proceeding which it may deem necessary to protect, assert or enforce any such rights or remedies.

E. Force Majeure. In the event any party to this Agreement is unable to perform or fulfill any of the terms or conditions of this Agreement on account of acts of God, enemy action, war, insurrection, strikes, walk-outs, riots, governmental actions or restrictions,

administrative appeals or legal actions, judicial orders, third-party actions, floods, earthquakes, fires, casualties or similar basis for excused performance which is not within the reasonable control of the party to be excused, the party obligated to so perform or prevented from performing thereby shall be excused from said performance until such time as said party shall no longer be prevented from performing on account of any of the foregoing reasons.

F. No Joint Venture or Partnership. Nothing contained herein or in any document executed in connection herewith shall be construed as making the City and Developer joint venturers or partners.

G. Applicable Law and Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of California. In the event of litigation, venue will be in the County of San Mateo.

H. Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect.

I. Attorneys' Fees. Attorney fees in an amount not exceeding $85 per hour per attorney, and in total amount not exceeding $5,000, shall be recoverable as costs (by the filing of a cost bill) by the prevailing party in any action or actions to enforce the provisions of this Agreement. The above $5,000 limit is the total of attorneys' fees recoverable whether in the trial court, appellate court or otherwise, and regardless of the number of attorneys, trials, appeals or actions. It is the intent of this provision that neither party shall have to pay the other more than $5,000 for attorneys' fees of the other party arising out of an action, or actions to enforce the provisions of this Agreement.

J. Incorporation of Exhibits and Schedules. Each of the following exhibits and schedules attached hereto and the recitals set forth above are incorporated herein by this reference and made a part hereof for all purposes:

Exhibit A:	East Property Description
Exhibit B:	West Property Description
Exhibit C:	Form of Assumption Agreement
Exhibit D:	Neighborhood Safety and Aesthetic Improvements
Exhibit D-West:	West Property Neighborhood Safety and Aesthetic Improvements
Exhibit D-East:	East Property Neighborhood Safety and Aesthetic Improvements
Exhibit E-West:	West Property Landscaping and Sidewalk Improvements
Exhibit E-East:	East Property Landscaping and Sidewalk Improvements

Exhibit F: Pedestrian Safety Project

Schedule 1: Development Impact Fees

ARTICLE 11
ASSIGNMENT AND TRANSFER

A. Assignment and Transfer. Developer shall have the right to sell, assign or transfer this Agreement with all its rights, title and interests therein to any person or entity at any time during the Term (a "**Transfer**"), including, without limitation, a Transfer relating only to Building East (or a portion thereof), only to Building West (or a portion thereof), or to both (such portion of the Project that is Transferred, the "**Transferred Portion**"). The conditions and covenants set forth in this Agreement and incorporated herein by exhibits shall run with the land and the benefits and burdens shall bind and inure to the benefit of the parties' successors in interest. Prior to consummating any Transfer (except for a Transfer to a Mortgagee or any designee of a Mortgagee), Developer shall obtain the City Manager's (or his or her designee's) written acknowledgement that such Transfer constitutes a Permitted Transfer in accordance with the criteria set forth in Section 11.B below or, if such Transfer does not constitute a Permitted Transfer, the City's written consent to such Transfer, which consent shall not be unreasonably withheld or conditioned. The City shall respond in writing to Developer's written request for any such acknowledgement or consent within ten business days after the City's receipt thereof. Developer's request shall provide reasonably sufficient detail and any non-confidential, non-proprietary supporting evidence necessary for the City to consider and respond to Developer's request. Any decision by the City Manager (or his or her designee) to withhold or condition consent to any Transfer shall be promptly reviewed by the City Council.

B. Permitted Transfers. The following Transfers constitute "**Permitted Transfers**" for which no City consent shall be required:

1. Any Transfer to a person or entity that satisfies either of the following conditions, as certified by the transferee:

a. The transferee or its affiliates (i) have the financial resources necessary to develop or complete development of the Transferred Portion, and to construct or perform the Public Benefits therefor, in accordance with the terms and conditions of this Agreement and the Conditions of Approval, (ii) have experience and expertise in developing projects similar in size and scope to the Transferred Portion, and (iii) are not involved in litigation with the City relating to any other development project; or

b. The transferee is acquiring the Transferred Portion for the purpose of occupying a majority of the rentable area thereof upon completion for its own use or the use of its affiliates; and

2. Any Transfer to a Mortgagee or any designee of a Mortgagee.

C. Assumption and Release. Developer may free itself from its obligations relating to the Transferred Portion, provided that the buyer, assignee or transferee expressly assumes such obligations and agrees to be bound by the other terms and conditions of this Agreement with respect to the Transferred Portion by way of an assignment and assumption agreement (an "**Assumption Agreement**"), materially in the form of Exhibit C attached hereto (or such other written agreement reasonably acceptable to the City), executed by and between the City, Developer and such buyer, assignee or transferee. The City shall execute and return any Assumption Agreement delivered to it for execution by Developer by the later to occur of (1) ten business days after the date of such delivery and (2) ten business days after the date upon which the City consents to the Transfer (or acknowledges the Permitted Transfer) contemplated by such Assumption Agreement pursuant to Section 11.A above. To the extent that Developer's obligations under this Agreement or the Conditions of Approval are not clearly allocated or attributed to the Transferred Portion, such allocation or attribution shall be made in the Assumption Agreement. Upon the full execution of an Assumption Agreement, the transferee shall thenceforth be deemed to be the "Developer" hereunder with respect to the Transferred Portion.

D. No Cross-Default. From and after the execution of an Assumption Agreement in connection with a Transfer concerning less than the entire Project, if the Developer of one portion of the Project defaults under this Agreement, then such default shall not constitute a default by the Developer of any other portion of the Project hereunder and shall not entitle the City to terminate or modify this Agreement as it relates to any such other Developer or its portion of the Project; provided, however, that nothing in this Section 11.D shall restrict the City from taking action with respect to the Developer actually responsible for the default or its portion of the Project.

ARTICLE 12
NOTICES

Any notice or communication hereunder must be in writing and may be given either by personal service or by registered or certified mail, return receipt requested. Any notice or communication personally served shall be deemed given and received on the date of personal service on the party noticed at the appropriate address designated below, and any notice or communication sent by registered or certified mail, return receipt requested, properly addressed to the appropriate address designated below, with postage prepaid, shall be deemed given and received on the fifth day after the date appearing on the signed return receipt. Any party hereto may at any time and from time to time, in the manner provided herein, designate any other address in substitution of the address to which such notice or communication shall be given. All such notices or communications shall be given to the parties to their addresses hereinafter set forth:

IF TO CITY:

City Clerk, City of San Mateo
City Hall
330 West 20th Avenue
San Mateo, CA 94403
ATTN: Director of Community Development

IF TO DEVELOPER:

c/o Hines Interests Limited Partnership
101 California Street, Suite 1000
San Francisco, CA 94111
ATTN: James C. Buie, Jr.

with a copy to:

c/o Transwestern Investment Company, L.L.C.
150 N. Wacker Drive, Suite 800
Chicago, IL 60606
ATTN: Timothy McChesney

[Signature page follows]

IN WITNESS WHEREOF, this Agreement was executed by the parties thereto as of the Execution Date.

CITY:

CITY OF SAN MATEO, a political subdivision of the State of California

By: _____
Name: JOHN LEE
Title: MAYOR

APPROVED AS TO FORM:

_____
Shawn Mason, City Attorney

ATTEST:

_____
City Clerk NORMA GOMEZ

****SIGNATURES TO BE NOTARIZED*****

DEVELOPER:

TRANSWESTERN HINES SAN MATEO, L.P., a Delaware limited partnership

By: HSM GP LLC, a Delaware limited liability company, its General Partner

By: _____
Name: _____
Title: Authorized Signatory

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Mateo

On 8/19/10 before me, Craig Williams, Notary Public, personally appeared John Doe, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

CRAIG WILLIAMS
Commission # 1715786
Notary Public - California
San Mateo County
My Comm. Expires Feb 9, 2011

DEVELOPER:

TRANSWESTERN HINES SAN MATEO, L.P., a Delaware limited partnership

By: HSM GP LLC, a Delaware limited liability company, its General Partner

By: Hines San Mateo Associates Limited Partnership, a Texas limited partnership, its Sole Member

By: Hines San Mateo GP LLC, A Delaware limited liability company, its General Partner

By: Hines Interests Limited Partnership, a Delaware limited partnership, its Sole Member

By: Hines Holdings, Inc., a Texas corporation, its General Partner

By: _____
James C. Buie
Executive Vice President

CK

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of SAN FRANCISCO

On AUGUST 24, 2010 before me, RACHEL J. GATES, Notary Public, personally appeared JAMES C. BUIE, JR., who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

(Seal)

RACHEL J. GATES
Commission # 1893924
Notary Public - California
San Francisco County
My Comm. Expires Jun 26, 2014

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of _____

On _____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of _____

On _____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

EXHIBIT A

East Property Description

Real property in the City of San Mateo, County of San Mateo, State of California, described as follows:

BEGINNING AT THE SOUTHERLY TERMINUS OF THE 25 FOOT RADIUS CURVE WITH A LENGTH OF 42.13 FEET. AS SAID CURVE IS SHOWN ON THE MAP ENTITLED "NINETEENTH AVENUE PARK, UNIT NO. 1, SAN MATEO, SAN MATEO COUNTY, CALIFORNIA", FILED APRIL 6, 1955 IN BOOK 42 OF MAPS AT PAGES 1, 2, 3 AND 4, IN THE OFFICE OF THE RECORDER OF SAN MATEO COUNTY, SAID POINT BEING ON THE NORTHERLY LINE OF NINETEENTH AVENUE AS ESTABLISHED BY THE QUITCLAIM DEED TO THE CITY OF SAN MATEO, RECORDED AUGUST 25, 1955 IN BOOK 2863 OF OFFICIAL RECORDS OF SAN MATEO COUNTY AT PAGE 665 (80395-M); THENCE ALONG THE GENERAL WESTERLY LINE OF SOUTH DELAWARE STREET, AS SAID STREET IS SHOWN ON THE ABOVE DESCRIBED MAP OF NINETEENTH AVENUE PARK, FROM A TANGENT THAT BEARS SOUTH 88° 36' 05" EAST ALONG ABOVE SAID CURVE, TO THE LEFT, WITH A RADIUS OF 25.00 FEET THROUGH AN ANGLE OF 96° 32' 55" AN ARC LENGTH OF 42.12 FEET NORTH 05° 09' 00" WEST 210.22 FEET AND ALONG A TANGENT CURVE TO THE LEFT WITH A RADIUS OF 959.93 FEET (SHOWN AS 960 FEET ON SAID MAP OF NINETEENTH AVENUE PARK, THROUGH AN ANGLE OF 0° 19' 34", ARC LENGTH OF 5.46 FEET TO THE TRUE POINT OF BEGINNING ON THE LANDS TO BE DESCRIBED HEREIN; THENCE FROM SAID TRUE POINT OF BEGINNING ALONG THE BOUNDARY OF THE LANDS DESCRIBED AS PARCEL 2 IN THE DEED FROM CONCAR RANCH & ENTERPRISES, INC., A CORPORATION TO STATE OF CALIFORNIA, DATED JULY 28, 1961 AND RECORDED SEPTEMBER 20, 1961 IN BOOK 4058 OF OFFICIAL RECORDS OF SAN MATEO COUNTY AT PAGE 238 (96948-T) AS FOLLOWS, NORTH 87° 26' 51" WEST 168.70 FEET NORTHWESTERLY ALONG THE ARC OF A TANGENT CURVE TO THE RIGHT, SAID CURVE HAVING A RADIUS OF 120 FEET THROUGH AN ANGLE OF 61° 56' 02" AN ARC LENGTH OF 129.71 FEET NORTH 25° 30' 49" WEST TANGENT TO THE PRECEDING CURVE 143.66 FEET NORTHERLY ON THE ARC OF A TANGENT CURVE TO THE RIGHT, SAID CURVE HAVING A RADIUS OF 100 FEET THROUGH AN ANGLE OF 33° 58' 42" AN ARC LENGTH OF 59.30 FEET NORTH 8° 27' 53" EAST TANGENT TO THE PRECEDING CURVE 85.57 FEET NORTH 53° 48' 21" EAST 98.79 FEET AND NORTHEASTERLY AND SOUTHEASTERLY ON THE ARC OF TANGENT CURVE TO THE RIGHT, SAID CURVE HAVING A RADIUS OF 90 FEET THROUGH AN ANGLE OF 96° 56' 31" AN ARC LENGTH OF 152.28 FEET TO THE ABOVE SAID GENERAL WESTERLY LINE OF SOUTH DELAWARE STREET THENCE ALONG SAID LAST NAMED LINE FROM A TANGENT THAT BEARS SOUTH 29° 15' 08" EAST ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 959.93 FEET (SHOWN AS 960 FEET ON SAID MAP OF NINETEENTH AVENUE PARK), AN ARC DISTANCE OF 398.38 FEET MORE OR LESS TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION THEREOF CONVEYED IN FEE TO THE CITY OF SAN MATEO BY GRANT DEED RECORDED SEPTEMBER 25, 2002, INSTRUMENT NO. 2002-190749, OFFICIAL RECORDS OF SAN MATEO COUNTY.

APN: 035-201-020

EXHIBIT B

West Property Description

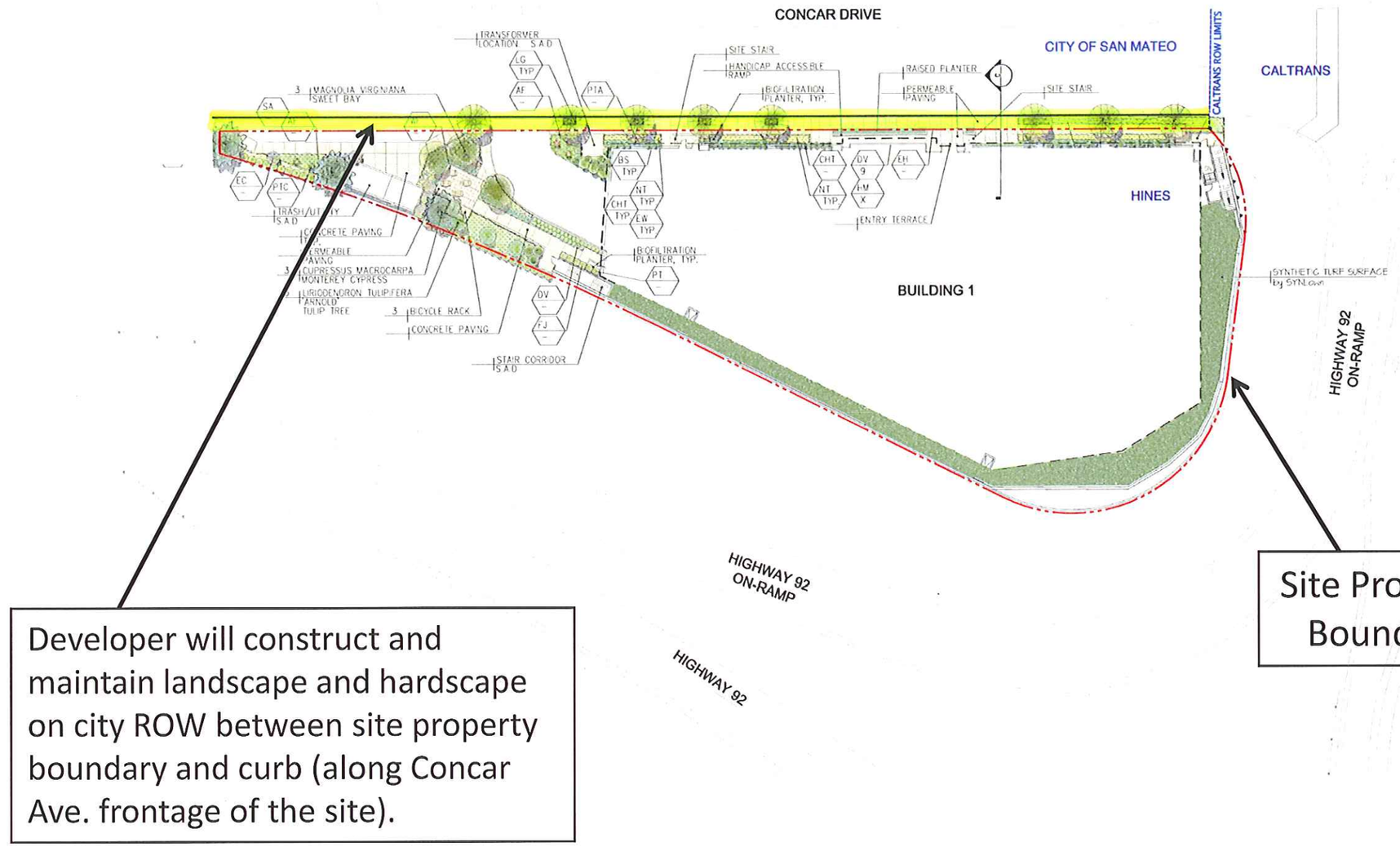
Real property in the City of San Mateo, County of San Mateo, State of California, described as follows:

COMMENCING AT THE NORTHEASTERLY TERMINUS OF THE COURSE DESCRIBED IN PARCEL 2 OF THAT CERTAIN DEED TO THE STATE OF CALIFORNIA, RECORDED ON SEPTEMBER 20, 1961 IN BOOK 4058 OF OFFICIAL RECORDS AT PAGE 238 (FILE NO. 96948-T), RECORDS OF SAN MATEO COUNTY, CALIFORNIA, WITH A LENGTH OF 574.11 FEET; THENCE ALONG SAID COURSE SOUTH 53° 48' 21" WEST 403.00 FEET THENCE SOUTH 36° 11' 39" EAST 50.00 FEET TO THE TRUE POINT OF COMMENCEMENT, SAID TRUE POINT BEING ON A LINE PARALLEL WITH AND DISTANT 25.00 FEET SOUTHEASTERLY, MEASURED AT RIGHT ANGLES, FROM ABOVE SAID "DP" LINE; THENCE ALONG LAST SAID PARALLEL LINE NORTH 53° 48' 21" EAST 442.61 FEET; THENCE FROM A TANGENT THAT BEARS SOUTH 79° 18' 12" EAST ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 60.00 FEET, THROUGH AN ANGLE OF 50° 20' 55" AN ARC LENGTH OF 52.73 FEET TO A POINT DISTANT SOUTH 62° 51' 50" WEST 68.00 FEET FROM ENGINEER'S STATION 220+17.00 ON THE "DD3" LINE OF SAID SURVEY; THENCE SOUTH 28° 57' 17" EAST 62.21 FEET; THENCE ALONG A TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 70.00 FEET, THROUGH AN ANGLE OF 109° 16' 40", AN ARC LENGTH OF 133.51 FEET; THENCE SOUTH 80° 19' 23" WEST, 173.05 FEET; THENCE ALONG A TANGENT CURVE TO THE LEFT WITH A RADIUS OF 1200.00 FEET, THROUGH AN ANGLE OF 10° 01' 03", AN ARC LENGTH OF 209.81 FEET; THENCE NORTH 36° 11' 39" WEST 10.00 FEET TO THE TRUE POINT OF COMMENCEMENT.

THE ABOVE DESCRIBED LANDS BEING THOSE CERTAIN LANDS EXCEPTED IN THE DESCRIPTION FROM PARCEL 2 OF THAT CERTAIN DEED TO THE STATE OF CALIFORNIA, RECORDED ON SEPTEMBER 20, 1961 IN BOOK 4058 OF OFFICIAL RECORDS AT PAGE 238 (FILE NO. 96948-T), RECORDS OF SAN MATEO COUNTY, CALIFORNIA.

APN: 035-202-010

Exhibit E - West



Developer will construct and maintain landscape and hardscape on city ROW between site property boundary and curb (along Concar Ave. frontage of the site).

Site Property Boundary

STUDIO FIVE| Design
site planning + landscape architecture

92 & Delaware - A Transit Oriented Development
San Mateo, CA
Formal Review Application

Hines

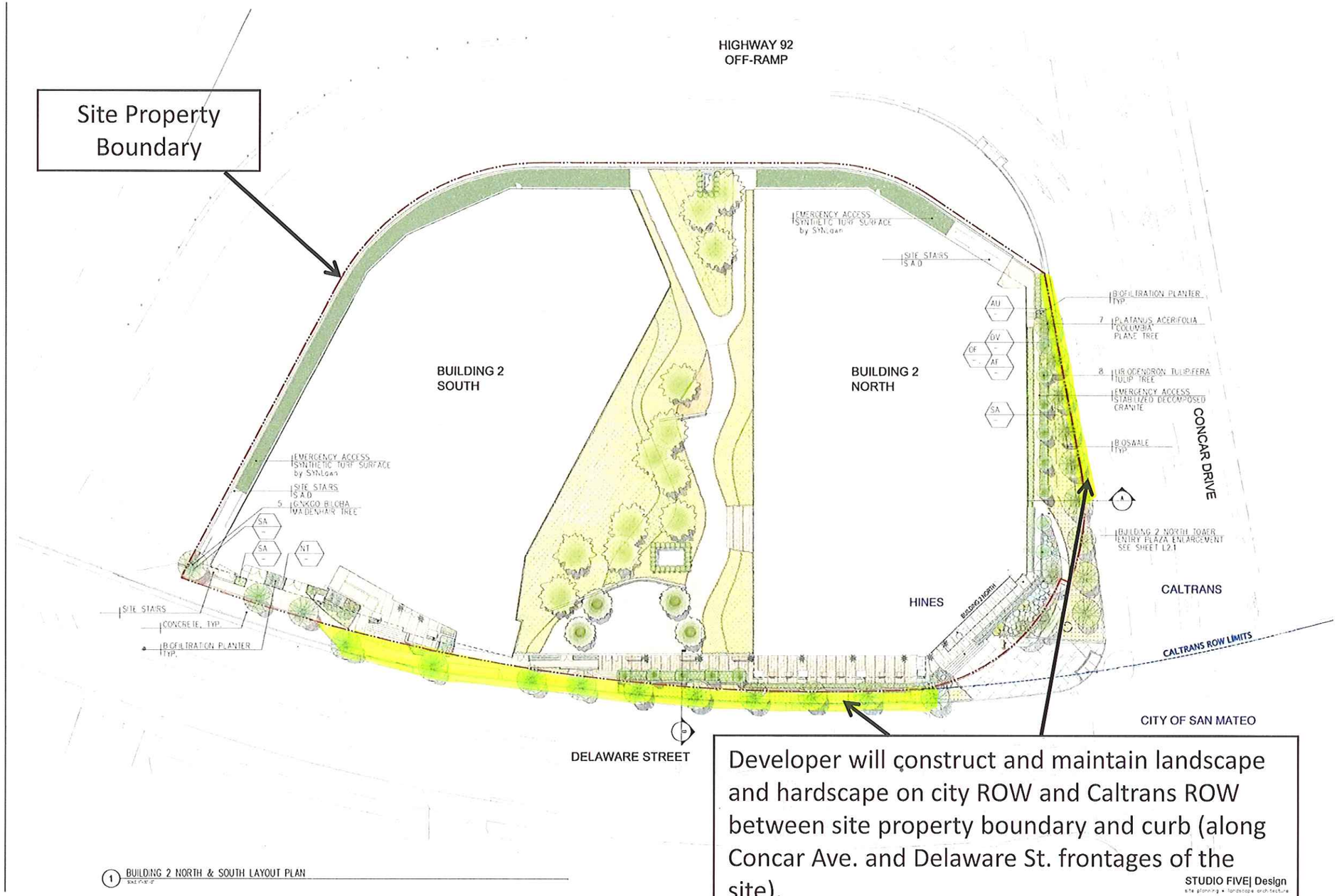
BUILDING 1 LANDSCAPE LAYOUT PLAN

Revisions:
△1 8/12/09 Planning Response

March 6, 2009
Scale:

L1.1

Exhibit E - East



Developer will construct and maintain landscape and hardscape on city ROW and Caltrans ROW between site property boundary and curb (along Concar Ave. and Delaware St. frontages of the site).

STUDIO FIVE| Design
site planning + landscape architecture

92 & Delaware - A Transit Oriented Development
San Mateo, CA
Formal Review Application

Hines

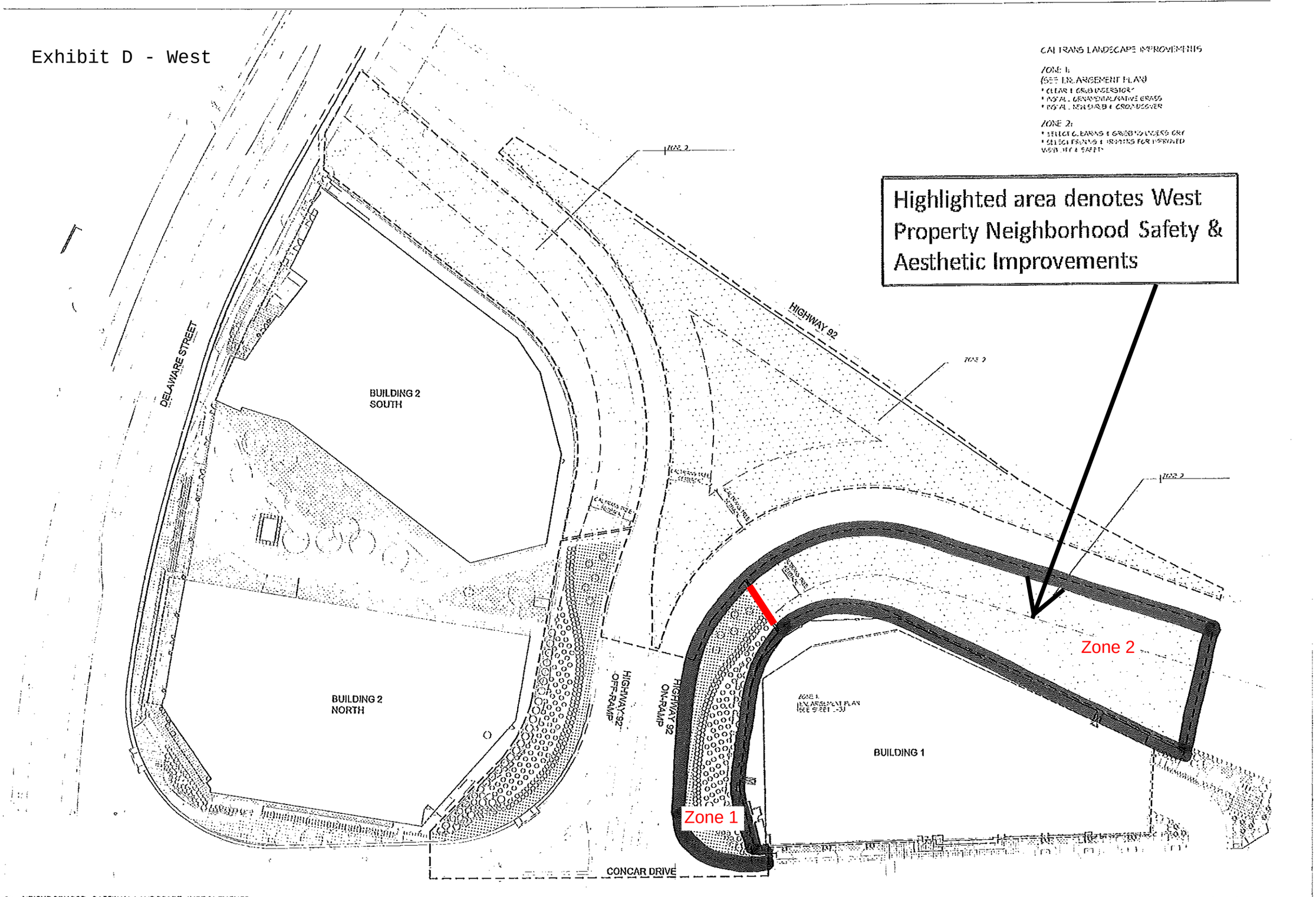
BUILDING 2 LANDSCAPE LAYOUT PLAN

Revisions:
△1 8/12/09 Planning Response

March 6, 2009
Scale: 1" = 30'

L1.0

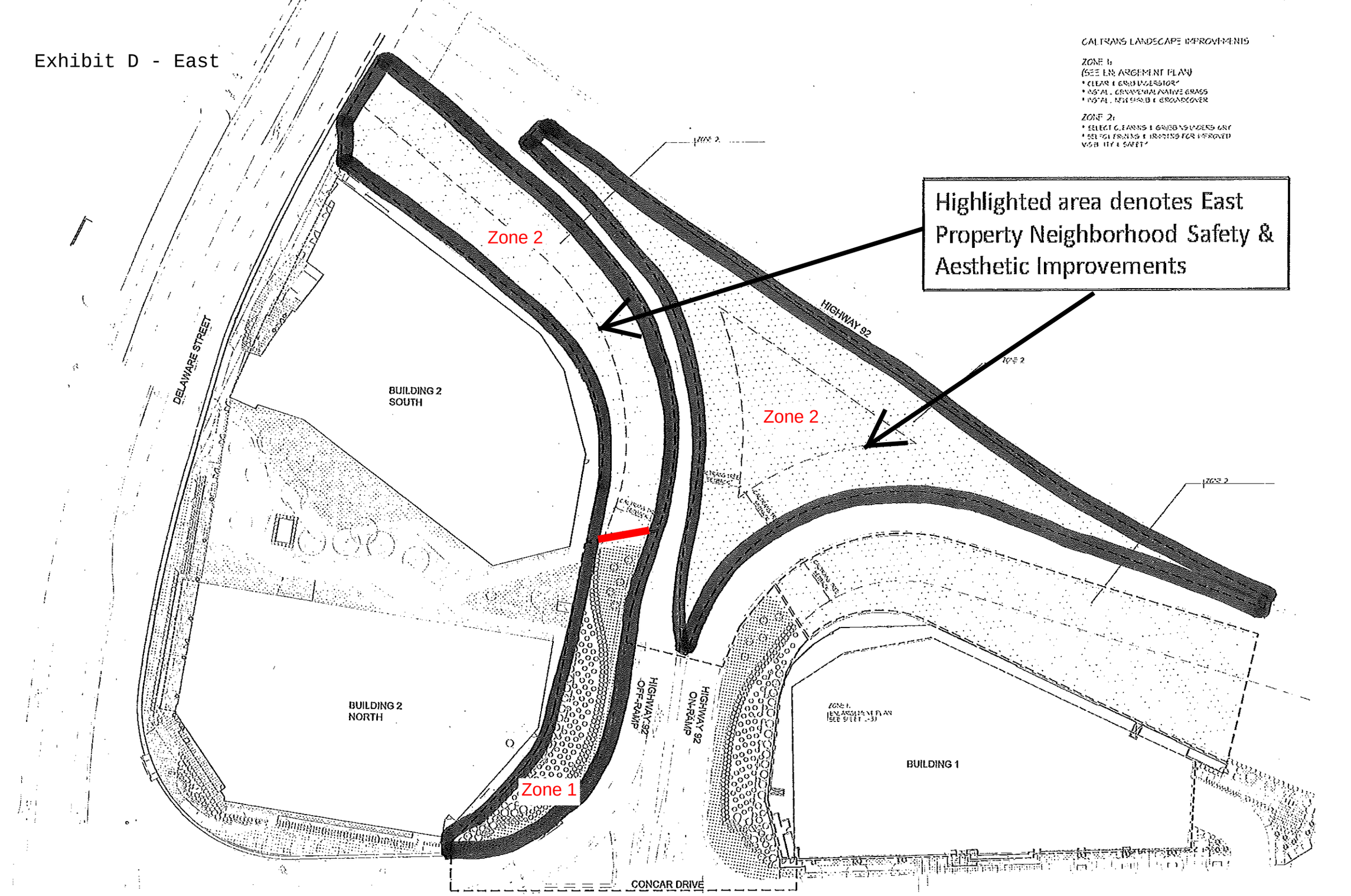
Exhibit D - West



1 NEIGHBORHOOD GATEWAY LANDSCAPE IMPROVEMENTS

STUDIO FIVEI Design

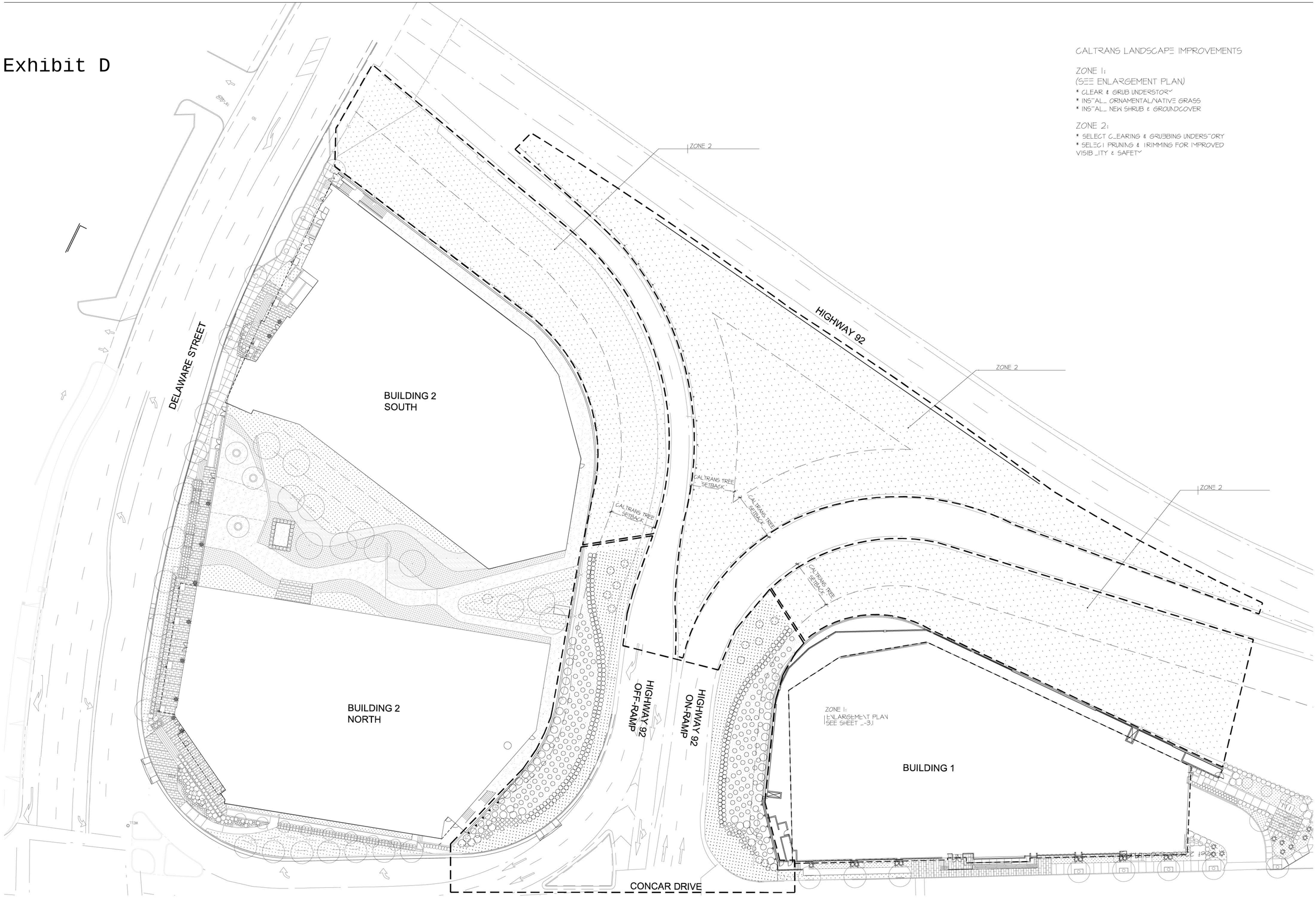
Exhibit D - East



1 NEIGHBORHOOD GATEWAY LANDSCAPE IMPROVEMENTS

STUDIO FIVE| Design

Exhibit D



1 NEIGHBORHOOD GATEWAY LANDSCAPE IMPROVEMENTS
SCALE: 1"=40' 0"

STUDIO FIVE| Design
site planning • landscape architecture

Form 4

92 & Delaware - A Transit Oriented Development
San Mateo, CA
Formal Review Application

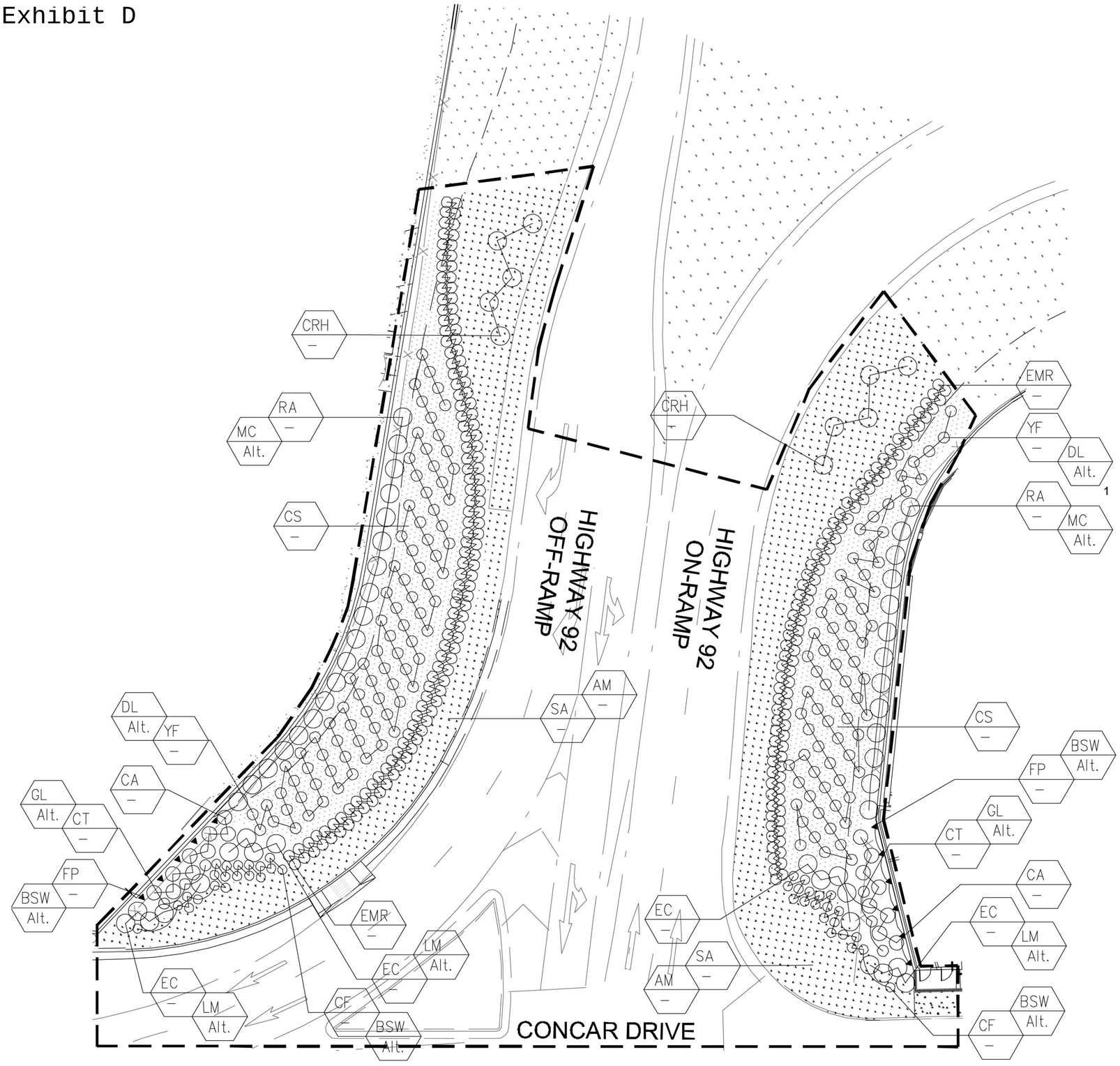
Hines

NEIGHBORHOOD GATEWAY
LANDSCAPE IMPROVEMENT

August 12, 2009
Scale: 1"= 40'

L3.0

Exhibit D



2 CALTRANS LANDSCAPE IMPROVEMENTS – PLANTING PLAN AT HIGHWAY RAMPS
SCALE: 1"=20'-0"

CALTRANS PLANT LIST

ID	SIZE	BOTANICAL NAME	COMMON NAME
		TREES	
		NOT APPLICABLE	

ID	SIZE	BOTANICAL NAME	COMMON NAME
		SHRUBS	
CRH	5 Gal.	Ceanothus 'Ray Hartman'	Ceanothus
CF	1 Gal.	Chrysanthemum fruticosa	Marguerite Daisy
CA	15 Gal.	Cordyline australis	Cordyline
DW	5 Gal.	Dasyirion wheeleri	Desert Spoon
EC	5 Gal.	Echium candicans	Pride of Madeira
LM	5 Gal.	Lavatera maritima	Cape Mallow
MC	5 Gal.	Myrica californica	Wax Myrtle
RA	5 Gal.	Rhamnus alternus	Italian Buckthorn
YF	5 Gal.	Yucca filamentosa	Adams needle

ID	SIZE	BOTANICAL NAME	COMMON NAME
		PERENNIALS/SUCCULENTS	
AM	1 Gal	Achillea millefolium	Common White Yarrow
EC	5 Gal	Euphorbia m. 'Rudolf'	Euphorbia
GL	1 Gal.	Gaura lindheimeri 'Whirling Butterflies'	Gaura

ID	SIZE	BOTANICAL NAME	COMMON NAME
		ORNAMENTAL GRASSES/RUSHES	
CA	4" Pot	Calamagrotis acutiflora 'Stricta'	Feather Reed Grass
CHT	1 Gal	Chondropetalum tectorum	Chondropetalum
NT	4" Pot	Nassella tenuissima	Mexican Feather Grass
SA	4" Pot	Sesleria autumnalis	Autumn Moor Grass

ID	SIZE	BOTANICAL NAME	COMMON NAME
		GROUNDCOVER	
CS	1 Gal	Convolvulus sabatius	Ground Morning Glory

ID	SIZE	BOTANICAL NAME	COMMON NAME
		VINES	
BSW	1 Gal	Bougainvillea 'Singapore White'	Bougainvillea
FP	1 Gal	Ficus pumila	Creeping Fig

EXISTING VEGETATION TO REMAIN

STUDIO FIVE| Design
site planning • landscape architecture

Form 4

92 & Delaware - A Transit Oriented Development
San Mateo, CA
Formal Review Application

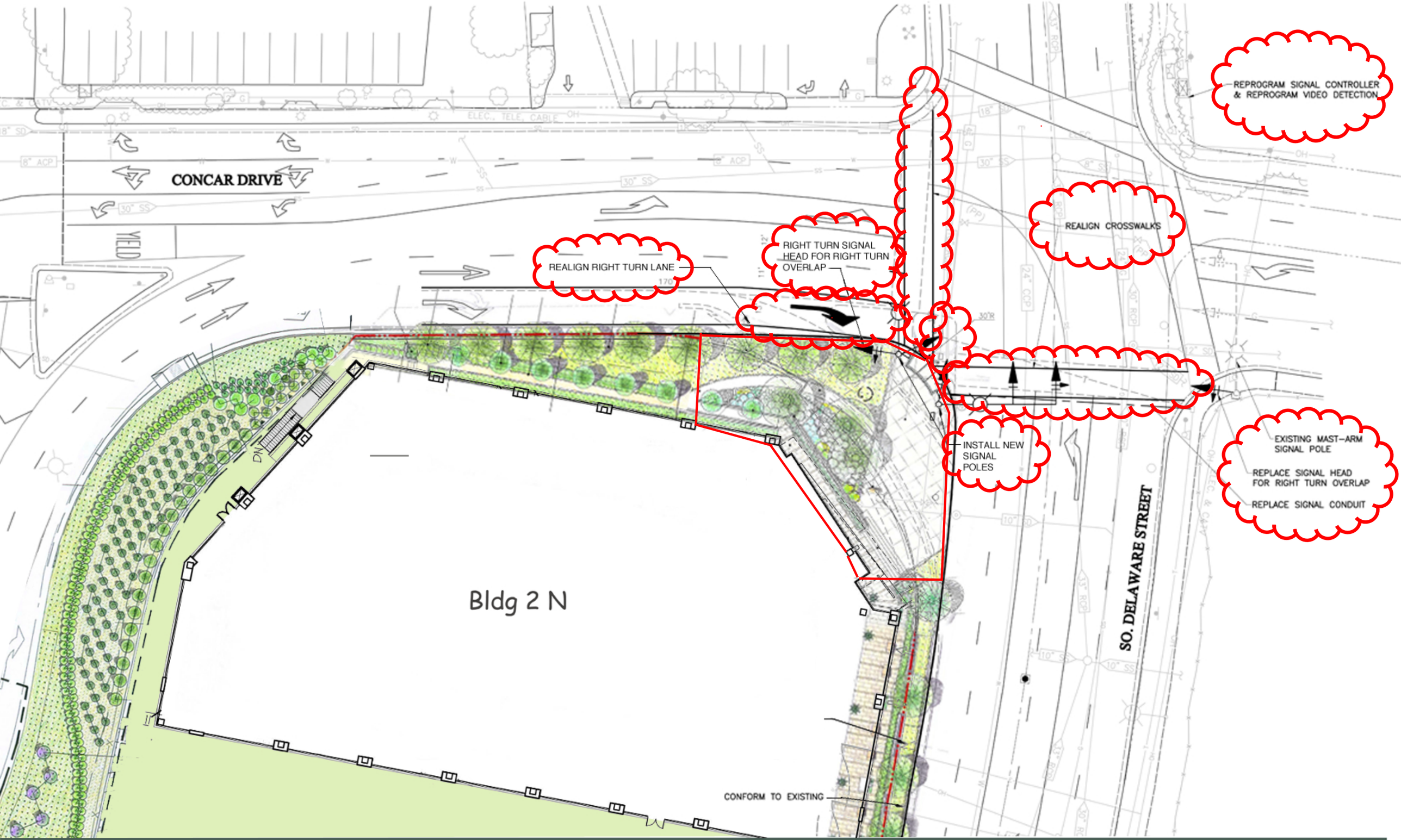
Hines

NEIGHBORHOOD GATEWAY
LANDSCAPE IMPROVEMENT
PLANTING PLAN

August 12, 2009
Scale: 1"= 20'

L3.1

Exhibit F



92 & Delaware - A Transit Oriented Development
San Mateo, CA
Formal Review Application

Form 4

Hines

INTERSECTION IMPROVEMENT WITH PLAZA OVERLAY

August 12, 2009
Scale: N.T.S.

A1.1e

EXHIBIT C

Form of Assumption Agreement

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

(Space Above For Recorder's Use)

ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement (this "**Assignment**") is entered into as of _____, by and between Transwestern Hines San Mateo, L.P., a Delaware limited partnership ("**Developer**"), _____, a _____ ("**Assignee**") and the City of San Mateo, a political subdivision of the State of California ("**City**").

RECITALS

A. City and Developer entered into that certain Amended and Restated Development Agreement dated as of _____, 2010, and recorded on _____ as Instrument No. _____ in the Official Records of San Mateo County (the "**Development Agreement**") with respect to the development of the "**Project**" (as defined in the Development Agreement) on certain real property located in the City, as more particularly described in Exhibit A attached hereto (the "**Property**").

B. Pursuant to, and subject to the terms and conditions set forth in, that certain [Purchase and Sale Agreement] dated as of _____ by and between Developer and Assignee (the "**Purchase Agreement**"), Developer shall (i) convey title to that portion of the Property described in Exhibit B attached hereto (the "**Transferred Property**") to Assignee and (ii) assign and transfer certain of its rights and obligations as "Developer" under the Development Agreement and the other Project entitlements, approvals, and conditions of approval described therein (together with the Development Agreement, the "**Project Approvals**") to Assignee to the extent described in the Purchase Agreement.

C. Pursuant to this Assignment, Developer intends to assign and transfer, and Assignee intends to assume, such rights and obligations of Developer to the extent described herein.

D. Pursuant to Section 11.A of the Development Agreement, City has the right to reasonably consent to certain assignments and transfers of Developer's rights and obligations under the Development Agreement.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth and the foregoing recitals, which are incorporated herein by reference and made a part of this Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto hereby agree as follows:

[1. ADD IF CITY CONSENT TO TRANSFER IS REQUIRED UNDER DA – City Consent to Transfer. Subject to Assignee acquiring fee title to the Transferred Property pursuant to the Purchase Agreement, City hereby consents to Developer assigning and transferring the Transferred Rights and Obligations (as defined in Section 2 below) to Assignee.]

[1. ADD IF CITY CONSENT TO TRANSFER IS NOT REQUIRED UNDER DA (USE FOR PERMITTED TRANSFERS) – City Acknowledgment of Permitted Transfer. Subject to Assignee acquiring fee title to the Transferred Property pursuant to the Purchase Agreement, City hereby acknowledges that Developer's assignment and transfer of the Transferred Rights and Obligations (as defined in Section 2 below) to Assignee constitutes a Permitted Transfer (as defined in the Development Agreement) for which no City consent is required under the Development Agreement.]

2. Assignment and Assumption. Subject to Assignee acquiring fee title to the Transferred Property pursuant to the Purchase Agreement, (i) Developer hereby assigns its rights and obligations under the Project Approvals to Assignee pertaining to the Transferred Property, as more fully described in Exhibit C attached hereto (the "**Transferred Rights and Obligations**"), and (ii) Assignee hereby assumes the Transferred Rights and Obligations and agrees to be bound by the terms and conditions of the Development Agreement with respect to the Transferred Property.

3. Release. City and Assignee each acknowledges and agrees that subject to Assignee acquiring fee title to the Transferred Property pursuant to the Purchase Agreement, Developer is hereby released from and is no longer obligated to perform or fulfill the Transferred Rights and Obligations.

4. Effectiveness; Recording. Each party hereto acknowledges and agrees that (i) Developer's assignment and transfer, (ii) Assignee's assumption and release, and (iii) City's [consent and] release, each as contemplated by this Assignment, are contingent upon Assignee acquiring fee title to the Transferred Property pursuant to the Purchase Agreement, and that if such acquisition does not occur, this Assignment shall not be recorded and shall be of no further force or effect. Concurrently with the close of escrow for such acquisition or at any time thereafter, any of the parties hereto shall have the right to instruct [INSERT ESCROW HOLDER'S NAME AND ADDRESS] ("**Escrow Holder**"), the escrow holder under the Purchase Agreement, to record this Assignment in the Official Records of San Mateo County. If so delivered, Escrow Holder shall record this Assignment.

5. Estoppel. City hereby confirms that, to its actual knowledge, (i) the Development Agreement is in full force and effect and a binding obligation of the parties thereto, (ii) the Development Agreement has not been amended or modified either orally or in writing, and (iii) Developer is not in default in the performance of its obligations under the Development Agreement.

6. Covenants Running with the Land. The provisions of this Assignment shall constitute covenants which shall run with the land comprising the Transferred Property. The burdens and benefits hereof shall bind and inure to the benefit of each party hereto and to all successors in interests to the parties hereto.

7. Severability. If any term, provision, covenant or condition of this Assignment is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms, provisions, covenants and conditions of this Assignment shall continue in full force and effect.

8. Amendments. No amendment, supplement or other modification to this Assignment shall be effective or enforceable against the parties hereto unless such amendment, supplement or other modification is in writing and executed by all of the parties hereto.

9. Applicable Law and Venue. This Assignment shall be construed and enforced in accordance with the laws of the State of California. In the event of litigation, venue will be in the County of San Mateo.

10. Counterparts; Headings; Defined Terms. This Assignment may be executed in counterparts, each of which shall be an original, but all of which together shall constitute one Assignment. The headings to sections of this Assignment are for reference only and shall not be used in interpreting this Assignment.

11. Waiver. No waiver by any of the parties hereto of any of the terms or conditions of this Assignment or any of their rights under this Assignment shall be effective unless such waiver is in writing and signed by the waiving party.

12. Further Assurances. Each party hereto agrees, upon the reasonable request of another party hereto, to perform any further acts and to execute and deliver such further documents which may be reasonably necessary to carry out the terms of this Assignment.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Assignment as of the date first above written.

DEVELOPER:

TRANSWESTERN HINES SAN MATEO, L.P., a Delaware limited partnership

By: HSM GP LLC, a Delaware limited liability company, its General Partner

By: _____
Name: _____
Title: Authorized Signatory

ASSIGNEE:

[INSERT ASSIGNEE'S SIGNATURE BLOCK]

CITY:

CITY OF SAN MATEO, a political subdivision of the State of California

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

_____
Shawn Mason, City Attorney

ATTEST:

_____
City Clerk

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of _____

On _____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of _____

On _____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

SCHEDULE 1

Development Impact Fees

NOTE: This schedule of estimated development impact fees does not include the City's in lieu fees.

1) Transportation Improvement Fee

$4.79 x 276,467 SF

= $1,324,277 (estimated, based on current rate*)

2) Child Care Development Fee

$1.03 x 276,467 SF

= $284,761 (estimated, based on current rate*)

3) School Facilities Fee

$0.42 x 276,467 SF

= $116,116 (estimated, based on current rate*)

4) Waste Water Treatment Plant Phase II Expansion Fee

$0.234 x 240,254 SF (reflects square footage of existing improvements)

= $56,219 (estimated, based on current rate*)

5) South Trunk Area Sewer Improvement Fee

$204 x 502 fixtures on site (current estimate)

= $102,408 (estimated, based on current rate*)

*The rates above are those currently in effect as of the Execution Date and are subject to increase or decrease as provided in Section 4.D of this Agreement. The calculations above are provided solely to illustrate how development impact fees would be calculated for the Project, based on the Project's square footage and number of fixtures, if Developer were to receive building permits immediately after the Execution Date.

BEFORE THE COUNCIL OF THE CITY OF SAN MATEO IN THE COUNCIL CHAMBERS, 330 WEST 20TH AVENUE

ORDINANCE INTRODUCED: July 12, 2010
ORDINANCE ADOPTION TO BE CONSIDERED AT 7 P.M.: August 16, 2010

ORDINANCE NO. 2010- 13

APPROVING A DEVELOPMENT AGREEMENT
FOR AN OFFICE DEVELOPMENT AT
400-450 CONCAR DRIVE
(PA09-009)

WHEREAS, in March 2004 the City Council approved a Development Agreement with Kenmark properties to allow a new office development and related improvements on the properties of 1830 South Delaware Street and 470 Concar (now known as 400-450 Concar Drive), and public improvements along Concar Drive required as a condition of that agreement have been constructed; and

WHEREAS, on June 6, 2005 the City Council, after reviewing and approving the Final Environmental Impact Report under the California Environmental Quality Act (CEQA), approved the San Mateo Rail Corridor Transit-Oriented Development Plan; and

WHEREAS, the applicant, Hines Development, has requested a development agreement with the City (the "Agreement"); and

WHEREAS, the applicant wishes assurance that it may proceed with the project under the laws, regulations and policies as specified in the Agreement, in effect on the date of the approval; and

WHEREAS, the state legislature has authorized cities to enter into development agreements in order to provide assurance to developers that they may proceed with projects in reliance on existing laws, regulations and policies; and

WHEREAS, the City, in Resolution No.120 (1990), has adopted procedures for reviewing and entering into such development agreements; and

WHEREAS, on June 8, 2010, the Planning Commission held a noticed public hearing according to law to consider the adoption of the Agreement in conjunction with the Mitigated Negative Declaration and the Site Plan and Architectural Review and the Site Development Permit; and

WHEREAS, the Planning Commission held additional deliberation and review on June 22, 2010, and recommended City Council approval of the Agreement with some modifications; and

WHEREAS, the City Council held a public hearing noticed in accordance with Government Code section 65090 and 65091 and Municipal Code section 27.06.050 on July 12, 2010, at which the public was given an opportunity to speak regarding adoption of the Agreement; and

WHEREAS, the parties are in agreement that the prior Kenmark development agreement should be terminated;

NOW, THEREFORE, THE SAN MATEO CITY COUNCIL FINDS THAT:

1. In accordance with Government Code section 65867.5, the Agreement is consistent with the City's General Plan and the Rail Corridor Transit Oriented Development Plan for the reasons set forth in Exhibit A to the Administrative Report accompanying this Ordinance, and

2. The Agreement is compatible with the requirements of the City's Zoning Ordinance for the reasons set forth in Exhibit A to the Administrative Report accompanying this Ordinance, and

3. For the reasons set forth in the Administrative Report accompanying this Ordinance, the Agreement provides substantial public benefits to persons residing or owning property outside the boundaries of the development project, beyond the exactions for public benefits required in the normal development review process under federal, state or local law; and

4. The Council finds that the environmental impacts of the Agreement were analyzed in the Mitigated Negative Declaration, and the Council has considered and adopts that Mitigated Negative Declaration and the corresponding Mitigation Monitoring and Reporting Program, before approving the Agreement.

NOW, THEREFORE, THE SAN MATEO CITY COUNCIL ORDAINS THAT:

Section 1. A Mitigated Negative Declaration was prepared for this project in accordance with Public Resources Code section 21064.5.

Section 2. The Council hereby approves the Agreement in substantially the form attached as Exhibit A to this Ordinance, and terminates the Kenmark development agreement.

Section 3. The Council authorizes and directs the Mayor to execute the Agreement on behalf of the City.

Section 4. EFFECTIVE DATE. This Ordinance takes effect 30 days after its adoption.

Section 5. PUBLICATION. This Ordinance shall be published once in accordance with City Charter section 2.15 and shall be effective upon the expiration of thirty days from the date of its adoption.

Section 6. RECORDATION. In accordance with Government Code Section 65868.5, the Agreement will be recorded no later than 10 days after execution.

ATTEST:

(SEAL) /s/NORMA GOMEZ
NORMA GOMEZ, CITY CLERK

/s/JOHN LEE
JOHN LEE, MAYOR

* * *

Ordinance No. 2010-13 introduced on July 12, 2010 and adopted on August 16, 2010 by the City Council of the City of San Mateo, California, at a regular meeting held on August 16, 2010, by the following vote of the Council:

AYES: Council Members LIM, MATTHEWS, GROTTE, ROSS and LEE

NOES: NONE

ABSENT: NONE

(SEAL) /s/ NORMA GOMEZ, City Clerk

92 & Delaware Development Agreement Matrix

Requirement	Development Agreement Section	Trigger	Status
Public Benefits			
West Property Neighborhood Safety Aesthetic Improvements	3.A.1.b.i	Within 18 mos after the later of Developer receiving building permit for Building West or City receiving Caltrans approvals	No action required at this time. Developer will be prepared to comply when trigger occurs
Maintenance of West Property Neighborhood Safety Aesthetic Improvements	3.A.1.b.ii	Enter into maintenance agreement prior to starting construction of West Property Neighborhood Safety Aesthetic Improvements	No action required at this time. Developer will be prepared to comply when trigger occurs
West Property Landscaping & Sidewalk Improvements	3.A.1.b.iii	Within 18 mos after Developer receiving building permit for Building West	No action required at this time. Developer will be prepared to comply when trigger occurs
Maintenance of West Property Landscaping & Sidewalk Improvements	3.A.1.b.iv	Enter into maintenance agreement prior to starting construction of West Property Landscaping & Sidewalk Improvements	No action required at this time. Developer will be prepared to comply when trigger occurs
West Property Bikeway Improvement Contribution ($45,000)	3.A.1.b.v	Within 10 business days after Developer receives building permit for Building West	No action required at this time. Developer will be prepared to comply when trigger occurs
West Property Preliminary Engineering Study Contributions ($30,000)	3.A.1.b.vi	Within 30 days of receiving written notice from City of City's incurred costs	No action required at this time. Developer will be prepared to comply when trigger occurs
East Property Neighborhood Safety Aesthetic Improvements	3.A.1.c.i	18 mos after the later of Developer receiving building permit for Building East or City receiving Caltrans approvals	No action required at this time. Developer will be prepared to comply when trigger occurs
Maintenance of East Property Neighborhood Safety Aesthetic Improvements	3.A.1.c.ii	Enter into maintenance agreement prior to starting construction of East Property Neighborhood Safety Aesthetic Improvements	No action required at this time. Developer will be prepared to comply when trigger occurs
East Property Landscaping & Sidewalk Improvements	3.A.1.c.iii	Within 18 mos after the later of Developer receiving building permit for Building East or City receiving Caltrans approvals	No action required at this time. Developer will be prepared to comply when trigger occurs
Maintenance of East Property Landscaping & Sidewalk Improvements	3.A.1.c.iv	Enter into maintenance agreement prior to starting construction of East Property Landscaping & Sidewalk Improvements	No action required at this time. Developer will be prepared to comply when trigger occurs
East Property Bikeway Improvement Contribution ($48,400)	3.A.1.c.v	Within 10 business days after Developer receives building permit for Building East	No action required at this time. Developer will be prepared to comply when trigger occurs
East Property Preliminary Engineering Study Contributions ($70,000)	3.A.1.c.vi	Within 30 days of receiving written notice from City of City's incurred costs	No action required at this time. Developer will be prepared to comply when trigger occurs
Pedestrian Safety Project (demolish porkchop, construct right turn lane, two new crosswalks, new signal equipment & pedestrian landscaping)	3.A.1.c.vii	Within 18 mos after the later of Developer receiving building permit for Building East or City receiving Caltrans approvals	No action required at this time. Developer will be prepared to comply when trigger occurs
Maintenance of Pedestrian Safety Project	3.A.1.c.viii	Enter into maintenance agreement prior to starting installation of new pedestrian landscaping	No action required at this time. Developer will be prepared to comply when trigger occurs