

IN WITNESS WHEREOF, the City and Developer have executed this Agreement as of the Effective Date.

**"CITY"**

City of Foster City, a municipal corporation

By: Buck Wykon  
Mayor

**ATTEST:**

By: Doris Palmer  
City Clerk

**APPROVED AS TO FORM:**

By: Jan K. Anderson  
City Attorney

**"AMB"**

AMB Institutional Alliance Fund III, LP, a Delaware limited partnership

By: Daniel L. Anderson  
Mark Hanson Daniel L. Anderson  
Title: Senior Vice President

**"FCEPP"**

Foster Park Executive Park Partners, a California general partnership

By: \_\_\_\_\_  
Alyn T. Beals  
Title: Managing Partner

IN WITNESS WHEREOF, the City and Developer have executed this Agreement as of the Effective Date.

**"CITY"**

City of Foster City, a municipal corporation

By: Buck Wykon  
Mayor

**ATTEST:**

By: Louis Palmer  
City Clerk

**APPROVED AS TO FORM:**

By: John Sward  
City Attorney

**"AMB"**

AMB Institutional Alliance Fund III, LP, a Delaware limited partnership

By: \_\_\_\_\_  
Mark Hanson

Title: \_\_\_\_\_

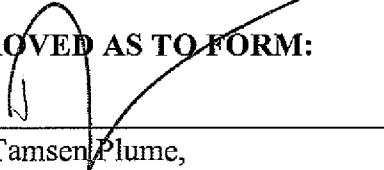
**"FCEPP"**

Foster Park Executive Park Partners, a California general partnership

By: Alyn T. Beals  
Alyn T. Beals

Title: Managing Partner


**APPROVED AS TO FORM:**

By:   
Tamsen Plume,  
Holland & Knight LLP

**"NORTHWESTERN"**

The Northwestern Mutual Life  
Insurance Company, a Wisconsin corporation

By: Northwestern Investment Management  
Company, LLC, a Delaware limited liability  
company, its wholly-owned affiliate and  
authorized representative

By:   
Name: Thomas D. Zale  
Title: Managing Director

*[Signature must be notarized]*

State of California

County of San Mateo

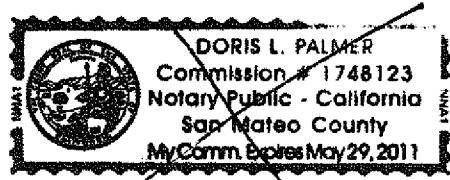
On 02-03-2010 before me, Doris L. Palmer, Notary Public  
*(here insert name and title of the officer)*

personally appeared Rick Wykoff, 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.

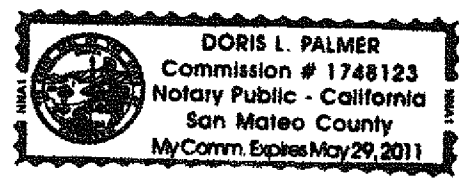
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Doris Palmer



(Seal)



State of California

County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_  
*(here insert name and title of the officer)*

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)

ACKNOWLEDGMENTS

State of California

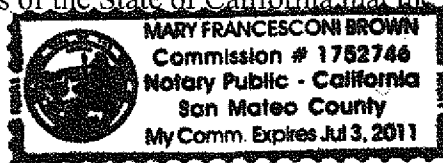
County of San Mateo

On 01/05/2010 before me, Mary Francesconi Brown, Notary Public  
*(here insert name and title of the officer)*

personally appeared Alyn T. Beals, 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 Mary Francesconi Brown  
01/05/2010

(Seal)

State of California

County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_  
*(here insert name and title of the officer)*

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)

ACKNOWLEDGMENTS

State of California

County of San Francisco

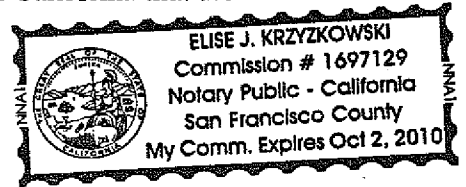
On January 5, 2010 before me Elise Krzyzkowski, a Notary Public  
*(here insert name and title of the officer)*

personally appeared Daniel L. Anderson, 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 [Handwritten Signature]



(Seal)

State of California

County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_  
*(here insert name and title of the officer)*

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.

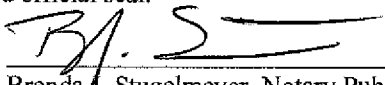
Signature \_\_\_\_\_

(Seal)

STATE OF WISCONSIN        )  
  )ss.  
COUNTY OF MILWAUKEE    )

Be it known, that on this 14<sup>th</sup> day of December, 2009, before me, a Notary Public, in and for said County and State, personally came Thomas D. Zale, Managing Director, of Northwestern Investment Management Company, LLC, a Delaware limited liability company, on behalf of THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY, a Wisconsin corporation, to me personally known to be the persons who executed the foregoing instrument, and acknowledged that they executed the same freely and voluntarily for the uses and purposes mentioned in it and as the free act and deed of the said corporation, and that the corporate seal of the said corporation was thereto affixed by its authority.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

  
\_\_\_\_\_  
Brenda J. Stugelmeyer, Notary Public  
Milwaukee County  
My Commission is permanent

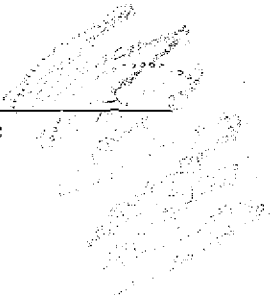


EXHIBIT A-1

AMB PROPERTY  
LEGAL DESCRIPTION

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

PARCEL I:

PARCEL 3, AS SHOWN ON THAT CERTAIN MAP ENTITLED "PARCEL MAP 14-74", FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN MATEO COUNTY, STATE OF CALIFORNIA, ON MAY 6, 1974 IN BOOK 24 OF PARCEL MAPS AT PAGE(S) 39.

PARCEL II:

AN EASEMENT FOR PEDESTRIAN AND VEHICULAR INGRESS AND EGRESS OVER THE FOLLOWING DESCRIBED PROPERTY:

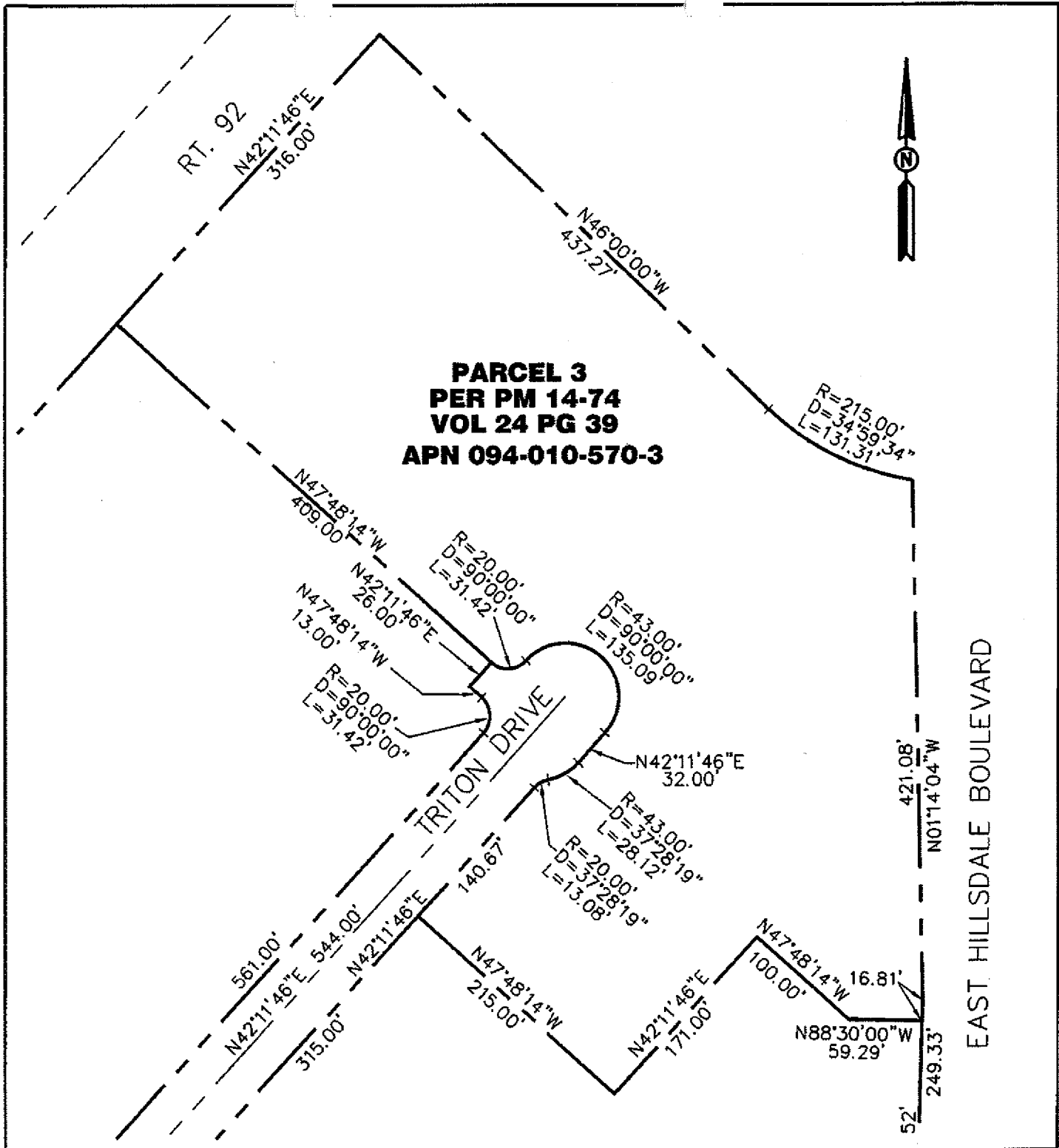
BEGINNING AT THE MOST SOUTHERLY CORNER OF PARCEL 3, AS SAID PARCEL IS DELINEATED AND SO DESIGNATED UPON THAT CERTAIN MAP ENTITLED, "PARCEL MAP 14-74", FILED FOR RECORD MAY 6, 1974, AND RECORDED IN BOOK 24 OF PARCEL MAPS AT PAGE 39, RECORDS OF SAID SAN MATEO COUNTY AND RUNNING THENCE NORTH 42° 11' 46" EAST 171.00 FEET; THENCE SOUTH 47° 48' 14" EAST, 100.00 FEET; THENCE SOUTH 88° 30' 00" EAST, 23.00 FEET; THENCE SOUTH 42° 11' 46" WEST, 26.00 FEET; THENCE NORTH 47° 48' 14" WEST 109.44 FEET; THENCE SOUTH 42° 11' 46" WEST, 160.00 FEET; THENCE NORTH 47° 48' 14" WEST, 8.00 FEET TO THE POINT OF BEGINNING AS GRANTED TO LINCOLN PROPERTY COMPANY, NO. 75, A GENERAL PARTNERSHIP, RECORDED MAY 5, 1975, IN BOOK 6835, AT PAGE 585, SERIES NO. 45286-AI, OFFICIAL RECORDS.

APN: 094-010-570-3

JPN: 094-001-010-41.04A; 094-001-010-41.02A; 094-001-010-28A and 094-001-010-28.01A



EXHIBIT A-2  
MAP OF AMB PROPERTY



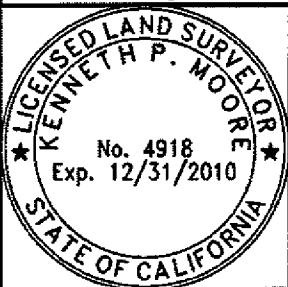
**PARCEL 3  
PER PM 14-74  
VOL 24 PG 39  
APN 094-010-570-3**



EAST HILLSDALE BOULEVARD

**WILSEY HAM**

393 Village Park Drive, Suite 100, Foster City, CA 94404 Phone 650-349-2051 Fax 650-346-4921



PLAT TO ACCOMPANY LEGAL DESCRIPTION

PARCEL 3  
PARCEL MAP 14-74

CITY OF FOSTER CITY SAN MATEO COUNTY CALIFORNIA

JOB. NO.  
818-007

SHEET 2 OF 2

SCALE: NONE

DATE: 10-12-09

EXHIBIT B-1

FOSTER CITY EXECUTIVE PARK PARTNERS PROPERTY

LEGAL DESCRIPTION

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

PARCEL ONE:

PARCEL 3, AS DESIGNATED ON THE MAP ENTITLED "PARCEL MAP 34-78, CITY OF FOSTER CITY, SAN MATEO COUNTY, CALIFORNIA", WHICH MAP WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA ON MAY 16, 1978, IN BOOK 42 OF PARCEL MAPS AT PAGE 22.

EXCEPTING ANY PORTION OF THE DESCRIBED PROPERTY WHICH IS OR WAS FORMERLY TIDELANDS WITHIN THE NATURAL BED OF ANY TIDAL SLOUGH.

PARCEL TWO:

AN EASEMENT FOR INGRESS AND EGRESS OVER PARCELS "A", "B", "C", "D" AND "F", AS DESIGNATED ON THE MAP ENTITLED "PARCEL MAP 34-78, CITY OF FOSTER CITY, SAN MATEO COUNTY, CALIFORNIA", WHICH MAP WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA ON MAY 16, 1978, IN BOOK 42 OF PARCEL MAPS AT PAGE 22.

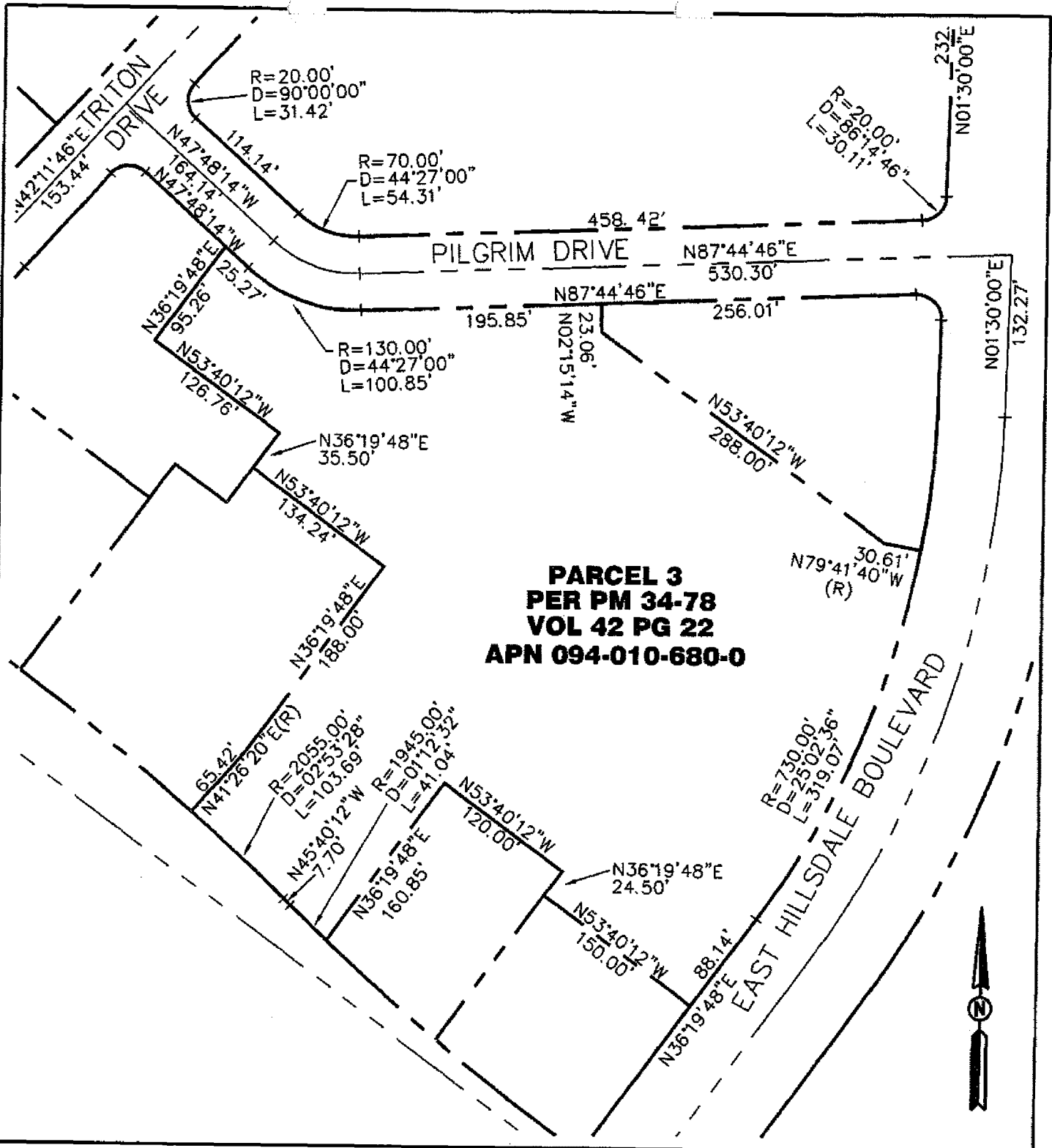
EXCEPTING ANY PORTION OF THE DESCRIBED PROPERTY WHICH IS OR WAS FORMERLY TIDELANDS WITHIN THE NATURAL BED OF ANY TIDAL SLOUGH.

APN: 094-010-680-0

JPN: 094-001-010-41.05.03A

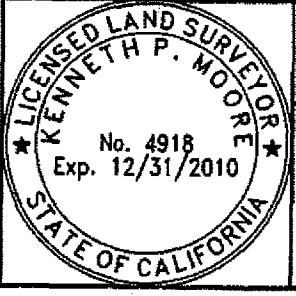
EXHIBIT B-2  
MAP OF FOSTER CITY EXECUTIVE PARK  
PARTNERS PROPERTY

EXHIBIT B-2



**WILSEY HAM**

393 Village Park Drive, Suite 100, Foster City, CA 94404 Phone 650-349-2051 Fax 650-346-4921



PLAT TO ACCOMPANY LEGAL DESCRIPTION		JOB. NO. 818-007
PARCEL 3 PARCEL MAP 34-78		SHEET 2 OF 2
CITY OF FOSTER CITY SAN MATEO COUNTY CALIFORNIA		SCALE: NONE
		DATE: 10-12-09

EXHIBIT C-1

NORTHWESTERN PROPERTY

LEGAL DESCRIPTION

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

PARCEL 1:

ALL OF PARCEL A, AS SAID PARCEL IS DELINEATED AND SO DESIGNATED UPON THAT CERTAIN MAP ENTITLED, "PARCEL MAP 11- 73, IN THE INCORPORATED TERRITORY OF THE CITY OF FOSTER CITY, COUNTY OF SAN MATEO, STATE OF CALIFORNIA, BEING A RESUBDIVISION OF LOTS 8, 9, 10, 11 & 12 AS SHOWN ON TRACT MAP NO. 820, FOSTER CITY INDUSTRIAL PARK NO. 1, RECORDED IN VOLUME 59 OF MAPS PAGES 35, SAN MATEO COUNTY RECORDS AND ALSO BEING A RESUBDIVISION OF A PORTION OF PARCEL "A", TRACT NO. 801, FOSTER CITY NEIGHBORHOOD NO. 1. UNIT NO. 1, RECORDED IN VOLUME 57 OF MAPS AT PAGES 32 TO 41, SAN MATEO COUNTY RECORDS, FOSTER CITY SAN MATEO CO. CALIFORNIA", FILED FOR RECORD DEC. 10, 1973, AND RECORDED IN BOOK 23 OF PARCEL MAPS AT PAGE 8, RECORDS OF SAID SAN MATEO COUNTY.

PARCEL 2:

ALL OF PARCEL "B", AS SAID PARCEL 15 DELINEATED AND SO DESIGNATED UPON THAT CERTAIN MAP ENTITLED, "PARCEL MAP 11-73, IN THE INCORPORATED TERRITORY OF THE CITY OF FOSTER CITY, COUNTY OF SAN MATEO, STATE OF CALIFORNIA, BEING A RESUBDIVISION OF LOTS 8, 9, 10, 11 & 12 AS SHOWN ON TRACT MAP NO. 820, FOSTER CITY INDUSTRIAL PARK NO. 1, RECORDED IN VOLUME 59 OF MAPS PAGE 35, SAN MATEO COUNTY RECORDS AND ALSO BEING A RESUBDIVISION OF A PORTION OF PARCEL 'A', TRACT NO. 801, FOSTER CITY NEIGHBORHOOD NO. 1, UNIT NO. 1, RECORDED IN VOLUME 57 OF MAPS AT PAGES 32 TO 41, SAN MATEO COUNTY RECORDS, FOSTER CITY, SAN MATEO COUNTY, CALIFORNIA", FILED FOR RECORD DEC. 10, 1973, AND RECORDED IN BOOK 23 OF PARCEL MAPS AT PAGE 8, RECORDS OF SAID SAN MATEO COUNTY.

PARCEL 3:

AN EXCLUSIVE EASEMENT FOR PARKING OVER, ALONG AND ACROSS LOT 7 AS SHOWN ON THAT CERTAIN MAP ENTITLED "TRACT NO. 820 FOSTER CITY INDUSTRIAL PARK NO. 1" WHICH MAP WAS FILED IN THE OFFICE OF THE RECORDER OF SAN MATEO COUNTY, STATE OF CALIFORNIA IN BOOK 59 OF MAPS AT PAGES 35, 36 AND 37, AS CREATED BY DEED FROM LINCOLN PROPERTY COMPANY NO. 75, A PARTNERSHIP TO LINCOLN POSAF ASSOCIATES, A LIMITED PARTNERSHIP RECORDED JANUARY 23, 1975 IN BOOK 6772 OFFICIAL RECORDS, PAGE 583, INSTRUMENT NO. 17261-A1.

COMMENCING AT A POINT ON THE SOUTHWESTERLY LINE OF SAID LOT 7, DISTANT THEREON NORTH 47° 48' 14" WEST 29.00 FEET FROM THE MOST SOUTHERLY CORNER OF SAID LOT 7 AND RUNNING THENCE ALONG SAID SOUTHWESTERLY LINE, NORTH 47° 48' 14" WEST 25.00 FEET; THENCE NORTH 42° 11' 46" EAST 1.50 FEET TO THE TRUE POINT OF BEGINNING; THENCE FROM SAID TRUE POINT OF BEGINNING, NORTH 47° 48' 14" WEST 238.45 FEET; THENCE ALONG A CURVE TO THE LEFT FROM A TANGENT BEARING NORTH 16° 58' 44" EAST HAVING A RADIUS OF 204.05 FEET THROUGH A CENTRAL ANGLE OF 5° 43' 52" AN ARC LENGTH OF 20.46 FEET; THENCE SOUTH 47° 48' 14" EAST 248.05 FEET; THENCE SOUTH 42° 11' 46" WEST 18.00 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL 4:

A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS AND PARKING PURPOSES OVER, ALONG AND ACROSS LOT 7, AS SAID LOT IS DELINEATED AND SO DESIGNATED UPON SAID MAP ENTITLED, "TRACT NO. 820, FOSTER CITY INDUSTRIAL PARK NO. 1", FILED IN BOOK 59 OF MAPS AT PAGES 35, 36 AND 37, AS CREATED BY DEED FROM LINCOLN PROPERTY COMPANY NO. 75, A PARTNERSHIP TO LINCOLN POSAF ASSOCIATES, A LIMITED PARTNERSHIP RECORDED JANUARY 23, 1975 IN BOOK 6772 OFFICIAL RECORDS, PAGE 583, INSTRUMENT NO. 17261-AL, SAID EASEMENT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHWESTERLY LINE OF SAID LOT 7, DISTANT THEREON NORTH 47° 48' 14" WEST, 29.00 FEET FROM THE MOST SOUTHERLY CORNER THEREOF AND RUNNING THENCE ALONG SAID SOUTHWESTERLY LINE NORTH 47° 48' 14" WEST, 25.00 FEET; THENCE NORTH 42° 11' 46" EAST 19.50 FEET; THENCE NORTH 47° 48' 14" WEST 248.05 FEET, TO A POINT OF CURVATURE; THENCE ALONG A CURVE TO THE RIGHT FROM A TANGENT BEARING SOUTH 11° 14' 52" WEST, HAVING A RADIUS OF 204.05 FEET, THROUGH A CENTRAL ANGLE OF 6° 11' 46" AN ARC LENGTH OF 22.12 FEET TO A POINT ON SAID SOUTHWESTERLY LINE OF LOT 7; THENCE ALONG SAID SOUTHWESTERLY LINE NORTH 47° 48' 14" WEST, 48.78 FEET; THENCE ALONG A CURVE TO THE LEFT FROM A TANGENT BEARING NORTH 10° 09' 28" EAST, HAVING A RADIUS OF 161.05 FEET, THROUGH A CENTRAL ANGLE OF 5° 20' 02" AN ARC LENGTH OF 15.00 FEET; THENCE NORTH 85° 10' 34" WEST, 11.05 FEET TO A POINT ON THE NORTHWESTERLY LINE OF SAID LOT 7; THENCE ALONG SAID NORTHWESTERLY LINE ON A CURVE TO THE LEFT FROM A TANGENT BEARING NORTH 4° 49' 26" EAST, HAVING A RADIUS OF 150.00 FEET, THROUGH A CENTRAL ANGLE OF 15° 32' 33" AN ARC LENGTH OF 40.69 FEET; THENCE NORTH 79° 16' 53" EAST 11.00 FEET; THENCE SOUTH 47° 48' 14" EAST, 350.97 FEET; THENCE SOUTH 42° 11' 46" WEST, 43.00 FEET TO THE POINT OF BEGINNING.

PARCEL 5:

ALL OF PARCEL "A", AS SAID PARCEL IS DELINEATED AND SO DESIGNATED UPON THAT CERTAIN MAP ENTITLED, "PARCEL MAP 10-73 IN THE UNINCORPORATED TERRITORY OF THE CITY OF FOSTER CITY, COUNTY OF SAN MATEO, STATE OF CALIFORNIA, BEING A SUBDIVISION OF PARCEL 1, AS SHOWN ON THE PARCEL MAP RECORDED ON FEBRUARY 9, 1971 IN BOOK 11 OF PARCEL MAPS AT PAGE 50, AND ALSO BEING A SUBDIVISION OF A PORTION OF PARCEL "A" TRACT NO. 801 FOSTER CITY NEIGHBORHOOD NO. 1, UNIT NO. 1, RECORDED IN BOOK 57 OF MAPS AT PAGES 32 TO 41, SAN MATEO COUNTY, RECORDS, FOSTER CITY, SAN MATEO COUNTY, CALIFORNIA", FILED FOR RECORD MARCH 22, 1974 AND RECORDED IN BOOK 24 OF PARCEL MAPS AT PAGE 11, RECORDS OF SAID SAN MATEO COUNTY.

PARCEL 6:

AN EASEMENT FOR THE PURPOSE OF PROVIDING PEDESTRIAN AND VEHICULAR INGRESS AND EGRESS OVER THE FOLLOWING DESCRIBED PROPERTY.

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF FOSTER CITY, COUNTY OF SAN MATEO, STATE OF CALIFORNIA, AND BEING A PORTION OF PARCEL 3, AS SAID PARCEL IS DELINEATED AND SO DESIGNATED UPON THAT CERTAIN MAP ENTITLED, "PARCEL MAP 14-74", FILED FOR RECORD MAY 6, 1974 AND RECORDED IN BOOK 24 OF PARCEL MAPS AT PAGE 39, RECORDS OF SAID SAN MATEO COUNTY AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST SOUTHERLY CORNER OF SAID PARCEL 3 AND RUNNING THENCE NORTH 47° 48' 14" WEST 18.00 FEET; THENCE SOUTH 42° 11' 46" EAST, 186.00 FEET; THENCE SOUTH 47° 48' 14" EAST 135.44 FEET; THENCE NORTH 88° 30' 00" WEST 23.00 FEET; THENCE NORTH 47° 48' 14" WEST 100.00 FEET; THENCE SOUTH 42° 11' 46" WEST 171.00 FEET TO THE POINT OF BEGINNING.

SAID EASEMENT WAS CREATED IN DEED RECORDED MAY 5, 1975 IN BOOK 6835 PAGE 587, OFFICIAL RECORDS, AND CLARIFIED AND AMENDED BY INSTRUMENT RECORDED DECEMBER 23, 1975 IN BOOK 7011, PAGE 303, AND AS AMENDED BY INSTRUMENT RECORDED APRIL 16, 1976 IN BOOK 7100, PAGE 670 OFFICIAL RECORDS.

PARCEL 7:

ALL OF PARCEL 2, AS SAID PARCEL IS DELINEATED AND SO DESIGNATED UPON THAT CERTAIN MAP ENTITLED, "PARCEL MAP 14-74, IN THE INCORPORATED TERRITORY OF THE CITY OF FOSTER CITY, COUNTY OF SAN MATEO, STATE OF CALIFORNIA, BEING A SUBDIVISION OF PARCEL C, AS SHOWN ON THE PARCEL MAP RECORDED MARCH 22, 1974, IN BOOK 24 OF PARCEL MAPS AT PAGE 11, AND ALSO BEING A SUBDIVISION OF A PORTION OF PARCEL "B", TRACT NO. 801, FOSTER CITY NEIGHBORHOOD NO. 1, UNIT NO. 1, RECORDED IN VOLUME 57 OF MAPS AT PAGES 32 TO 41, SAN MATEO COUNTY RECORDS, FOSTER CITY, SAN MATEO CO. CALIFORNIA", FILED FOR RECORD MAY 6, 1974, AND RECORDED IN BOOK 24 OF PARCEL MAPS AT PAGE 39, RECORDS OF SAID SAN MATEO COUNTY.

APN: 094-010-500-0; 094-010-510-9; 094-010-560-4 and 094-010-520-8

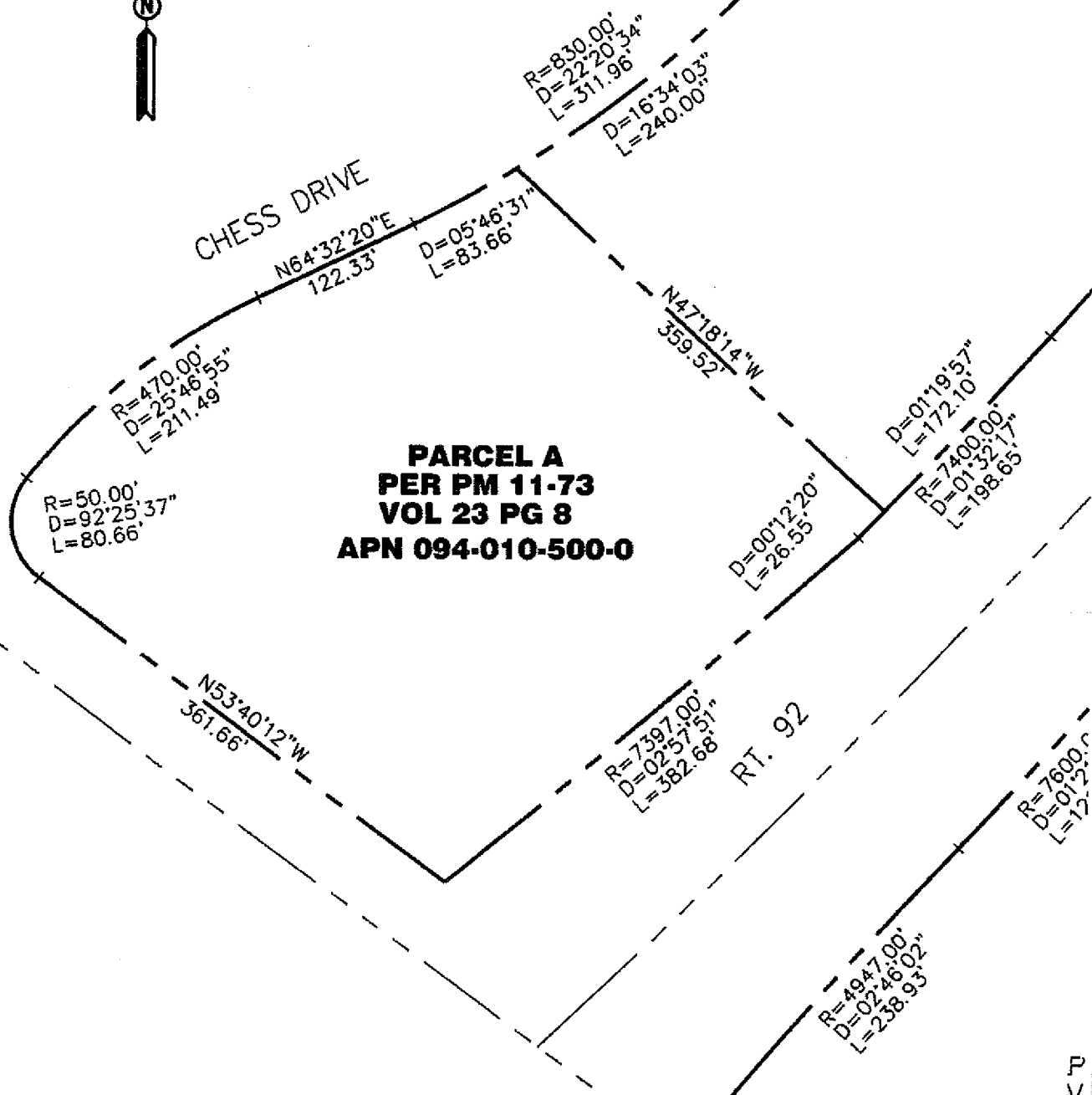
JPN: 094-001-010-50A; 094-001-010-51A; 094-001-010-41.01A and 094-001-010-41.03A



EXHIBIT C-2  
MAP OF NORTHWESTERN PROPERTY



CHESSE DRIVE



**PARCEL A  
PER PM 11-73  
VOL 23 PG 8  
APN 094-010-500-0**

**WILSEY HAM**

393 Village Park Drive, Suite 100, Foster City, CA 94404 Phone 650-349-2051 Fax 650-346-4921



PLAT TO ACCOMPANY LEGAL DESCRIPTION

JOB. NO.

818-007

PARCEL A  
PARCEL MAP 11-73

SHEET 2 OF 5

SCALE: NONE

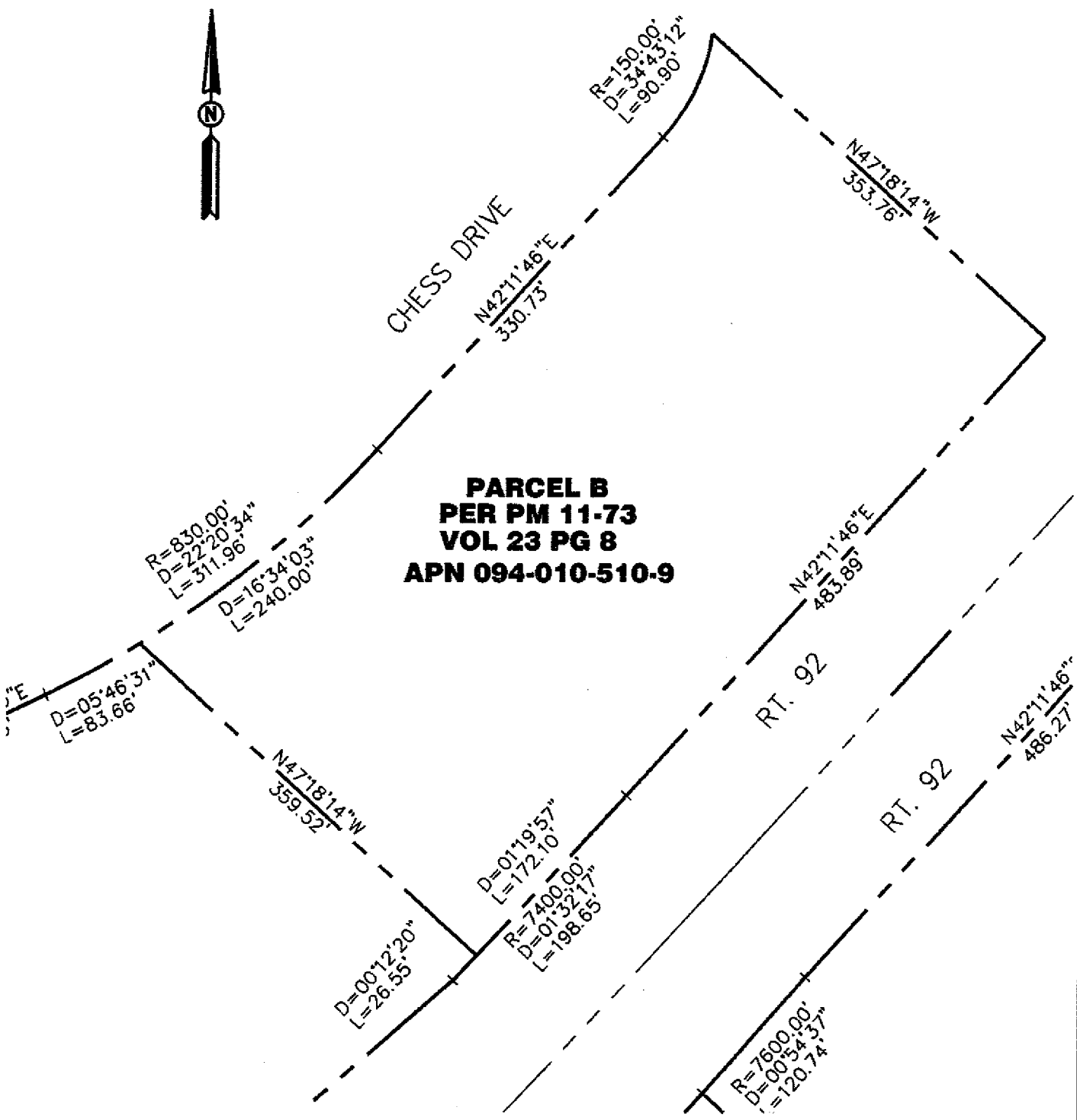
CITY OF FOSTER CITY SAN MATEO COUNTY CALIFORNIA

DATE: 10-12-09



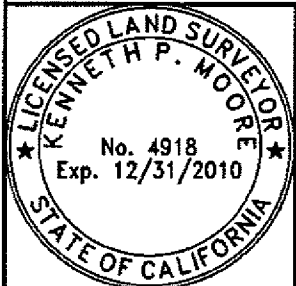
CHESSE DRIVE

**PARCEL B  
PER PM 11-73  
VOL 23 PG 8  
APN 094-010-510-9**



**WILSEY HAM**

393 Village Park Drive, Suite 100, Foster City, CA 94404 Phone 650-349-2051 Fax 650-346-4921



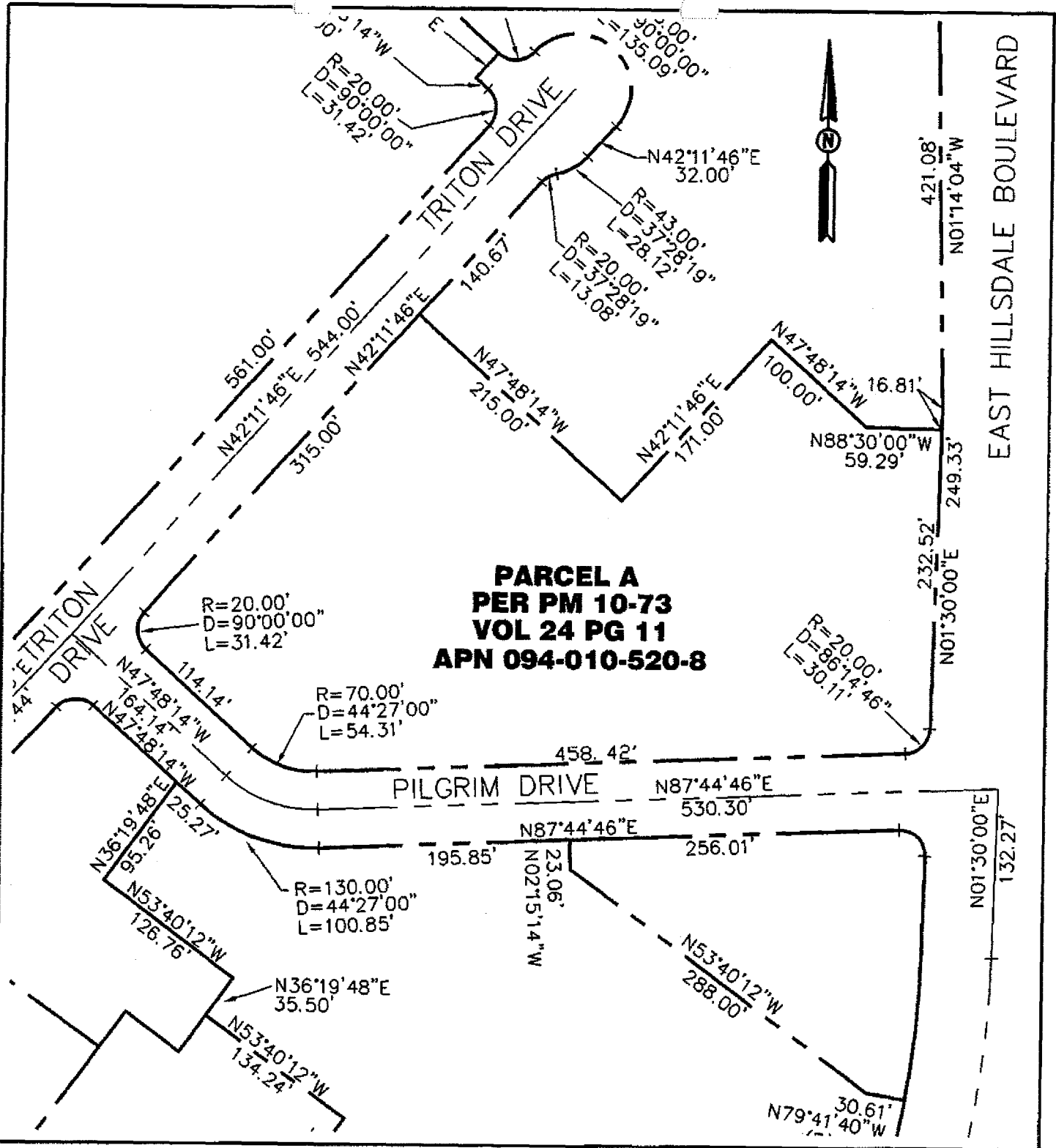
PLAT TO ACCOMPANY LEGAL DESCRIPTION

JOB. NO.  
818-007

PARCEL B  
PARCEL MAP 11-73

SHEET 3 OF 5  
SCALE: NONE  
DATE: 10-12-09

CITY OF FOSTER CITY SAN MATEO COUNTY CALIFORNIA



PLAT TO ACCOMPANY LEGAL DESCRIPTION

PARCEL A  
PARCEL MAP 10-73

CITY OF FOSTER CITY SAN MATEO COUNTY CALIFORNIA

JOB. NO.  
818-007

SHEET 4 OF 5

SCALE: NONE

DATE: 10-12-09



## EXHIBIT D

### APPLICABLE CITY REGULATIONS

To the extent the following do not conflict with or are not inconsistent with the Existing Approvals (in the event of a conflict or inconsistency, the Existing Approvals shall control):

The rules, regulations, ordinances, resolutions, Impact Fees, Exactions and official policies of the City existing on the Effective Date and applicable to development and use of the Property. Applicable City Regulations include, without limitation, (i) the General Plan, the Zoning Code, and all other City laws in effect on the Effective Date; and (ii) all those existing and approved permits, entitlements, agreements, and other grants of approval having force and effect on the Effective Date relating to the Project and Property, including without limitation their text, terms and conditions of approval.

EXHIBIT E

PERMITTED DENSITY AND INTENSITY OF USE

Parcel (Per Master Plan)	Owner	Acreage (approx)	Maximum Residential Units	Maximum Commercial Square Footage
A	AMB	3.11	240	58,000
B	AMB	2.99		
C	NML	1.84	324	183,000
D	NML	1.73		
E	NML	3.31		
F	NML	2.83		
G	FCEP	1.37	166	55,000
H	FCEP	2.85		
I	FCEP	0.72		
<b>Total</b>		<b>20.74</b>	<b>730</b>	<b>296,000</b>

EXHIBIT E

## EXHIBIT F

### SUSTAINABLE DESIGN STANDARDS

Each applicant for a Specific Development Plan/Use Permit shall comply with the following:

- Commercial buildings (which do not include Live-Work Units or residential units) in the Master Plan shall be designed to achieve the requirements of LEED Silver or a standard that is deemed to be equivalent to the LEED Silver standards ("Alternate Green Building Standards") in effect as of the Effective Date.
- In the event that that a Developer elects to design commercial buildings to achieve the requirements of Alternate Green Building Standards, the Developer shall submit such standards to the City for approval at the time of Developer's application for a Specific Development Plan/Use Permit. The Developer shall retain an independent third party consultant ("Green Compliance Consultant"), at Developer's expense, to provide the City with a written analysis as to why the Alternate Green Building Standards are equivalent to LEED Silver. The Green Compliance Consultant retained by the Developer shall be reasonably approved by the City. The City shall either approve or disapprove the Alternate Green Building Standards within thirty (30) days after the Developer's request. If the City disapproves the Developer's request, the City shall describe, with particularity, the reasons why the proposed Alternate Green Building Standards are not equivalent to the LEED Silver standards in effect as of the Effective Date.
- The Green Compliance Consultant shall verify whether the commercial building constructed by Developer is in compliance with LEED Silver or Alternate Green Buildings Standards described in the Specific Development Plan/Use Permit.
- Residential buildings will submit a sustainable practices sheet for City review prior to issuance of a building permit but will not be required to meet any LEED or other green building standards, unless the City of Foster City shall have adopted such LEED or other green building standards applicable to residential buildings ("City-Adopted Residential Standards") prior to Developer's submission of the application for the building permit, in which case, Developer shall be required to meet such the City-Adopted Residential Standards or a standard deemed equivalent to the City-Adopted Residential Standards ("Alternate Green Building Residential Standards").
- In the event that that a Developer elects to design residential buildings to achieve the requirements of Alternate Green Building Residential Standards, the Developer shall submit such standards to the City for approval at the time of Developer's application for a Specific Development Plan/Use Permit. The Developer shall retain a Green Compliance Consultant, at Developer's expense, to provide the City with a written analysis as to why the Alternate Green Building Residential Standards are equivalent to the City-Adopted Residential Standards. The Green Compliance Consultant retained by the Developer shall be reasonably approved by the City. The City shall either approve or disapprove the Alternate Green Building Residential Standards within thirty (30) days after the



Developer's request. If the City disapproves the Developer's request, the City shall describe, with particularity, the reasons why the proposed Alternate Green Building Residential Standards are not equivalent to the City-Adopted Residential Standards in effect as of the Effective Date.

- The Green Compliance Consultant shall verify whether the residential building constructed by Developer is in compliance with the City-Adopted Residential Standards or Alternate Green Buildings Residential Standards described in the Specific Development Plan/Use Permit.

EXHIBIT G  
IMPACT FEES

1. Payments in satisfaction of the Required Park Obligation pursuant to Chapter 16.36 of the Foster City Municipal Code and Sections 3.2 and 3.3 of the Agreement.
2. Payments for Off-Site Traffic Improvements pursuant to Section 3.6 of the Agreement.
3. School Fees imposed pursuant to Section 2.11 of the Agreement.

EXHIBIT H  
OFF-SITE TRAFFIC IMPROVEMENTS

	Total Estimated Project Cost (Design, Construction & Contingency)	Fair Share	Dollar Value
<b>Shared Off-Site Traffic Improvements</b>			
1 - Westbound SR 92 On-Ramp Reconstruction	\$1,240,000	22.70%	\$ 281,480.00
2 - Interlock signals on Chess Drive at:			
o Foster City Boulevard			
o Westbound SR 92 Ramps	\$87,000	22.70%	\$ 19,749.00
3 - Lengthen northbound left-turn lane on Foster City Boulevard at Chess Drive to 650 feet	\$190,000	22.70%	\$ 43,130.00
6- Construct 2 <sup>nd</sup> Eastbound Through Lane on Metro Center Boulevard between SR 92 Eastbound Ramps and Foster City Boulevard and interlock signals on Metro Center Boulevard at:	\$905,000	22.70%	\$ 205,435.00
o Foster City Boulevard			
o Eastbound SR 92 Ramps			
11 - Westbound SR 92 Off-ramp Reconstruction	\$1,200,000	22.70%	\$ 272,400.00
Additional Funded Escalation and Contingency	N/A	N/A	\$321,806
<b>Total Shared Off-Site Traffic Improvement</b>	<b>N/A</b>	<b>N/A</b>	<b>\$1,144,000</b>
<b>Triton Drive Widening Project</b>			
5 - Construct 2 <sup>nd</sup> Eastbound Through Lane on Triton Drive East of Foster City Boulevard; "Signal overlap" Phase on Westbound Triton Drive at Foster City Boulevard	\$1,450,000	100%	\$1,450,000.00
	<b>Total Contribution</b>		<b>\$2,594,000.00</b>
<i>Sources: Foster City, March 2009 and Fehr &amp; Peers, April 2009 Studies</i>			

EXHIBIT I  
 FORM ASSIGNMENT AGREEMENT AND  
 ASSUMPTION AGREEMENT

RECORDING REQUESTED BY )  
 AND WHEN RECORDED MAIL TO: )  
 )  
 )  
 )  
 City of Foster City )  
 610 Foster City Boulevard )  
 Foster City, CA 94404 )  
 Attn: \_\_\_\_\_ )

*(Space Above This Line for Recorder's Use Only)*  
 Exempt from Recording Fee per Government Code §27383

**ASSIGNMENT AND ASSUMPTION AGREEMENT**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT ("Agreement") is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and among \_\_\_\_\_, a \_\_\_\_\_ ("Assignor"), \_\_\_\_\_, a \_\_\_\_\_ ("Assignee"), and the CITY OF FOSTER CITY, a municipal corporation ("City").

**RECITALS**

A. AMB Institutional Alliance Fund III, L.P., a Delaware limited partnership, Foster City Executive Park Partners, a California general partnership, and The Northwestern Mutual Life Insurance Company, a Wisconsin corporation (collectively, "Developers") have entered into a Development Agreement with the City effective \_\_\_\_\_, 2010 (Recorder's Document No. 2010-\_\_\_\_\_) ("Development Agreement"), to facilitate the redevelopment of that certain real property owned by Developers consisting of approximately 20.75 acres within the City of Foster City, County of San Mateo, State of California, which is legally described in Exhibits A-1, B-1 and C-1 to the Development Agreement and shown on the maps attached to the Development Agreement as Exhibits A-2, B-2 and C-2 (collectively, "Site"). Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Development Agreement.

B. Assignor is the fee owner of the approximately \_\_\_\_\_ acre portion of the Site designated as APN \_\_\_\_\_, more particularly described in Exhibit 1 attached hereto and incorporated herein ("Property").

C. Assignor desires to transfer its interest in the Property to Assignee concurrently with execution of this Agreement and Assignor desires to so acquire such interest in the Property from Assignor.

D. Section 6.2 of the Development Agreement provides that each of the Developers may assign its rights and obligations under the Development Agreement to another party, provided that the assigning Developer shall have provided to City at least ten (10) business days prior written notice and provided that the assignor and the assignee document the assignment in an agreement substantially in the form of this Agreement.

E. Assignor has provided the required written notice to City of its intent to enter into an assignment and assumption agreement as required by Section 6.2.

F. Assignor desires to assign to Assignee and Assignee desires to assume all rights and obligations of Assignor under the Development Agreement. Upon execution of this Agreement and transfer to Assignee of legal title to the Property, Assignor desires to be released from any and all obligations under the Development Agreement.

### ***A G R E E M E N T***

NOW, THEREFORE, Assignor, Assignee and City hereby agree as follows:

1. Assignment by Assignor. Assignor hereby assigns, transfers and grants to Assignee, and its successors and assigns, all of Assignor's rights, title and interest and obligations, duties, responsibilities, conditions and restrictions under the Development Agreement (collectively, "Rights and Obligations").

2. Acceptance and Assumption by Assignee. Assignee, for itself and its successors and assigns, hereby accepts such assignment and assumes all such Rights and Obligations, whether accruing before or on or after the Effective Date (defined in Section 16 below). Assignee agrees, expressly for the benefit of City, to comply with, perform and execute all of the covenants and obligations of \_\_\_\_\_ [*Insert name of Assignor entity*] arising from or under the Development Agreement.

3. Release of Assignor. Assignee and City hereby fully release Assignor from all Rights and Obligations. Both Assignor and Assignee acknowledge that this Agreement is intended to fully assign all of Assignor's Rights and Obligations to Assignee, and it is expressly understood that Assignor shall not retain any Rights and Obligations whatsoever.

4. Substitution of Assignor. Assignee hereafter shall be substituted for and replace Assignor in the Development Agreement. Whenever the term "\_\_\_\_\_" [*Insert defined name of Assignor*] appears in the Development Agreement, it shall hereafter mean Assignee. Whenever the term "Developer" appears in the Development Agreement, it shall hereafter include Assignee.

5. Assignor and Assignee Agreements, Indemnifications and Waivers.

a. Assignee represents and warrants to City as follows:

(i) Assignee is a \_\_\_\_\_ duly formed within and in good standing under the laws of the State of \_\_\_\_\_. The copies of the documents evidencing the formation of Assignee, which have been delivered to City, are true and complete copies of the originals, as amended to the date of this Agreement. Assignee has full right, power and lawful authority to undertake all obligations as provided herein and the execution, performance and delivery of this Agreement by Assignee has been fully authorized by all requisite actions on the part of Assignee.

(ii) Assignee's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Assignee is a party or by which it is bound.

(iii) Assignee has not (i) made a general assignment for the benefit of creditors, (ii) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by Assignee's creditors, (iii) suffered the appointment of a receiver to take possession of all, or substantially all, of Assignee's assets, (iv) suffered the attachment or other judicial seizure of all, or substantially all, of Assignee's assets, (v) admitted in writing its inability to pay its debts as they come due, or (vi) made an offer of settlement, extension or composition to its creditors generally.

(iv) As of the Effective Date of this Agreement, Assignee owns fee simple title to the Property.

b. Assignor and Assignee hereby acknowledge and agree that City has not made, and will not make, any representation or warranty that the assignment and assumption of the Development Agreement provided for hereunder will have any particular tax implications for Assignor or Assignee.

c. Assignor and Assignee each hereby waives and releases and each hereby agrees to indemnify and hold City harmless from any and all damages, liabilities, causes of action, claims or potential claims against City (including attorneys fees and costs) arising out of or resulting from the assignment and assumption of the Rights and Obligations.

d. Assignor acknowledges and agrees that the Rights and Obligations have been fully assigned to Assignee by this Agreement and, accordingly, that Assignee shall have the exclusive right to assert any claims against City with respect to such Rights and Obligations. Accordingly, without limiting any claims of Assignee under

the Development Agreement, Assignor hereby waives any claims or potential claims by Assignor against City to the extent arising solely out of the Development Agreement.

6. Development Agreement in Full Force and Effect. Except as specifically provided herein with respect to the assignment, all the terms, covenants, conditions and provisions of the Development Agreement are hereby ratified and shall remain in full force and effect.

7. Recording. Assignor shall cause this Agreement to be recorded in the Official Records of San Mateo County, California, and shall promptly provide conformed copies of the recorded Agreement to Assignee and City.

8. Successors and Assigns. Subject to the restrictions on transfer set forth in the Development Agreement, all of the terms, covenants, conditions and provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns, pursuant to Section 6.2 of the Development Agreement.

9. Assignee Address for Notices.

The address of Assignee for the purpose of notices, demands and communications under Section 7.5 of the Development Agreement shall be:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

10. Applicable Law/Venue This Agreement shall be construed and enforced in accordance with the laws of the State of California, without reference to choice of law provisions. Any legal actions under this Agreement shall be brought only in the Superior Court of the County of San Mateo, State of California.

11. Interpretation. All parties have been represented by counsel in the preparation and negotiation of this Agreement, and this Agreement shall be construed according to the fair meaning of its language. The rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement. Unless the context clearly requires otherwise: (a) the plural and singular numbers shall each be deemed to include the other; (b) the masculine, feminine, and neuter genders shall each be deemed to include the others; (c) "shall," "will," or "agrees" are mandatory, and "may" is permissive; (d) "or" is not exclusive; and (e) "includes" and "including" are not limiting.

12. Headings. Section headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants or conditions of this Agreement.

13. Severability. Except as otherwise provided herein, if any provision(s) of this Agreement is (are) held invalid, the remainder of this Agreement shall not be affected, except as necessarily required by the invalid provisions, and shall remain in full force and effect unless amended or modified by mutual consent of the parties.

14. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to constitute an original, but all of which, when taken together, shall constitute one and the same instrument, with the same effect as if all of the parties to this Agreement had executed the same counterpart.

15. City Consent. City is executing this Agreement for the limited purpose of consenting to the assignment and assumption and clarifying that there is privity of contract between City and Assignee with respect to the Development Agreement.

16. Effective Date. The Effective Date of this Agreement shall be the date upon which Assignee obtains fee title to the Property and delivers evidence of the transfer to City ("Effective Date"). For the purposes of this Section, the evidence of transfer shall consist of a duly recorded deed and title report.

IN WITNESS WHEREOF, Assignor, Assignee and City have entered into this Agreement as of the date first above written.

*[Signatures follow on separate pages]*



**ASSIGNOR:**

\_\_\_\_\_

a \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

*[Notary Acknowledgment Required]*

**ASSIGNEE:**

\_\_\_\_\_

a \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

*[Notary Acknowledgment Required]*

*[Signatures continued on next page]*

**CITY**

**CITY OF FOSTER CITY**, a municipal corporation,

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

*[Notary Acknowledgment Required]*

ATTEST:

By: \_\_\_\_\_

\_\_\_\_\_, City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_

\_\_\_\_\_, City Attorney

EXHIBIT NO. 1

**Property Legal Description**

*[To Be Inserted]*

EXHIBIT J

ANNUAL REVIEW FORM

This Annual Review Evaluation Form is submitted to the City of Foster City ("City") by [Developer] [Note: each Developer to submit separately] pursuant to the requirements of California Government Code section 65865.1 and Resolution No. 80-73 regarding [Developers] good faith compliance with its obligations under the Development Agreement between the City and AMB Institutional Alliance Fund III, L.P., Foster City Executive Park Partners and The Northwestern Mutual Life Insurance Company ("Developers") having an Effective Date of \_\_\_\_\_ ("Development Agreement"). All terms not otherwise defined herein shall have the meanings assigned to them in the Development Agreement:

Annual Review Period: \_\_\_\_\_ to \_\_\_\_\_.

In order to establish: (1) that Developer has used good faith efforts to obtain financing, process required approvals, and/or construct and sell the remaining undeveloped properties and reach allocated commercial/retail densities and/or residential unit maximums allocated under the Development Agreement and (2) whether the term of the Agreement may be extended consistent with the "Duration of Agreement" section, describe the following:

- a. Economic factors relevant to development in City and mid-peninsula region including vacancy rates, construction costs, the availability of financing, market demand and average rental rates for different product types (residential/commercial/retail) within the Master Plan.
- b. A summary of all efforts made in the past year to market, sell and process required permits and/or construct the remaining undeveloped properties and reach allocated commercial/retail densities and/or residential unit maximums.
- c. A summary of specific strategies to be followed in the coming year intended to facilitate the processing of permits and/or actual project construction.

Note that Developers have no affirmative obligation to process permits and construct and sell commercial/retail space and/or residential units under the Development Agreement. Accordingly, the discussion provided in connection with the above may not be used to establish a breach of the Development Agreement. However, the Parties intend that these factors will be taken into account in City's determination of whether to extend the Term of the Development Agreement pursuant to Section 1.3.2.2.

Specify whether Impact Fees, Processing Fees, Connection Fees and/or other fees due and payable have been paid during this annual review period.

Describe whether obligations related to open space dedications, open space improvements and/or open space in lieu fees were satisfied where required during this annual review period.

Describe whether any Shuttle Bus contributions were satisfied during this annual review period.

Describe whether any On-Site Circulation Improvements were completed during this annual review period.

Describe whether any Off-Site Traffic Improvements were paid for during this annual review period.

Describe whether other applicable Development Agreement obligations were completed during this annual review period.

Specify whether Developer has assigned the Development Agreement or otherwise conveyed the Property during this annual review period.

Describe compliance with the Phasing Plan.

The undersigned representative confirms that [Developer] is:

\_\_\_\_\_ In good faith compliance with its obligations under the Development Agreement for this annual review period.

\_\_\_\_\_ Not in good faith compliance with its obligations under the Development Agreement for this annual review period, in response to which [Developer] is taking the actions set forth in the attachment hereto.

IN WITNESS WHEREOF, [Developer] has executed this Annual Review Form as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

EXHIBIT K

FORM OF PLAZA EASEMENT AGREEMENT

**RECORDING REQUESTED BY  
AND WHEN RECORDED  
MAIL TO:**

City of Foster City  
610 Foster City Boulevard  
Foster City, CA 94404  
Attention: City Clerk

Space Above This Line for Recorder's Use Only  
Exempt from recording fee per Gov. Code § 27383]

**PLAZA EASEMENT AGREEMENT**

This PLAZA EASEMENT AGREEMENT ("**Agreement**") is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ ("**Effective Date**") by and between \_\_\_\_\_, \_\_\_\_\_ ("**Grantor**") and the City Of Foster City, a California municipal corporation ("**City**").

**RECITALS**

- A. Grantor is the fee owner of certain real property located at \_\_\_\_\_, in the City of Foster City, County of San Mateo, designated as APN \_\_\_\_\_ as more particularly described in **Exhibit A** ("**Grantor's Property**").
- B. Grantor is a "Developer" party to that certain Master Development Agreement by and among AMB Institutional Alliance Fund III, L.P., a Delaware limited partnership, Foster City Executive Park Partners, a California general partnership, and The Northwestern Mutual Life Insurance Company, a Wisconsin corporation and the City dated \_\_\_\_\_, 2010 (Recorder's Document No. 2010-\_\_\_\_\_) ("**Master Development Agreement**"). Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Master Development Agreement.
- C. Section 3.3 of the Master Development Agreement requires that the Grantor dedicate to City a nonexclusive perpetual easement for public plaza use as further described in Section 1 below on or prior to the date of City's approval of a final map for Grantor's Property, or, in the case of a Phase for which a final map is not required, to execute and submit such an easement prior to issuance of a building permit for the Phase, with the easement to be recorded upon issuance of a certificate of occupancy. Section 3.3 further requires Grantor to construct certain improvements on the easement area and to maintain such improvements in perpetuity

D. Grantor has submitted an application for a final map [or a building permit, as applicable], and Grantor now desires to grant to City, and City desires to obtain from Grantor, such easement.

E. The parties further desire to set forth their respective rights and obligations with respect to operation, use and maintenance of the plaza easement area.

## AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained in this Agreement, the parties agree as follows:

1. Plaza Easement.

a. Grant. Grantor, for itself, its successors and assigns and all those taking by, under or through it or them, hereby grants to City, its successors and assigns and all those taking by, under or through the City a perpetual nonexclusive easement in gross to enter upon, exit from, traverse, and otherwise use the Easement Area for Public Plaza Purposes, together with rights of ingress to and egress from the Easement Area over portions of Grantor's Property (provided that such rights of ingress and egress shall not materially interfere with Grantor's use and enjoyment of Grantor's Property) (collectively, "Easement"). The location of the Easement is more particularly described in Exhibit B ("Easement Area").

b. Scope. The Easement Area shall be used only for Public Plaza Purposes. "Public Plaza Purposes" means use of the Easement Area as a privately owned and maintained plaza held open to the public in perpetuity for public access and open space purposes, including but not limited to walking, sitting, picnicking and other active and passive recreational uses every day between the hours of 6 am and 9 pm. The Easement Area shall accommodate a mix of programmed and non-programmed spaces for spontaneous as well as scheduled activities. The programmed areas shall include such facilities as a bocce court, a tot lot with play equipment, picnic tables, seat walls and arbor-covered seating with benches and game tables. The non-programmed areas shall include open lawns of sufficient size and configuration to allow informal, organized game activity such as volleyball, badminton, frisbee, or catch. Other amenities shall include fountains, public gardens and drinking fountains. [*Adjust as necessary to reflect the improvements in the Specific Development Plan/Use Permit for the portion of the Park Plaza*]

c. Construction. Grantor shall construct those plaza improvements described in Section 3.3 of the Master Development Agreement and in the Specific Development Plan/Use Permit for Grantor's Property ("Plaza Improvements") in the manner and within the time provided therein.

2. Maintenance. Grantor and its successors and assigns, at its and their expense, shall diligently maintain, repair and care for the Easement Area and the Plaza Improvements and make any replacements of the same in conformance with this Agreement and the Master Development Agreement and in accordance with the custom and practice generally applicable to public open spaces in the City. The following standards (collectively, "Maintenance Standards") shall be complied with by Grantor and its maintenance staff, contractors, and/or subcontractors:

EXHIBIT K

a. Landscape Maintenance: Landscape maintenance shall include: watering/irrigation; fertilization; mowing; edging; trimming of grass; tree and shrub pruning; trimming and shaping of trees and shrubs to maintain a healthy, natural appearance, and irrigation coverage; replacement, as needed, of all plant materials; control of weeds in all planters, shrubs, lawns, ground covers, or other planted areas; and staking for support of trees.

b. Clean-Up Maintenance: Clean-up maintenance shall include: maintenance of all sidewalks, paths, and other paved areas, play equipment, benches, picnic tables and other improvements, in clean and weed-free condition; maintenance of all such areas clear of dirt, mud, trash, waste, debris or other matter which is unsafe or unsightly; the removal of graffiti or other forms of vandalism; removal of all trash, litter, and other debris from improvements and landscaping prior to mowing; clearance and cleaning of all areas maintained prior to the end of the day on which the maintenance operations are performed to ensure that all cuttings, weeds, leaves and other debris are properly disposed of by maintenance workers.

c. Hardscape and Improvements Maintenance: Hardscape and improvements maintenance shall include: the upkeep, repair and replacement of all exterior lighting fixtures, bulbs, ballasts and wiring; playground equipment; benches; picnic tables; utilities systems; concrete work; path paving; water fountains; and all other improvements comprising the Plaza Improvements and any replacements thereof. All maintenance work shall conform to all applicable federal and state Occupation Safety and Health Act standards and regulations for the performance of maintenance. Any and all chemicals, unhealthful substances, and pesticides used in and during maintenance shall be applied in strict accordance with all governmental requirements. Precautionary measures shall be employed recognizing that all areas are open to public access.

3. Grantor Default; City May Maintain Improvements. If Grantor does not maintain the Easement Area and Plaza Improvements in accordance with the Maintenance Standards, City, at Grantor's expense, shall have the right to maintain the Easement Area and Plaza Improvements, or to contract for the correction of such deficiencies, after written notice to Grantor. However, prior to taking any such action, City shall notify Grantor in writing if the condition of the Easement Area and/or the Plaza Improvements does not conform to the Maintenance Standards and to specify in detail the deficiencies and the actions required to be taken by Grantor to cure the deficiencies. Upon notification of any maintenance deficiency, Grantor shall have thirty (30) days within which to correct, remedy or cure the deficiency. If the written notification states that the problem is urgent and relates to the public health and safety, then Grantor shall have a reasonable time not to exceed three (3) business days to rectify the problem.

If Grantor fails to cure any such deficiencies following written notice and an opportunity to cure as provided for above, or should an emergency require immediate action, City, at its option, may make the necessary repairs, replacements or other work, and Grantor shall reimburse City such costs, plus a 15% administrative fee. In addition to the foregoing remedy, City may also pursue any and all other remedies available in law or equity in the event of Grantor's breach of the maintenance obligations set forth herein, and, in the event legal action by the City is necessary, Grantor will pay the City a reasonable sum as attorney's fees and court costs, together with interest from the date City provided notice under this paragraph 4, as determined by the court.



4. No Liability of City. City shall not be responsible for any of the costs of maintaining, repairing or replacing the Easement Area or Plaza Improvements. In addition, neither the City nor any of its officers, agents, volunteers, or employees shall be liable to Grantor, or its contractors, subcontractors, officers, agents, or employees, for any error or omission, injury or damage that may result to any person or property, or any obligation whatsoever, arising out of or in connection with any work to be performed by Grantor hereunder or by failure to perform under this Agreement.

5. Permits and Licenses; Compliance with Law. Grantor shall comply with all applicable legal requirements including all federal, state, and local laws and regulations (including City ordinances and resolutions, and requirements of other agencies with authority), whether or not said laws or regulations are expressly stated in this Agreement, and shall, at its sole cost and expense, obtain and maintain all necessary permits and licenses.

6. Liens. Grantor shall pay, when due, all persons furnishing labor or materials in connection with any work to be performed by or on behalf of Grantor related to the Plaza Improvements or the Easement Area, and shall keep City's interest in the Easement Area and Plaza Improvements thereon free and clear of any related mechanics' liens.

7. Indemnification. Grantor shall indemnify, defend (with counsel reasonably acceptable to City) and hold harmless City, the Foster City Community Development Agency ("**Agency**"), the Estero Municipal Improvement District ("**EMID**") and its and their elected officials, officers and employees from and against any and all third party suits or actions at law or in equity, claims, liabilities, obligations, losses, damages, costs and expenses (including attorneys fees) (collectively "**Claims**"), including, but not limited to, Claims for bodily injury, sickness, disease or death of any person or damage to real or personal property, tangible or intangible arising directly or indirectly from the acts, omissions, negligence or willful misconduct of Grantor or its contractors, subcontractors, agents or employees under this Agreement. Grantor's indemnity obligations under this Section 8 shall not extend to Claims to the extent occasioned by the active negligence or willful misconduct of City, Agency or EMID or its or their elected officials, officers or employees. Notwithstanding the foregoing sentence, Grantor shall be required to defend City, Agency or EMID and its and their elected officials, officers and employees against any and all Claims, regardless of the extent to which (or if at all) City, Agency or EMID or its or their elected officials, officers or employees have contributed or are alleged or found to have caused or contributed to such Claims. Grantor's indemnity obligations shall apply regardless of whether any City, Agency or EMID insurance policies, self-insurance or joint self-insurance has been determined to be applicable to such Claims and regardless of whether or not City, Agency or EMID has prepared, supplied or approved of plans and specifications for maintenance, repair or replacement of the Plaza Improvements.

8. Insurance. Grantor shall continuously maintain and shall furnish to City evidence of commercial general liability, comprehensive automobile liability, and worker's compensation insurance meeting the following requirements:

Grantor shall maintain or shall cause its contractors to maintain a commercial general liability policy in an amount not less than One Million Dollars (\$1,000,000) combined single limit, including contractual liability, together with a comprehensive automobile liability policy in the amount of One Million Dollars (\$1,000,000), combined single limit. Such

EXHIBIT K

policy or policies shall be written on an occurrence form, so long as such form of policy is then commonly available in the commercial insurance marketplace. Grantor shall cause to be furnished to City evidence reasonably satisfactory to City that any contractor with whom Grantor has contracted with for the performance of work pursuant to this Agreement carries workers' compensation insurance as required by law. Companies writing the insurance required hereunder shall be approved to conduct business in the State of California. Grantor's insurance shall be placed with insurers with a current A.M. Best's rating of no less than A:VII. Grantor shall furnish appropriate certificate(s) of insurance evidencing the insurance coverage required by Grantor hereunder, and the City, Agency and EMID and its and their officers, officials and employees shall be named as additional insured parties under the liability policies required hereunder. Each insurance policy required hereunder shall be endorsed to require that the carrier notify City of any material change, cancellation or termination of the coverage at least thirty (30) days in advance of the effective date of any such material change, cancellation or termination (ten (10) days advance notice in the case of cancellation for nonpayment of premiums). Coverage provided hereunder by Grantor shall be primary insurance and shall not be contributing with any insurance, self-insurance or joint self-insurance maintained by City, Agency or EMID, and the policy shall contain such an endorsement. The insurance policy or the endorsement shall contain a waiver of subrogation for the benefit of City, Agency and EMID to the extent that such waiver is commonly available with respect to such coverages. The initial required certificate shall be furnished by Grantor to City concurrently with execution of this Agreement. The liability insurance requirements under this Agreement may be reviewed by City every five (5) years, for the purpose of increasing (in consultation with its insurance advisors) the minimum limits of such insurance from time to time to limits which shall be reasonable and customary for similar agreements in accordance with generally accepted insurance industry standards.

9. Covenants Running with the Land. All of the provisions contained in this Agreement shall be binding upon Grantor and its heirs, successors and assigns, and all other persons acquiring all or a portion of Grantor's Property, whether by operation of law or in any manner whatsoever. All of the provisions contained in this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to California law including California Civil Code Section 1468. Each covenant herein to act or refrain from acting is intended to burden Grantor's Property, runs with Grantor's Property and is binding upon Grantor and its heirs, successors and assigns. Upon conveyance of fee title to Grantor's Property by Grantor or its successor owner, as applicable, the conveying party shall be released from all obligations under this Agreement accruing after the effective date of such conveyance.

10. Concurrent Uses. Each party acknowledges and agrees that the Easement Area will be concurrently used by the City, the public and Grantor. Grantor shall not obstruct, use or permit the use of the Easement Area in any manner that will unreasonably interfere with Public Plaza Purposes, its obligations under the Master Development Agreement or this Agreement, ingress to, egress from, or public use and enjoyment of the Plaza Improvements or the Easement Area, or other easements or rights granted hereunder (collectively, "**Easement Rights**"). Without limiting the foregoing, Grantor agrees to utilize diligent good faith efforts to ensure that any maintenance, repair or other work is undertaken expeditiously and in a manner that minimizes any adverse impacts on any of the Easement Rights.

11. Recordation; Amendment; Termination; No Waiver. This Agreement shall be recorded in the Official Records of San Mateo County. The parties hereto declare and agree that each of the easements and rights granted hereunder are a burden on the Grantor's Property, and shall inure to the benefit of the City, its successors and assigns, and all those taking by, under or through the City. This Agreement may be modified only by the written consent of the parties, evidenced by a document that has been fully executed, acknowledged and recorded in the Official Records of San Mateo County, California. The easements and rights granted pursuant to this Agreement are perpetual in duration and shall survive any damage, renovation, repair or replacement of all or any portion of Grantor's Property or the privately owned improvements thereon, the Easement Area, or the Plaza Improvements, and shall not be terminated or extinguished by nonuse, abandonment, merger, or in any other manner; provided, however, that City may unilaterally terminate this Agreement by a document that has been approved and executed by the City, acknowledged and recorded in the Official Records of San Mateo County, California. No waiver of any breach of any of the terms, covenants, agreements, restrictions or conditions of this Agreement shall be construed to be a waiver of any succeeding breach of the same or other terms, covenants, agreements, restrictions and conditions hereof.

12. Legal and Equitable Relief. Each party shall have the right to prosecute any proceedings at law or in equity against any other party, or any other person or entity, violating or attempting to violate or defaulting in the performance of any of the provisions contained in this Agreement in order to prevent such party, person or entity from violating or attempting to violate or defaulting in the performance of any of the provisions of this Agreement or to recover damages for any such violation or default. It is agreed that damages would be an inadequate remedy for violation of this Agreement by any party and, therefore, injunctive or other appropriate equitable relief shall be available to the other party. The remedies available under this Section 12 shall include, by way of illustration but not limitation, ex parte applications for temporary restraining orders, preliminary injunctions and permanent injunctions enjoining any such violation or attempted violation or default, and actions for specific performance of this Agreement. The result of every action or omission whereby any covenant, condition or restriction herein contained is violated in whole or in part is hereby declared to be and to constitute a nuisance, and every remedy allowed by law or equity against any party, either public or private, shall be applicable against every such result and may be exercised by any party.

13. Attorneys' Fees. In the event that any action is brought by either party hereto as against the other party for the enforcement or declaration of any right or remedy in or under this Agreement or for the breach of any covenant or condition of this Agreement, the prevailing party shall be entitled to recover, and the other party agrees to pay (in addition to any other relief that may be granted) all fees and costs to be fixed by the court therein including, but not limited to, attorneys' fees.

14. Notices. Any notice to be given or other document to be delivered by either party to the other hereunder shall be in writing and shall be deemed to have been duly given and received (i) upon personal delivery, (ii) as of the third business day after mailing by United States registered or certified mail, return receipt requested, postage prepaid, addressed as set forth below, or (iii) the immediately succeeding business day after deposit with Federal Express or other equivalent overnight courier, addressed to the party for whom intended, set forth in this

Section 14. Any party hereto may from time to time, by written notice to the other, designate a different address which shall be substituted for the one above specified.

If to City: City of Foster City  
610 Foster City Boulevard  
Foster City, CA 94404  
Attention: Community Development Director  
Telephone: (650) 286-3225

with a copy to:

City Attorney  
939 Laurel Street, Suite D  
San Carlos, CA 94070  
Attention: Jean Savaree  
Telephone: (650) 593-3117  
Facsimile: (650) 637-1401

If to Grantor: [Insert Information]

15. Relationship Between the Parties; Authority; Binding Effect. This Agreement does not create any partnership or agency between the parties, each of which is, and at all times shall remain, solely responsible for all acts of its officials, employees, agents, contractors and any subcontractors, including any negligent acts or omissions. Neither party is an agent of the other, and neither has authority to act on behalf of or to bind the other party to any obligation whatsoever. Each party executing this Agreement on behalf of a party represents and warrants that such person is duly and validly authorized to do so on behalf of the entity it purports to bind. Each of the terms, covenants and conditions of this Agreement shall extend to and be binding on and shall inure to the benefit of the parties and each of their respective successors and assigns and all those taking by, under or through it or them.

16. Entire Agreement; Interpretation. This Agreement represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered herein. The titles to the sections of this Agreement are not a part of this Agreement and shall have no effect upon the construction or interpretation of any part of this Agreement. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Agreement shall be interpreted as though prepared jointly by both parties. The laws of the State of California, without regard to conflict of laws principles, shall govern the interpretation and enforcement of this Agreement. The Recitals above and Exhibits attached hereto are incorporated herein by reference. This Agreement may be executed in one or more counterparts, each of which shall, for all purposes, be deemed an original and all such counterparts, taken together, shall constitute one and the same instrument.

17. Severability. If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

CITY:

GRANTOR:

CITY OF FOSTER CITY,  
a California municipal corporation

\_\_\_\_\_  
a \_\_\_\_\_

By: \_\_\_\_\_  
*[signature must be notarized]*

By: \_\_\_\_\_  
*[signature must be notarized]*

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Doris Palmer, City Clerk

By: \_\_\_\_\_  
*[signature must be notarized]*

APPROVED AS TO FORM:

Name: \_\_\_\_\_

By: \_\_\_\_\_  
Jean Savaree, City Attorney

Its: \_\_\_\_\_

**EXHIBIT A**

Legal Description of Grantor's Property

*[To Be Inserted]*

Exhibit A to  
**EXHIBIT K**

**EXHIBIT B**

Legal Description and Depiction of Easement Area

*[To Be Inserted]*

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Exhibit B to  
**EXHIBIT K**

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