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BEFORE THE COUNCIL OF THE CITY OF SAN MATEO IN THE  
COUNCIL CHAMBERS, 330 WEST 20<sup>TH</sup> AVENUE

RECEIVED

ORDINANCE INTRODUCED: January 18, 2011

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ORDINANCE ADOPTION TO BE CONSIDERED AT 7 P.M.: February 7, 2011

OFFICE OF CITY CLERK  
CITY HALL  
SAN MATEO, CA

ORDINANCE NO. 2011- 1

APPROVING A DEVELOPMENT AGREEMENT FOR  
MIXED USE OF RESIDENTIAL, OFFICE AND RETAIL SPACE  
AT 1700 AND 1790 SOUTH DELAWARE STREET  
"STATION PARK GREEN"  
(PA07-030)

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, ARJAX Railroad Associates II, LLC, 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, most-recently, the Planning Commission met in September, October and November 2010 to comment on the Specific Plan, Design Guidelines and Development Agreement which resulted in substantial revisions to the project which are fully detailed in the accompanying Administrative Report; and

WHEREAS, at a noticed public hearing, the Planning Commission considered the Agreement in conjunction with the Mitigated Negative Declaration and the Specific Plan and Design Guidelines on December 16, 2010, and recommended approval to the City Council; 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 January 18, 2011, at which the public was given an opportunity to speak regarding adoption of the Agreement;

ORIGINAL

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 the Findings for Approval, attached as Exhibit A to the Administrative Report accompanying this Ordinance, as well as with the Station Park Green Specific Plan approved concurrently under Resolution No. 13 (2011), and
2. The Agreement is compatible with the requirements of the City's Zoning Ordinance for the reasons set forth in the Findings for Approval, attached as 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 approves the Development Agreement in substantially the form attached as Exhibit A to this Ordinance.

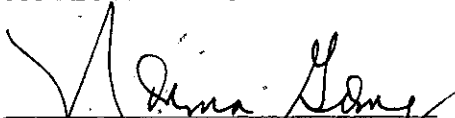
**Section 3.** The Council authorizes and directs the Mayor to execute the Agreement on behalf of the City.

**Section 4. EFFECTIVE DATE.** This Ordinance takes effect 30 days after its second reading and its adoption.

**Section 5. PUBLICATION.** This Ordinance shall be published once in accordance with City Charter section 2.15.

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

ATTEST:

  
NORMA GOMEZ, CITY CLERK

  
JACK MATTHEWS, MAYOR

When Recorded, Mail to:

City of San Mateo  
ATTN: City Clerk  
330 West 20<sup>th</sup> Avenue  
San Mateo, CA 94403

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**DEVELOPMENT AGREEMENT  
BY AND BETWEEN  
THE CITY OF SAN MATEO AND ARJAX RAILROAD ASSOCIATES II, LLC  
RELATIVE TO THE DEVELOPMENT KNOWN AS  
STATION PARK GREEN**

**THIS DEVELOPMENT AGREEMENT** (this "**Agreement**") is made and entered into as of the Execution Date (as defined in Article 2, Section B below), by and between the **CITY OF SAN MATEO**, a political subdivision of the State of California ("**City**"), and **ARJAX RAILROAD ASSOCIATES II, LLC**, a Delaware limited liability company ("**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 (the "**Development Agreement Resolution**"). City and Developer are sometimes referred to herein as the "**Parties**."

**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 1700 South Delaware Street, San Mateo, California (County of San Mateo APN 035-200-060 and County of San Mateo APN 035-200-180), and more particularly described in **Exhibit A** attached hereto (the "**Property**"). The sole member of Developer is Ardmore PA Railroad Associates, LLC, a Delaware limited liability company, owned in part and controlled by Edward B. Lipkin.

E. 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.

F. 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.

G. Developer desires to provide the transit-oriented development and high-density uses encouraged and permitted by the General Plan (as defined in Article 2, Section C below), the Corridor Plan and the TOD District, and to that end has filed Planning Application No. 07-030 (the "**Planning Application**") for, among other things, the City to adopt the Station Park Green Specific Plan (the "**Specific Plan**") and the Station Park Green Design Guidelines (the "**Design Guidelines**") affecting the Property, and thereby allowing the phased development of Developer's proposed mixed-use, transit-oriented project as described in those documents (the "**Project**"), including: (1) up to 599 dwelling units; (2) a minimum of 25,000 gross square feet ("**gsf**") and up to 60,000 gsf, of retail / services / restaurant uses, and a minimum of 10,000 gsf and up to 45,000 gsf of office use; and (3) approximately 2.0 acres of private maintained open space open to the general public (but excluding publicly accessible streets and residential usable open space).

H. Developer has committed to contribute toward the development of significant public infrastructure and other improvements in excess of what Developer could otherwise be legally required to provide (collectively, the "**Public Benefits**").

I. In exchange for the Public Benefits, Developer desires this Agreement with the City to assure that Developer shall, at the time of application, be entitled to proceed to construct and complete the Project at any time within the Term (as defined in Article 1, Section B below), subject only to the terms and conditions set forth in this Agreement, including, without limitation, providing the Public Benefits in accordance with Article 3, Section A.1 below. City finds a substantial public benefit in the provision of the Public Benefits and the other benefits set forth in this Agreement.

J. 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.

K. City has examined the environmental effects of the Project, the Public Benefits, and this Agreement in the Initial Study/Mitigated Negative Declaration ("**MND**") prepared for the

Planning Application pursuant to the California Environmental Quality Act (“**CEQA**”). On January 18, 2011, the City Council reviewed and adopted the MND as adequate to assess the environmental effects of the Project and the Public Benefits in addition to the Planning Application, including this Agreement. The terms and conditions of this Agreement are consistent with and within the scope of the MND. Except as potentially required for the exercise of Subsequent Discretionary Powers (as defined in Article 4, Section C below), no further environmental documentation is anticipated.

L. After conducting a duly noticed public hearing on December 16, 2010, the Planning Commission of the City (the “**Planning Commission**”) reviewed, considered, and recommended approval of (1) the MND, and (2) the Planning Application, including this Agreement, thereby authorizing development of the Project and provision of the Public Benefits.

M. After conducting a duly noticed public hearing on January 18, 2011, and after independent review and consideration, the City Council approved by Ordinance No. 1 the execution of this Agreement (the “**Enacting Ordinance**”), and, by resolution, the Planning Application, including both the Specific Plan and the Design Guidelines, thereby authorizing development of the Project and provision of the Public Benefits. The City Council also found that the provisions of this Agreement are consistent with the City’s General Plan as well as the Corridor 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. In exchange for providing these public benefits, Developer receives assurance from City that Developer shall be entitled to proceed with development of the Project and provision of the Public Benefits in accordance with the Planning Application and the Existing City Laws (as defined in Article 3, Section B.2 below), subject only to the terms and conditions contained in this Agreement, including, without limitation, Article 4, Section C below.

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, 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 (the “**Term**”) shall commence upon the Effective Date and shall expire ten (10) years after the Effective Date, unless terminated, modified or extended, as provided herein, or under the Development Agreement Statutes and the Development Agreement Resolution. All subdivision approvals (including, without limitation, the Subdivision Maps referenced in Article 4, Section F below), Site Plan and Architectural Review (“**SPAR**”) permits, Site Development permits, use permits, and any other land use and

development approvals for the Project and the Public Benefits (collectively, “**Subsequent Approvals**”) granted, issued or approved by the City shall be effective and valid for the duration of the Term, unless a longer period is permitted under otherwise applicable law.

C. Development of Property. City approves and consents to the development of the Property and to the construction of the Project in substantial conformity with the Planning Application 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**”);
2. Developer complies with its obligations with respect to Public Benefits; and
3. A building permit application or applications for the substantive components of the Project has or have been filed prior to expiration of the Term, which building permits may be extended administratively for up to eighteen (18) months beyond the expiration of the Term to ensure substantial completion of the Project by that time. This provision shall survive the expiration of the Term.

D. Commencement and Timing of Development. The Parties acknowledge that except for any express deadlines set forth in this Agreement, including the schedule for the provision of Public Benefits attached hereto as **Exhibit B** (the “**Timing of Public Benefits**”), and in the Conditions of Approval, Developer shall have the right to develop the Project in such order and at such rate and at such times as Developer deems appropriate within the exercise of its subjective business judgment. This includes, without limitation, using some portions of the Property as construction staging areas during construction on other portions of the Property.

E. Vested Rights; No Waiver of Rights to Existing Uses or Structures. Developer shall have the vested right to develop the Property, construct the Project and provide the Public Benefits, in accordance with the Specific Plan, the Design Guidelines, the MND, the Conditions of Approval, the terms of this Agreement, and the Existing City Laws (as defined in Article 3, Section B.2 below). Notwithstanding anything set forth in this Agreement to the contrary, under no circumstances shall Developer be obligated to proceed with the Project or any portion of the Project, and, prior to and/or at any time after undertaking the Project, Developer shall be entitled to apply to the City for approvals to develop different projects, and/or to make repairs, improvements, additions and renovations to the existing buildings, structures, landscaping and infrastructure at the Property (the “**Existing Improvements**”), in conformance with the San Mateo Municipal Code (the “**Municipal Code**”). City agrees not to unreasonably or arbitrarily withhold, condition, or delay consent to such repairs, improvements, additions and renovations to the Existing Improvements. City expressly acknowledges that Developer has not abandoned or relinquished any rights to the Existing Improvements or the existing uses at the Property.

F. 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 City ordinances and charter, or (2) if the Enacting Ordinance is subject to a valid referendum proceeding pursuant to Elections Code §§ 9200 et seq., the date the Enacting Ordinance is upheld pursuant to such referendum proceeding.

B. “**Execution Date**” means the date on which all signatures to this Agreement have been obtained.

C. “**General Plan**” means the City of San Mateo General Plan, adopted by the City Council on July 16, 1990, 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 fees imposed by the City and payable upon the submission of an application for a permit or approval, which cover only the estimated actual costs of processing that application, and are not only applicable to the Project but applied citywide.

**ARTICLE 3  
OBLIGATIONS OF DEVELOPER AND CITY**

A. Obligations of Developer.

1. Public Benefits. Subject to the terms and conditions of this Agreement, including the Timing of Public Benefits attached hereto as **Exhibit B**, Developer shall provide the following Public Benefits:

a. Grant by Developer to City of a surface easement for purposes of a Class I bike facility and landscaping strip along the southeasterly frontage of the Property with Concar Drive (the “**Multi-Use Path**”) at an estimated value of \$813,000, and in substantial conformity with the plan attached hereto as part of **Exhibit C**;

b. Contribution by Developer to City of \$627,000 to help fund or reimburse the City for the design and construction of that portion of the Complete Street project along the South Delaware frontage of the Property, as further described in the Specific Plan and Design Guidelines, and in substantial conformity with the diagrams attached hereto as part of **Exhibit C**;

c. Contribution by Developer to City of \$200,000 to help fund or reimburse the City for (i) a residual flooding preliminary engineering study of the immediate area around the Property (the "**Flood Studies**"); (ii) planning for the Hayward Park Station Area; and/or (iii) pedestrian and bicycle improvements in the immediate area;

d. Contribution by Developer of \$60,000 to help fund, or to reimburse the City for, the planting and two (2) years of maintenance for trees in the 19th Avenue Park neighborhood in substantial conformity with the plan attached hereto as **Exhibit D**;

e. Development, operation and maintenance of a community room of at least 3,000 square feet within Block MU-1, MU-2 or MU-3, available to the members of the San Mateo community free of charge by reservation and subject to availability at an estimated value of \$375,000.

f. Relocation underground of existing utility lines within the public right-of-way of Concar Drive along the frontage of the Property in conjunction with initial site grading of Blocks MU-1, MU-2 and MU-3, at an estimated value of \$1,500,000.

g. Developer must comply with the City's Below Market Rate Housing program in existence on the date this Agreement is executed.

2. Transportation Management Association. Developer will join the City's Transportation Management Association, as described in the Conditions of Approval.

3. Long-Term Shared or Reduced Parking Plans. Developer agrees to meet and confer in good faith with the developers of the transit-oriented development located at 400-450 Concar Drive in San Mateo approved under Planning Application No. 09-009, to pursue shared or reduced parking plans between that project and the Project that might discourage vehicular commuting and encourage train utilization. Developer shall keep Planning Division staff reasonably informed of its efforts under this provision and shall allow Planning Division staff to attend such meetings. Notwithstanding the foregoing, the City shall not be required to approve any shared or reduced parking plan below the minimum parking ratios required under the Planning Application, and Developer shall not be required to eliminate any parking stalls that have been constructed in accordance with the Planning Application.

4. Green Building Requirement. No later than the Execution Date, Developer shall provide the City with a copy of the letter dated March 24, 2008, from the U.S. Green Building Council ("**USGBC**") confirming Stage 1 (Plan Pre-Review) approval of the Project at the Gold level under the Pilot Version, updated July 2007, of the USGBC's Leadership in Energy and Environmental Design for Neighborhood Development Rating System ("**LEED-ND**").

5. Density Bonus Waiver. Developer waives its right to request a density bonus.



B. Obligations of City

1. Development Plan Shall Not Be Diminished or Impeded by City. City agrees that during the Term, the timing, size, scope, nature, and Conditions of Approval of the Project shall not be changed, affected, modified, delayed, or diminished, regardless of any increased burden of pending, proposed 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 described in the Planning Application. Without limiting the foregoing, City further agrees that during the Term, with the exception of Public Benefits and the Conditions of Approval, no construction or contribution toward funding additional infrastructure or other improvements shall be required of Developer by City in connection with the Project, except for requirements imposed by State or Federal law. City shall take no action nor impose any condition that would conflict with this Agreement or the implementation of the Project or the Planning Application, including, without limitation, by: reducing the density or intensity of the Project, or any part thereof; reducing the height or bulk of the Project, or any part thereof; forbidding or limiting any permitted land uses; controlling the rate, timing, phasing or sequencing of the development of the Project; controlling the availability of or any privileges or rights to public utilities, services or facilities; controlling rents, purchase prices, ownership association fees or common area charges within the Project; limiting the processing or procuring of applications for Subsequent Approvals; or increasing any development impact fees within the Existing City Laws (as defined in Article 3, Section B.2 below), except as specifically permitted under Article 4, Section E below.

2. Existing City Laws. Except as specifically provided herein, City's charter, General Plan, Corridor 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 the Project, the Property, the Public Benefits, and the property on which the Public Benefits will be constructed, including, without limitation, the Specific Plan and the Design Guidelines (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**"). 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, City agrees that it will process such applications pursuant to State law and the Municipal Code.

3. Recording. Pursuant to Government Code section 65868.5, within ten (10) days after this Agreement is approved and executed by the Parties hereto, the City shall submit a complete original of this Agreement to the Recorder's Office of the County of San Mateo, California, to be recorded and shall provide Developer with a certified copy of such recordation. From and after the time of such recordation, this Agreement shall impart such notice thereof to all persons as is afforded by the recording laws of this State, and the burdens of this Agreement, including all its exhibits, shall be binding upon, and the benefits of this Agreement, including all

exhibits, shall inure to, all successors in interest to the Parties. If the Parties or their successors-in-interest amend, modify, cancel or terminate this Agreement pursuant to its terms, City shall have notice of such action recorded with the Recorder's Office of the County of San Mateo, California, within ten (10) days, and shall provide Developer with a certified copy of such recordation.

#### **ARTICLE 4 DEVELOPMENT OF PROPERTY**

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

1. New City Laws that (a) are not inconsistent with and do not conflict with the Existing City Laws, the Planning Application, the Project, 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, including, without limitation, as provided under Article 3, Section B above, 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 situations and are in effect at the time that 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 Municipal Code;

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

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

e. Any requirements applicable upon issuance of a building permit for which City acts as an administering agent for any State or Federal agency; and

f. Any Processing Fees, in accordance with Article 4, Section D, below.

B. Moratoria. In the event that any ordinance, resolution, general plan amendment, specific plan or specific plan amendment, 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, 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. It is the desire of the Parties to avoid the result in Pardee Construction Co. v. City of Camarillo, 37 Cal.3d 465 (1984), in which the California Supreme Court held that because the parties there had failed to consider and expressly provide for the timing of development, a later-adopted initiative restricting the timing of development prevailed over the parties' agreement. Without limiting the foregoing, Article 1, Section D above, or Article 3, Section B above, 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 or development 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 City as an emergency ordinance on the basis of its finding that a significant public health or safety emergency exists such that the failure of the City to terminate or modify the provisions of this Agreement would place the residents of the City in a condition dangerous to their health or safety (a "**Health or Safety Danger**"), in which case the Term shall be extended automatically for a period of time equal to that of such emergency moratorium or other limitation affecting development of the Project. 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. Subsequent Discretionary Powers. Developer acknowledges that the Existing City Laws contemplate the exercise of subsequent discretionary powers by the City, subject to City's obligations under Article 3, Section B. These constitute "**Subsequent Discretionary Powers**," and may include, without limitation, Subsequent Approvals, finalization of the financing actions necessary to implement the monitoring and implementation of environmental mitigation measures, and further CEQA review of individual phases of the Project as it builds out where required by State law. Nothing in this Article shall be construed to limit the authority or the obligation of the City to hold legally required public hearings, or to limit unlawfully the discretion of City and any of its officers or officials in complying with or applying Existing City Laws and Applicable New City Laws.

D. Application, Processing and Inspection Fees. Processing Fees that are revised during the Term shall apply to the development of the Project pursuant to this Agreement provided that (1) such revised fees apply generally to similar private projects or works within City, (2) the application of such fees to development of the Project is prospective only, unless otherwise agreed to by Developer, and (3) the application of such fees to development of the Project would not require an amendment of this Agreement, including, without limitation, any of the exhibits incorporated herein.

E. No New Development Impact Fees. City expressly agrees that Developer and its successors-in-interest shall have no obligation to participate in, pay, contribute, or otherwise provide as a condition or exaction of any Subsequent Approval by City, any new-impact fees imposed on development, however described or defined, that did not exist under the Existing City Laws. This provision will not preclude authorized and reasonable increases or decreases to those

development impact fees in existence under the Existing City Laws solely to account for increases or decreases in the Consumer Price Index for All Consumers (“**CPI-U**”) for San Francisco-Oakland-San Jose metropolitan area measured by the United States Department of Labor’s Bureau of Labor Statistics. The City shall not modify or renegotiate the development impact fees applicable to the Project as a result of any amendment to this Agreement or the Planning Application unless such amendment materially increases the density or intensity of the Project. The Parties acknowledge that the provisions contained in this Article 4, Section E, are intended to implement the intent of the Parties that Developer has the right to develop the Project pursuant to specified and known criteria and rules, and that City receives the benefits which will be conferred as result of such development without abridging the right of City to act in accordance with its powers, duties and obligations.

F. Subdivision Maps.

1. Developer shall have the right, from time to time or at any time, to apply for one (1) or more Tentative Maps (“**Master Tentative Maps**”), subdividing the Property or portions of the Property into parcels corresponding to the “**Blocks**,” “**Streets**” and/or “**Open Spaces**” (all, as specified in the Planning Application), as may be necessary in order to develop, sell, lease or finance any portion of the Property in connection with development of the Project consistent with the density and parcel sizes set forth in the Planning Application. Multiple final maps may be filed for any Master Tentative Map pursuant to Government Code Section 66456.1.

2. Developer shall have the right to apply for a subsequent Tentative Map (“**Subsequent Tentative Map**”) prior to the time that the Master Tentative Map has been approved and prior to the time that the Final Subdivision Map based on the Master Tentative Map has been approved and filed for record. City may grant approval of a Master Tentative Map or of a Subsequent Tentative Map or Subsequent Tentative Maps with conditions as to the development of the parcel or parcels described on the Master Tentative Map or Subsequent Tentative Map. Conditions of approval of a Subsequent Tentative Map shall include that the conditions of the Master Tentative Map as to the parcel or parcels shown and described on the Subsequent Tentative Map have been fulfilled.

3. Each Master Tentative Map, Subsequent Tentative Map and Final Subdivision Map may be “for condominium purposes,” approving the portion of the Property described therein for a maximum number of condominium units. Any portion of the Property described on a Final Subdivision Map “for condominium purposes” may be divided into condominiums by a condominium plan in accordance with Civil Code Section 1351(e) and Government Code Section 66427. A Final Subdivision Map for a portion of the Property described in a Tentative Map may not be approved until the conditions of approval of the Tentative Map applicable to the portion of the Property described in the Final Subdivision Map have been satisfied.

4. Pursuant to Government Code Section 65867.5, City has determined that this Agreement is not subject to the provisions of Government Code Section 66473.7 for the following two (2) independent reasons: (a) the Project is a residential project proposed for a site that is within an urbanized area and has been previously developed for urban uses; and (b) the immediate contiguous properties surrounding the Property are, and previously have been, developed for

urban uses, all within the meaning of Government Code Section 66473.7(i). Therefore, the maps referenced in this Article 4, Section F shall be exempt from the requirements of Government Code Section 66473.7 concerning water verifications.

5. Notwithstanding that the Planning Application, the MND, the Conditions of Approval and this Agreement apply to the entire Property and run with the land, if and to the extent that the Property is subdivided into separate parcels and any such parcels are transferred, following the execution of an Assumption Agreement in connection with a Transferred Parcel (as defined in Article 11, Section A below) the obligations of a Transferee (as defined in Article 11, Section A below) shall be limited to those provisions of the Planning Application, the MND, the Conditions of Approval, this Agreement and the Subsequent Approvals only insofar as they apply to the parcel owned by such Transferee. Without limiting the generality of the foregoing, the owner of such Transferred Parcel shall not be chargeable with any omission, commission, default or delay under the Planning Application, the Conditions of Approval, the MND, this Agreement, or Subsequent Approvals regarding any other parcels making up the Property that it does not own. This provision to make the undertakings with respect to each parcel making up the Property severable is included in order to facilitate the separate ownership, financing and/or development of parcels making up the Property without concern for any non-compliance attributable to the acts of others.

G. Processing During Third-Party Litigation. The filing of any third-party lawsuit(s) against City or Developer relating to this Agreement, the MND, the Planning Application, the Subsequent Discretionary Powers, any other development permits or approvals, or issues affecting the Project or the Property, shall not give cause to the City to delay or stop the development, processing or construction of the Project, or the exercise by the City of any of its Subsequent Discretionary Powers, unless such third party obtains a court order preventing the activity. City shall not stipulate to the issuance of any such order.

## ARTICLE 5 AMENDMENT OR CANCELLATION

A. Amendments to Agreement (Developer and City). This Agreement may be amended, or cancelled in whole or in part, at any time and from time to time 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 form required by Government Code section 65867, and adoption of an ordinance amending or cancelling this Agreement; provided, however, that following the execution of an Assumption Agreement in connection with a Transferred Parcel (as defined in Article 11, Section A below), this Agreement may be so amended or cancelled as it relates solely to such Transferred Parcel without the consent of the owners of any other parcels within the Property.

B. Superseding State or Federal Laws. 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 the Planning Application, the MND, the Conditions of Approval or any Subsequent Approvals ("**Superseding State or Federal Laws**"): (1) such Superseding State or Federal Laws shall be treated as a Force Majeure pursuant to Article 10, Section E below; and (2) this Agreement shall be suspended, or, with Developer's written

consent, modified or its Term extended as necessary to comply with such Superseding State or Federal Laws. Within two (2) months following the enactment of any such Superseding State or Federal Laws, 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; and if such modification, extension or suspension cannot be agreed upon, then Developer may terminate this Agreement on thirty (30-) days' notice to City. In addition, Developer shall have the right to challenge such Superseding State or Federal Laws, 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, its elected and appointed officials, employees, and agents, from and against any litigation, claim, action, or court proceeding brought against any of the foregoing individuals or entities ("**Indemnified Parties**"), the purpose of which is to attack, set aside, void, or annul this Agreement. This indemnification shall include, but not be limited to, damages, costs, expenses, attorney fees (including court-awarded attorney fees), or expert witness fees that may be asserted or incurred by Indemnified Parties, arising out of or in connection with the approval of this Agreement. If Developer is required to defend Indemnified Parties in connection with any litigation, claim, action, or court proceeding, 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. City agrees to cooperate with Developer in the defense of the claim, action, or proceeding. Nothing in this Article 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 City, or for the Indemnified Parties' negligence or willful misconduct.

## **ARTICLE 7 MORTGAGEE PROTECTION AND ESTOPPEL CERTIFICATES**

### **A. Mortgagee Protection.**

1. This Agreement shall be superior and senior to any lien placed now or hereafter 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 anything in this Agreement to the contrary, no Mortgagee shall have any obligation or duty under this Agreement to proceed with the Project, and unless such Mortgagee elects to proceed with the Project it shall not be obligated to provide the Public Benefits, indemnify the Indemnified Parties under Article 6 above or pay any applicable Processing Fees or development impact fees. However, in the event that Mortgagee both (a) takes possession of the Property as a result of a foreclosure or deed in lieu of foreclosure and (b) gives notice to the City that Mortgagee elects to proceed with the Project ("**Election to Proceed**"), then Mortgagee shall assume all the obligations imposed on Developer in connection with undertaking the Project, including, without limitation, the provision of Public Benefits, the indemnification of the Indemnified Parties under Article 6 above, and the payment of all applicable Processing Fees and development impact fees. Failure by Mortgagee to give notice to the City of its Election to Proceed within thirty (30) days of Mortgagee's taking possession of the Property as a result of a foreclosure or deed in lieu of foreclosure shall constitute an Event of Default as described in Article 9, Section A.1, in which case City shall retain the remedies against Developer set forth in Article 9, Section A.3.

3. If 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 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 ninety (90) days after the receipt of such notice from City to cure or remedy the default claimed or the areas of noncompliance set forth in City's notice. If such default or noncompliance is of a nature that it can only be cured or remedied by such Mortgagee upon obtaining possession of the Property, then such Mortgagee shall seek to obtain possession with diligence and continuity through a receiver or otherwise, and shall within ninety (90) days after obtaining possession cure or remedy such default or noncompliance. If such default or noncompliance cannot with diligence either be cured or remedied within such ninety-(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 ninety-(90-) day period and thereafter diligently pursues completion of such cure or remedy to the extent possible.

B. Estoppel Certificates. Either Developer or City 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); (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); and (4) any other factual matters reasonably pertaining to this Agreement, the Project and the Public Benefits as may be reasonably requested. A party receiving a request hereunder shall execute and return such certificate to the requesting party or its designee within ten (10) days following the receipt thereof. The certification of City may be executed on behalf of City by the City Planning Director. City

acknowledges that a certificate hereunder may be relied upon by existing or prospective Mortgagees, existing or prospective tenants of the Property, and Transferees (as defined in Article 11, Section A below).

## ARTICLE 8 ANNUAL REVIEWS

A. Annual Reviews. Beginning on the Effective Date, at least once every 12 months during the Term, Developer shall contact the City and request the scheduling of a hearing before the Planning Commission in order to demonstrate that Developer has sufficiently followed the terms of this Agreement so as to carry out the intent of the Parties in entering into it (“**Good Faith Compliance**”). 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 (5) business days prior to the hearing.

B. Notice of Default. If either of the Parties 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 Article 9 below.

C. Planning Commission Determination Regarding Good Faith Compliance. If, as a result of any such review, the Planning Commission determines, on the basis of substantial evidence, that Developer is in Good Faith Compliance, such determination shall be subject to appeal in accordance with the procedures set forth in Municipal Code Section 27.08.090. Alternatively, if, as the result of any such review, the Planning Commission determines, on the basis of substantial evidence, that Developer is not in Good Faith Compliance, then the Planning Commission shall (1) specify on the record the respects in which Developer has failed to so comply with this Agreement, and (2) give notice to Developer of such determination and specification pursuant to Article 12 below, which notice shall serve as written notice by City to Developer of a default pursuant to Article 9, Section A.1 below.

D. Planning Commission Determination Regarding a Health or Safety Danger. If, as a result of any such review, the Planning Commission determines, on the basis of substantial evidence, that, subject to Article 3, Section B and Article 4 above, there exists a Health or Safety Danger, then the Planning Commission shall (1) specify on the record the factual basis for finding such Health or Safety Danger, (2) give notice to Developer of such determination and specification pursuant to Article 12 below, and (3) make recommendations to the City Council regarding modifications to or termination of this Agreement.

E. Action by City Council. In the event that either (1) an Event of Default arises pursuant to Article 9, Section A.1 below, or (2) the Planning Commission makes recommendations to the City Council regarding modifications to or termination of this Agreement pursuant to Section D above regarding a Health or Safety Danger, 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 Developer is not in Good Faith Compliance,



or that a Health or Safety Danger exists, then the City Council may terminate or, with Developer's written consent and in accordance with Article 5, Section A above, modify this Agreement. At such hearing City shall demonstrate on the record the grounds and basis on which it claims the right to terminate this Agreement, if any. 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.

## 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 Article 8, Section E above regarding Good Faith Compliance, and Article 9, Section A.2 below regarding Force Majeure, any failure by either party to perform any material terms or provision 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 sixty (60) days after receiving written notice of default from the other party, where such failure is of a nature that can be cured within such sixty- (60-) day period; or (b) if such failure is not of a nature that can be cured within such sixty- (60-) day period, the defaulting party does not within such sixty- (60-) day period commence substantial efforts to cure such failure, or thereafter does not prosecute to completion with diligence and continuity the curing of such failure.

2. 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 Force Majeure, as described in Article 10, Section E hereof. If written notice of any such default, noncompliance, or terminating event or delay is given to either party within thirty (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.

3. 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. Within ten (10) days after expiration of the sixty- (60-) day cure period provided in Article 9, Section A.1 above, the nondefaulting party shall submit: (a) a list of three neutral mediators, each of whom must have at least five (5) years experience with performance under development agreements made and entered into in the State of California pursuant to the Development Agreement Statutes; (b) and dates the mediators are available at the time it requests the meeting. Within ten (10) days of receiving such list, the defaulting party shall select one neutral mediator from the list provided. If the dispute is not resolved within sixty (60) days after the nondefaulting party has requested a meeting, and the nondefaulting party has provided at least three (3) 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 shall be specific performance and Developer shall not have the right to recover monetary damages (compensatory, consequential or punitive) against City other than attorneys' fees to the extent provided in Article 10, Section I below, and (y) City's sole remedies, other than attorneys' fees to the extent provided in Article 10, Section I below, shall be specific performance of Developer's obligation to provide the Public Benefits as specified herein or the right to receive and retain the Public Benefits in the dollar amounts set forth in **Exhibit B** of this Agreement and specified in Article 3, Section B.1(b)-(d) as liquidated and agreed upon monetary damages. In addition, the non-defaulting party shall have the right to terminate this Agreement in accordance with the procedures set forth in Article 9, Section 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 Article 9, Section A.3 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 pursuant to Article 12 below. If 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 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 of the City or his or her designee (the "City Manager") to take whatever action the City Council deems necessary or appropriate in connection with 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 Article 9, Section B, shall not be construed so as to place additional noticing requirements upon the termination of this Agreement pursuant to Article 8, Section D above, or Developer's freeing itself from further obligations pursuant to Article 11, Section B below.

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. Notwithstanding anything in this Agreement to the contrary, following the execution of an Assumption Agreement in connection with a Transferred Parcel (as defined in Article 11, Section A below), the owner of such Transferred Parcel shall not be chargeable with any other parcel owner's non-compliance with the Planning Application, the MND, the Conditions of Approval, this Agreement or the Subsequent Approvals, and City shall have no recourse under this Article 9 or otherwise against any such non-defaulting owner and no right under this Article 9 to terminate or modify this Agreement as it relates to any parcel of the Property, and any portion of the Project thereon, owned by any such non-defaulting developer. This provision to make the undertakings with respect to each parcel making up the Property severable is included in order to facilitate the separate ownership, financing and/or development of

portions of the Property without concern for any so-called cross-default attributable to the acts of others.

## 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 City Laws.

B. Default by Developer; Withholding of Building Permits. City may, at its discretion, refuse to issue a building permit for any Project-related 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 Articles 8 or 9 above; provided, however, that following the execution of an Assumption Agreement in connection with a Transferred Parcel (as defined in Article 11, Section A below), the owner of such Transferred Parcel shall not be chargeable with any other parcel owner's non-compliance with the Planning Application, the MND, the Conditions of Approval, this Agreement or the Subsequent Approvals, and the City shall have no recourse under this Section B against such non-defaulting Transferee by delaying or refusing to accept, process or approve a building permit application for such Transferred Parcel. This provision to make the undertakings with respect to each parcel making up the Property severable is included in order to facilitate the separate ownership, financing and/or development of portions of the Property without concern for any so-called cross-default attributable to the acts of others.

C. Covenants Run with the Land. 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 and permitted assigns 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, terrorism, war, insurrection, strikes, labor disputes, unavailability of labor or materials, walk-outs, riots, governmental actions or restrictions (including, without limitation, Superseding State or Federal Laws), administrative appeals or legal actions, judicial orders, third-party actions, floods, earthquakes, fires, casualties, unusually inclement weather of a magnitude in excess of seasonally anticipated conditions for the subject climate and time of year, any condition caused by the other party, or similar basis for excused performance which is not within the reasonable control of the party to be excused ("**Force Majeure**"), 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 such Force Majeure, and the Term shall be extended automatically for a period of time equal to that of such Force Majeure.

F. No Joint Venture or Partnership. Nothing contained herein or in any document executed in connection herewith shall be construed as making City and Developer joint venturers or partners, or render either party liable for any obligations of the other.

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. Reasonable attorney fees 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.

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

Exhibit A	Property Description
Exhibit B	Timing of Public Benefits
Exhibit C	Multi-Use Path Plan and Complete Street Diagrams
Exhibit D	19 <sup>th</sup> Avenue Park Trees Plan
Exhibit E	Form of Assumption Agreement

**ARTICLE 11  
ASSIGNMENT AND TRANSFER**

A. Assignment and Transfer. At any time during the Term, Developer and its successors-in-interest shall have the right to sell, assign or transfer all or a portion of its rights, title and interests in the Property and/or this Agreement (a "**Transfer**") to any person or entity (a "**Transferee**"). The Parties acknowledge that transfer of any portion of the Property that is less than the entire Property would require subdivision approval by the City, and such portion so transferred constitutes a "**Transferred Parcel.**" Except in regard to Transfers to Pre-Approved Transferees (which does not require any consent by the City as provided in Section B below), prior to consummating any Transfer, Developer shall obtain from the City Manager written consent to the Transfer, which consent shall not be unreasonably withheld, delayed or conditioned. The City Manager shall respond in writing to Developer's written request for any such written consent within ten (10) business days after the City's receipt thereof in accordance with Article 12 below. Developer's written request shall provide reasonably sufficient detail and any non-confidential, non-proprietary supporting evidence necessary for the City Manager to consider and respond to Developer's request. Any failure by the City Manager to respond within the ten- (10-) business day period, as well as any decision by the City Manager to withhold, delay or condition consent to any Transfer, shall be promptly reviewed by the City Council in accordance with the appeal provisions set forth in San Mateo Municipal Code section 27.08.090.

B. Pre-Approved Transferees. Notwithstanding anything in this Agreement to the contrary, the following Transferees constitute "**Pre-Approved Transferees,**" for which no City consent shall be required:

1. An entity owned or controlled by Developer or Edward B. Lipkin;
2. Any Transferee that certifies that either: (a) The Transferee or its affiliates (i) have the financial resources necessary to develop or complete development of the Transferred Parcel, 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 that portion of the Project planned to occur at the Transferred Parcel, and (iii) are not involved in litigation with the City relating to any other development project; or (b) it is acquiring the Transferred Parcel 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
3. A Mortgagee or any designee of a Mortgagee.

C. Assumption and Release. Without the requirement of any public hearing, Developer or its successors-in-interest may free themselves from their obligations relating to the Property or to a Transferred Parcel, provided that the Transferee expressly assumes such obligations and agrees to be bound by the other terms and conditions respecting the Property or such Transferred Parcel under this Agreement, by way of an assignment and assumption agreement (an "**Assumption Agreement**"), materially in the form of Exhibit D attached hereto (or such other written agreement reasonably acceptable to the City), executed by and between the

City, Developer and such Transferee. With respect to a Transfer of a Transferred Parcel, to the extent that Developer's obligations under this Agreement are not clearly allocated or attributed to such Transferred Parcel, such allocation or attribution shall be made in the Assumption Agreement. Upon delivery by Developer to City of any proposed Assumption Agreement, the City Council shall consider such Assumption Agreement on its consent agenda no later than at its next regularly scheduled meeting, provided such meeting occurs no sooner than within five (5) business days. Within three (3) business days after approval by the City Council of any Assumption Agreement, City Manager shall execute and return such Assumption Agreement to Developer. Upon the full execution of an Assumption Agreement, the Transferee shall thenceforth be deemed to be the "Developer" hereunder with respect to the Property or the Transferred Parcel.

## **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, postage prepaid. Any notice or communication personally served shall be deemed given and received on the date of personal service (evidenced by signed receipt) 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 date of receipt, as evidenced by the return receipt card. 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 20<sup>th</sup> Avenue  
San Mateo, CA 94403  
ATTN: Director of Community Development

**WITH A COPY TO:**

City Attorney  
330 West 20th Avenue  
San Mateo, CA 94403  
ATTN: City Attorney

**IF TO DEVELOPER:**

ARJAX Railroad Associates II, LLC  
c/o EBL&S Development, LLC  
230 South Broad St. Mezzanine Floor  
Philadelphia, PA 19102-4101  
ATTN: Edward B. Lipkin

WITH A COPY TO:  
Goulston & Storrs, a Professional Corporation  
400 Atlantic Avenue  
Boston, MA 02110  
ATTN: Jared J. Eigerman, Esq.

*[SIGNATURE PAGE FOLLOWS]*

IN WITNESS WHEREOF, this Agreement was executed by the Parties thereto on the dates set forth below:

**[SIGNATURES MUST BE NOTARIZED FOR RECORDED DOCUMENT]**

DEVELOPER:

Dated: \_\_\_\_\_

ARJAX RAILROAD ASSOCIATES II, LLC,  
a Delaware limited liability company

By: ARDMORE PA RAILROAD ASSOCIATES, LLC,  
a Delaware limited liability company, its Sole Member

\_\_\_\_\_  
By: Edward B. Lipkin  
Its: President

CITY:

Dated: February 7, 2011

CITY OF SAN MATEO,  
a California municipal corporation

APPROVED AS TO FORM:

/s/JACK MATTHEWS  
By: Jack Matthews, Mayor

/s/SHAWN MASON  
By: Shawn Mason, City Attorney

ATTEST:

(SEAL) /s/NORMA GOMEZ  
Norma Gomez, City Clerk



**EXHIBIT A**  
**PROPERTY DESCRIPTION**

**Parcel A:**

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF SAN MATEO, COUNTY OF SAN MATEO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL 1, AS SHOWN ON THAT CERTAIN PARCEL MAP ENTITLED, "PARCEL MAP NO. 93 BEING A RESUBDIVISION OF THE PROPERTIES OF CONCAR RANCH AND ENTERPRISES, INC., SAN MATEO, CALIFORNIA, BEING A PORTION OF PARCEL 'B' AS RECORDED IN PARCEL MAP BOOK 16 AT PAGE 21, OFFICIAL RECORDS OF SAN MATEO COUNTY, BEING ALSO A PORTION OF THE LANDS CONVEYED TO CONCAR RANCH ENTERPRISES, INC., BY DEED RECORDED IN VOLUME 3248 OF OFFICIAL RECORDS OF SAN MATEO COUNTY AT PAGE 703", WHICH SAID PARCEL MAP WAS RECORDED JUNE 13, 1973 IN PARCEL MAP BOOK 21 AT PAGE 8 IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA.

EXCEPTING THEREFROM, ALL THAT PORTION OF THE HEREIN DESCRIBED PROPERTY DESCRIBED IN THE DEED FROM CONCAR ENTERPRISES, INC., TO THE CITY OF SAN MATEO, DATED MAY 30, 1974 AND RECORDED AUGUST 28, 1974 IN BOOK 6688, PAGE 133 (77494-AA), OFFICIAL RECORDS.

FURTHER EXCEPTING THEREFROM, ALL THAT PORTION OF THE HEREIN DESCRIBED PROPERTY DESCRIBED IN THE DEED FROM CONCAR ENTERPRISES, INC., A CALIFORNIA CORPORATION, FORMERLY KNOWN AS CONCAR RANCH AND ENTERPRISES, INC., A CALIFORNIA CORPORATION, TO THE CITY OF SAN MATEO, DATED DECEMBER 1, 2001, RECORDED FEBRUARY 5, 2003, UNDER SERIES NO. 2003-029396, OFFICIAL RECORDS.

**Parcel B:**

BEGINNING AT A POINT ON THE CENTERLINE OF SOUTH DELAWARE STREET, AS SHOWN ON THAT CERTAIN MAP ENTITLED "NINETEENTH AVENUE PARK UNIT NO. 1", WHICH MAP WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA ON APRIL 6, 1955 IN BOOK 42, PAGES 1, 2, 3 AND 4, OF MAPS, SAID POINT OF BEGINNING BEING MARKED ON THE GROUND BY AN IRON PIPE MONUMENT SET IN A HAND HOLE AT THE INTERSECTION OF SAID CENTERLINE WITH THE CENTERLINE OF THE ALLEY BETWEEN BLOCKS 6 AND 7, AS SHOWN ON SAID MAP; THENCE FROM SAID POINT OF BEGINNING NORTHWESTERLY ALONG THE CENTERLINE OF SOUTH DELAWARE STREET, AS SHOWN ON SAID MAP ON THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 1000 FEET AND A CENTRAL ANGLE OF 1°46'33", AN ARC DISTANCE OF 30.93 FEET; THENCE CONTINUING ALONG SAID CENTERLINE NORTH 41°28' WEST, 30.88 FEET TO A POINT THEREON; THENCE LEAVING SAID CENTERLINE OF SOUTH DELAWARE STREET SOUTH 48°32' WEST, 46.00 FEET TO THE TRUE POINT OF BEGINNING, FOR THE PARCEL TO BE DESCRIBED HEREIN;

THENCE FROM SAID TRUE POINT OF BEGINNING, SOUTH 41°28' EAST, 21.51 FEET; THENCE TANGENT TO THE PRECEDING COURSE ON THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 15.00 FEET AND A CENTRAL ANGLE OF 93°40'17", AN ARC DISTANCE OF 24.52 FEET TO A LINE PARALLEL WITH AND DISTANT 37.00 FEET NORTHWESTERLY, MEASURED AT RIGHT ANGLES FROM THE "DP" LINE OF THE DEPARTMENT OF PUBLIC WORKS SURVEY FOR THE STATE FREEWAY IN THE CITY OF SAN MATEO, ROAD IV-SN-105-SM; THENCE TANGENT TO THE PRECEDING CURVE AND SOUTHWESTERLY ALONG SAID PARALLEL LINE SOUTH 52°12'17" WEST, 125.05 FEET; THENCE LEAVING SAID PARALLEL LINE NORTH 41°28' WEST, 163.52 FEET; THENCE NORTH 52°37' EAST, 141.11 FEET TO A POINT ON THE NORTHWESTERLY LINE OF SAID SOUTH DELAWARE STREET; THENCE SOUTHEASTERLY ALONG THE NORTHWESTERLY LINE OF SAID STREET SOUTH 41°28' EAST, 125.00 FEET TO THE TRUE POINT OF BEGINNING.

## EXHIBIT B

### TIMING OF PUBLIC BENEFITS

1. The later of (a) expiration of all statutes of limitation applicable to any Covered Actions, and (b) final resolution of all Covered Actions, if any, such that the Project may proceed:
  - A. Grant of surface easement for purposes of a Class I bike facility and landscaping, along the southeasterly frontage of the Property with Concar Drive (the “**Multi-Use Path**”), in substantial conformity with the plan attached hereto as part of **Exhibit C**, which shall be constructed either as part of the Project or as a separate bid package independent of the Project. In all cases, the costs for construction and maintenance of the Multi-Use Path shall be the City’s sole responsibility.
  
2. The later of (a) six (6) months after the Execution Date, and (b) final resolution of all Covered Actions, if any, such that the Project may proceed:
  - A. Contribution by Developer to City of \$100,000 to help fund or reimburse the City for (i) a residual flooding preliminary engineering study of the immediate area around the Property (the “**Flood Studies**”); (ii) planning for the Hayward Park Station Area; and/or (iii) pedestrian and bicycle improvements in the immediate area.
  
3. The later of (a) eighteen (18) months after Execution Date, and (b) final resolution of all Covered Actions, if any, such that the Project may proceed:
  - A. Contribution by Developer to City of \$100,000 to help fund or reimburse the City for (i) the Flood Studies; (ii) planning for the Hayward Park Station Area; and/or (iii) pedestrian and bicycle improvements in the immediate area.
  
4. No later than upon demolition of the existing *Kmart* building at the Property in furtherance of the Project:
  - A. Contribution by Developer to City of \$627,000 to help fund or reimburse the City for the design and construction of that portion of the Complete Street project along the South Delaware frontage of the Property, as further described in the Specific Plan and Design Guidelines, and in substantial conformity with the diagrams attached hereto as part of **Exhibit C**.
  - B. Contribution by Developer of \$60,000 to help fund, or to reimburse the City for, the planting and two (2) years of maintenance for trees in the 19th Avenue

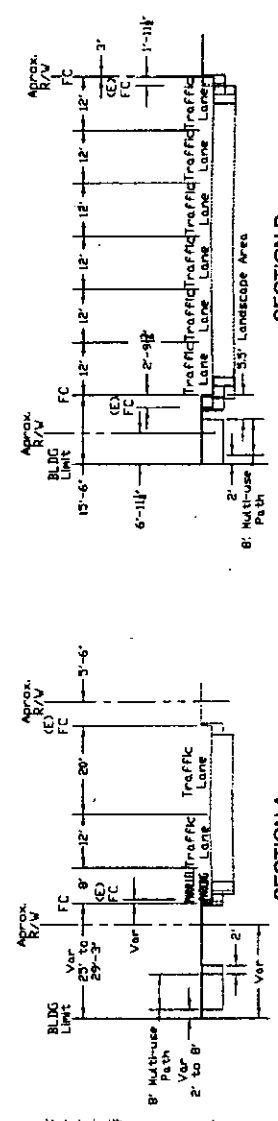
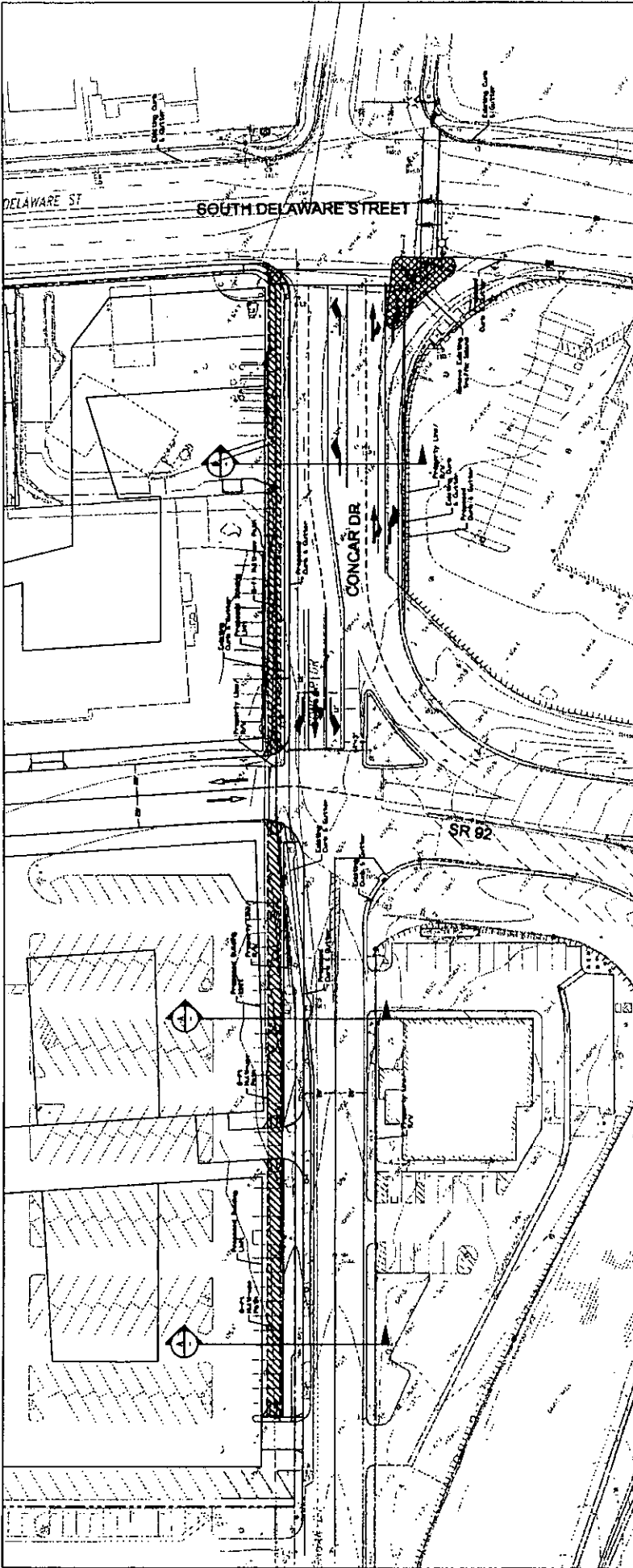
Park neighborhood in substantial conformity with the plan attached hereto as **Exhibit D.**

5. No later than upon issuance of a certificate of occupancy for the first building at the first of the following Blocks to be developed: MU-1, MU-2 and MU-3.
  - A. Relocation underground of existing utility lines within the public right-of-way of Concar Drive along the frontage of the Property in conjunction with initial site grading of Blocks MU-1, MU-2 and MU-3.
  
6. No later than upon issuance of a certificate of occupancy for the first building at the third of the following Blocks to be developed: MU-1, MU-2 and MU-3.
  - A. Development, operation and maintenance of a community room of at least 3,000 square feet within Block MU-1, MU-2 or MU-3, available to the members of the San Mateo community free of charge by reservation and subject to availability.

**EXHIBIT C**

**MULTI-USE PATH PLAN AND COMPLETE STREETS DIAGRAMS**

*[ATTACHED BEHIND]*



- NOTE:
1. TOPOGRAPHIC INFORMATION, STREET RIGHT-OF-WAY AND/OR PROPERTY LINE ARE SHOWN ILLUSTRATIVELY.
  2. EXISTING ROW WIDTH IS APPROXIMATE, AS TWO DISCRETE SURVEYS HAVE BEEN OVERLAIN TO CREATE THIS EXHIBIT
  3. 2- FEET ZONE IS TO PROVIDE CLEARANCE FROM THE BUILDING TO MULTI-USE PATH PER AASHTO'S BICYCLES GUIDE RECOMMENDATION. RETAIL DOORS SHOULD OPEN INWARD

**PRELIMINARY  
FOR DISCUSSION  
ONLY**

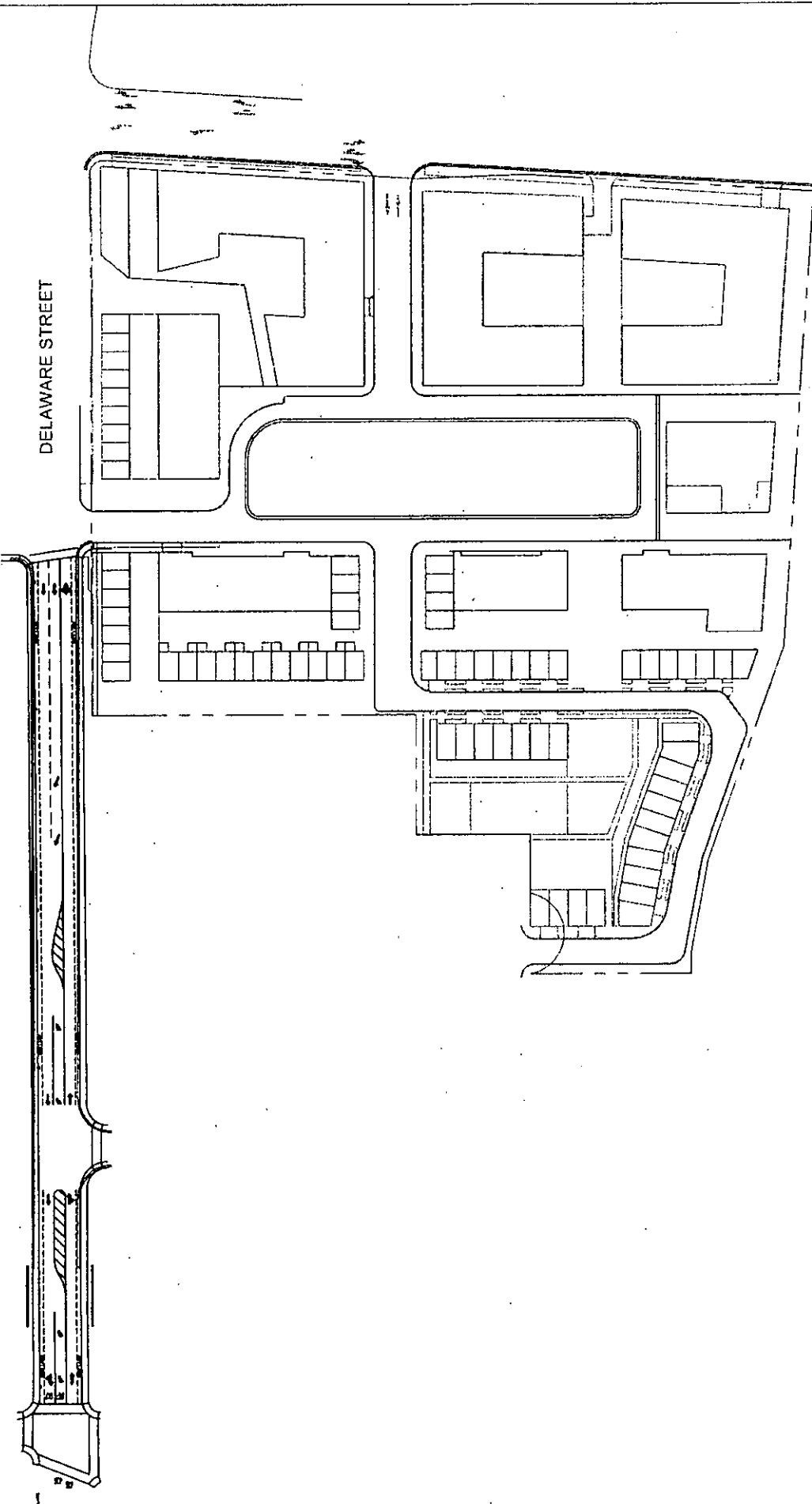
**SECTION B**  
NT

**SECTION A**  
NT

**ARUP**  
ARCHITECTURAL  
ENGINEERING  
PLANNING  
ENVIRONMENTAL

STATION PARK  
GREEN

Concar Drive & Multi-use Path Exhibit  
DATE: 07/10/18  
PROJECT NO: 18-0000



PRELIMINARY  
FOR DISCUSSION  
ONLY

**ARUP**  
 10000 North Central Expressway, Suite 1000  
 Dallas, Texas 75243  
 Tel: 972.342.2000  
 Fax: 972.342.2001  
 www.arup.com

**Bay Meadows Land Company**  
 10000 North Central Expressway, Suite 1000  
 Dallas, Texas 75243  
 Tel: 972.342.2000  
 Fax: 972.342.2001  
 www.baymeadows.com

**Bay Meadows Development PH2**

**Delaware Street Block Layout Streetscape Exhibit**

DATE	DESCRIPTION	BY	CHECKED

10000 North Central Expressway, Suite 1000  
 Dallas, Texas 75243  
 Tel: 972.342.2000  
 Fax: 972.342.2001  
 www.arup.com

**EXHIBIT D**

**19TH AVENUE PARK TREES PLAN**

*[ATTACHED BEHIND]*

# MEMORANDUM

**DATE:** May 5, 2009  
**TO:** Lisa Ring, City of San Mateo  
**FROM:** ARJAX Railroad Associates II, LLC  
**REGARDING:** "Station Park Green" – Public Benefit for 19<sup>th</sup> Avenue Park

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The 19<sup>th</sup> Avenue Street Trees Program offered to residents of 19<sup>th</sup> Avenue Park as part of Station Park Green's public benefit, as outlined in the corresponding development agreement, is intended to both enhance the streets within the 19<sup>th</sup> Avenue Park neighborhood, as well as improve design continuity between two adjacent neighborhoods. The benefit project is briefly described below.

Tree Sizes and Species: The City's Arborist and the Developer's landscape architect will select the range of trees offered as part of the benefit. Trees will be of the same size and species as other trees planted at Station Park Green. Their boxes will be, at minimum, twenty-four inches (24"). Trees will be planted on private property according to a design completed by the Developer's landscape architect.

The following tree species have been reviewed and approved by the City's Arborist, Dennis Pawl:

Sycamore or London Plane Tree (*Platanus acerifolia*)

Southern Live Oak (*Quercus virginiana*)

*Ulmus parvifolia* (Chinese Elm)

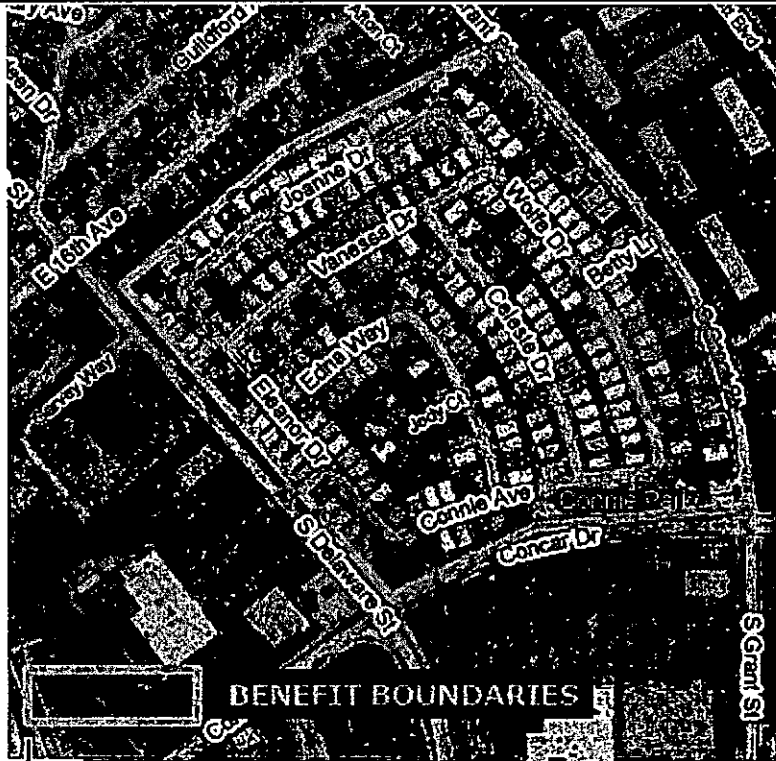
Ginkgo (*Ginkgo biloba*)

In the event that residents request smaller, flowering trees, the following has been suggested and approved:

Tulip Tree or Deciduous Magnolia (*Magnolia soulangeana*)

Project Boundaries: This benefit is intended to serve the residents of 19<sup>th</sup> Avenue Park, and therefore the neighborhood association's boundaries are (we believe) those outlined below. The Developer intends to offer the public benefit of street trees only within the depicted outlined area.





Tree Quantity and Placement: The developer estimates the outer threshold of trees planted to be three hundred (300). Exact placement of trees must be determined by a landscape architect, as an architect must review the total number of residents who would like to participate in the benefit simultaneous with mapping the final design, which will include an existing-utility study to assure that the gas, sewer, and water lines running through the sidewalk are not affected by this benefit.

Maintenance and Care: After planting the trees, the Developer will be responsible for their maintenance (pruning as necessary, water) and care for 24 consecutive months. Thereafter the trees will be the responsibility of each private owner on whose property a tree has been planted.

Program Participation: Participation in the program by homeowners in the 19<sup>th</sup> Avenue Park neighborhood is entirely voluntarily (i.e., Property owners may opt-in or opt-out of the program).

**EXHIBIT E**

**FORM OF ASSUMPTION AGREEMENT**

*[ATTACHED BEHIND]*

## 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 ARJAX RAILROAD ASSOCIATES II, LLC, a Delaware limited liability company (“**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 Development Agreement dated as of \_\_\_\_\_, 2011, 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 [IN THE CASE OF THE ENTIRE PROPERTY -- the Property] [IN THE CASE OF A PORTION OF THE PROPERTY -- that portion of the Property described in Exhibit B attached hereto (the “**Transferred Parcel**”)] 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.

Exhibit E - 2

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 {Property} {Transferred Parcel} 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 PRE-APPROVED TRANSFEREES) – City Acknowledgment of Pre-Approved Transferee. Subject to Assignee acquiring fee title to the {Property} {Transferred Parcel} 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 Transfer to a Pre-Approved Transferee (as those terms are 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 [Property] [Transferred Parcel] described in Exhibit B pursuant to the Purchase Agreement, (i) Developer hereby assigns its rights and obligations under the Development Agreement to Assignee pertaining to the [Property] [Transferred Parcel], 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 [Property] [Transferred Parcel].

3. Release. City and Assignee each acknowledges and agrees that subject to Assignee acquiring fee title to the [Property] [Transferred Parcel] 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 [Property] [Transferred Parcel] 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 [Property] [Transferred Parcel]. 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.

List of Exhibits:

Exhibit A Legal Description of the Property

[Exhibit B Legal Description of the Transferred Property]

Exhibit C Transferred Rights and Obligations

*[SIGNATURE PAGE FOLLOWS]*

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

**DEVELOPER:**

ARJAX RAILROAD ASSOCIATES II, LLC,  
a Delaware limited liability company

By: ARDMORE PA RAILROAD  
ASSOCIATES, LLC,  
a Delaware limited liability company,  
its Sole Member

\_\_\_\_\_  
By: Edward B. Lipkin  
Its: President

**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

CONSENT, JOINDER AND SUBORDINATION OF LENDER

The undersigned, BOREL PRIVATE BANK AND TRUST COMPANY, a California chartered bank ("**Borel**"), is the owner and holder of that certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated October 13, 2006, which is recorded in the Recorder's Office of the County of San Mateo, California, as Instrument No. 2006-154886, in Book \_\_\_\_\_, Page \_\_\_\_\_, as the same may have or hereafter be amended (the "**Deed of Trust**").

Borel, as the owner and holder of the Deed of Trust, hereby joins in, consents to, and subordinates the Deed of Trust to the Development Agreement by and between The City of San Mateo and ARJAX Railroad Associates II, LLC, Relative to the Development known as Station Green Park (the "**Development Agreement**") to which this Consent, Joinder and Subordination of Lender is attached. Borel agrees that all of its right, title, interest and estate in and to the real property and any improvements thereon described in the Deed of Trust shall be and is hereby bound by, subject to and subordinate to all of the terms and provisions of the Development Agreement, and the Development Agreement (and all of the terms and provisions thereof ) shall fully survive any foreclosure, deed in lieu of foreclosure and/or any exercise by Lender of any right or remedy under or pursuant to the Deed of Trust.

BOREL:

BOREL PRIVATE BANK AND TRUST COMPANY,  
a California chartered bank

By: \_\_\_\_\_  
[Name], [Title]

[SIGNATURES MUST BE NOTARIZED FOR RECORDED DOCUMENT]



\*\*\*

Ordinance No. 2011-1 introduced on January 18, 2011 and adopted on February 7, 2011 by the City Council of the City of San Mateo, California, at a regular meeting held on February 7, 2011, by the following vote of the Council:

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

NOES: NONE

ABSENT: NONE

(SEAL) /s/ NORMA GOMEZ, City Clerk