



**REGULAR MEETING OF THE
CITY OF CONCORD
PLANNING COMMISSION**

**Wednesday, April 20, 2016
6:30 p.m. – Council Chamber
1950 Parkside Drive, Concord**

Planning Commission Members:

Carlyn Obringer, Chair
Jason Laub, Vice Chair

LaMar Anderson, Commissioner
Ray Barbour, Commissioner

**REGULAR MEETING
6:30 p.m. – Council Chamber**

I. ROLL CALL

II. PLEDGE TO THE FLAG

III. PUBLIC COMMENT PERIOD

IV. ADDITIONS / CONTINUANCES / WITHDRAWALS

V. CONSENT CALENDAR

1. [4/06/16 Meeting Minutes](#)

VI. PUBLIC HEARINGS

- 1. [Jo-Ann Fabrics & Burlington Coat Factory Façade Improvements Appeal \(PL15369 – AP\)](#) –A resolution denying an appeal by Jo-Ann Fabrics and Burlington Coat Factory of an Administrative Design Review denial for façade improvement application at 1675 Willow Pass Road and approving the March 30th Revised Design for Façade Improvement application at 1675 Willow Pass Road. The General Plan designation is Downtown Mixed Use; Zoning classification is DMX (Downtown Mixed Use); APN 126-281-009. Pursuant to the provisions of the California Environmental Quality Act (CEQA) of 1970, as amended, the project is classified as Categorical Exempt pursuant to Section 15301 Class 1 “Existing Facilities,” and 15302 Class 2 “Replacement or Reconstruction”, therefore no further environmental review is required. **Project Planner: Afshan Hamid @ (925) 671-3281****

2. [Development Agreement Between the City of Concord and Swift Realty Partners, LLC \(PL16137 – GP\)](#) - Proposal for a Development Agreement between the City of Concord and Swift Realty Partners, LLC to vest current land use designations for the properties located at 1638, 1654, 1672, and 1680 Grant Street. The General Plan designation is Downtown Mixed Use; Zoning Classification is DMX (Downtown Mixed Use); APN's 126-103-001, -015, -016, and -017. Pursuant to the provisions of the California Environmental Quality Act (CEQA) of 1970, as amended, the project is classified as Categorically Exempt pursuant to Sections 15060(c)(2), 15060(c)(3), 15061(b)(3) and 15378. **Staff Contact: John Montagh @ (925) 671-3082**

VII. COMMISSION CONSIDERATIONS

VIII. STAFF REPORTS / ANNOUNCEMENTS

IX. COMMISSION REPORTS / ANNOUNCEMENTS

X. FUTURE PUBLIC HEARING ITEMS

XI. ADJOURNMENT

NOTICE TO PUBLIC

ADA ACCOMMODATION

In accordance with the Americans With Disabilities Act and California Law, it is the policy of the City of Concord to offer its public programs, services and meetings in a manner that is readily accessible to everyone, including those with disabilities. If you are disabled and require a copy of a public hearing notice, or an agenda and/or agenda packet in an appropriate alternative format; or if you require other accommodation, please contact the ADA Coordinator at (925) 671-3021, at least five (5) days in advance of the hearing. Advance notification within this guideline will enable the City to make reasonable arrangements to ensure accessibility.

APPEALS

Decisions of the Planning Commission on use permits, variances, major subdivisions, appeals taken from decisions of the Zoning Administrator or staff interpretations of the Zoning Code may be appealed to the City Council. Appeals and the required filing fee must be filed with the City Clerk within ten (10) days of the decision.

If you challenge any of the foregoing described actions in court, an appeal first of said actions to the Zoning Administrator, Planning Commission, and/or City Council (as applicable) in the manner and within the time period established in Development Code Chapter 18.510 (Appeals and Calls for Review) is required, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Zoning Administrator and/or Planning Commission (as applicable) at, or prior to, said public hearing.

APPLICANT'S SUBMITTAL OF INFORMATION

Submittal of information by a project applicant subsequent to the distribution of the agenda packet but prior to the public hearing may result in a continuance of the subject agenda item to the next regularly scheduled Planning Commission meeting, if the Commission determines that such late submittal compromises its ability to fully consider and evaluate the project at the time of the public hearing.

CONSENT CALENDAR

Adoption of the Consent Calendar may be made by one motion of the Planning Commission, provided that any Commissioner, individual, or organization may request removal of an item from the Consent Calendar for separate consideration. If a request for removal of an item from the Consent Calendar has been received, the Chair may defer action on the particular item and place the same on the regular agenda for consideration in any order s/he deems appropriate.

CORRESPONDENCE

Correspondence and writings received within 72 hours of the scheduled Planning Commission meeting that constitute a public record under the Public Records Act concerning any matter on the agenda is available for inspection during normal business hours at the Permit Center located at 1950 Parkside Drive, Concord. For additional information contact the Planning Division at (925) 671-3152.

HEARINGS

Persons who wish to speak on hearings listed on the agenda will be heard when the hearing is opened, except on hearing items previously heard and closed to public comment. Each public speaker should limit their comments to three (3) minutes or less. The Chair may grant additional time. The project applicant normally shall be the first person to make a presentation when a hearing is opened for public comment. The project applicant's presentation should not exceed ten (10) minutes unless the Chair grants permission for a longer presentation. After the public has commented, the item is closed to further public comment and brought to the Planning Commission level for discussion and action. Further comment from the audience will not be received unless requested by the Commission. No public hearing or hearing shall commence after 11:00 p.m. unless this rule is waived by majority vote of the Commission.

MEETING RECORDS

Planning Commission meetings are available for viewing on the City's website, www.cityofconcord.org and at the Concord Public Library. Copies of DVDs of the Planning Commission Meeting are available for purchase. Contact the Planning Division at (925) 671-3152 for further information.

NOTICE TO THE HEARING IMPAIRED

The Council Chamber is equipped with Easy Listener Sound Amplifier units for use by the hearing impaired. The units operate in conjunction with the Chamber's sound system. You may request the Easy Listener Phonic Ear Personal Sound Amplifier from the staff for personal use during Commission meetings.

ROUTINE AGENDA ITEMS AND CONTINUED ITEMS

All routine and continued items will be considered by the Planning Commission at the beginning of the meeting. There will not be separate discussions of these items unless a request is made prior to the time the Planning Commission considers the motions.

SPEAKER'S CARD

Members of the audience who wish to address the Planning Commission should complete a speaker's card available in the lobby or at the front bench. Submit the completed card to staff before the item is called, preferably before the meeting begins.

TELEVISED MEETINGS

All Planning Commission meetings are broadcast live on Astound Broadband channel 29 and Comcast channel 28. The meeting is replayed on the Thursday following the meeting at 8:00 a.m., 2:00 p.m. and 8:00 p.m. Replays are also broadcast on Fridays and Saturdays. Please check the City website, <http://www.cityofconcord.org/about/citynews/tvlistings.pdf> or check the channels for broadcast times.

NEXT PLANNING COMMISSION MEETINGS:

May 2, 2016: 6:30 pm – Council Chamber (SPECIAL MEETING)

May 4, 2016: **CANCELLED**

May 18, 2016: 6:30 pm – Council Chamber

REGULAR MEETING OF THE
CITY OF CONCORD PLANNING COMMISSION
COUNCIL CHAMBER, 1950 PARKSIDE DRIVE
CONCORD, CALIFORNIA

Wednesday, April 6, 2016

A regular meeting of the Planning Commission, City of Concord, was called to order by Vice Chair Laub at 6:30 P.M., April 6, 2016, in the City Council Chamber.

I. ROLL CALL

COMMISSIONERS PRESENT: Vice Chair Jason Laub
Commissioner LaMar Anderson
Commissioner Ray Barbour
Commissioner Carlyn Obringer

STAFF PRESENT: Laura Simpson, Planning Manager
Susanne Brown, Senior Assistant City Attorney
G. Ryan Lenhardt, Senior Planner

II. PLEDGE TO THE FLAG

Commissioner Obringer led the pledge.

III. PUBLIC COMMENT PERIOD

No public comment was heard.

IV. REORGANIZATION OF PLANNING COMMISSION

1. Nomination and designation of the Chairperson of the Planning Commission for 2016/17.

Motion was made by Vice-Chair Laub to nominate Commissioner Obringer for Chair, and seconded by Commissioner Barbour. The motion was passed by the following vote:

AYES: Laub, Barbour, Anderson, Obringer
NOES: None
ABSTAIN: None
ABSENT: None

2. Nomination and designation of the Vice Chairperson of the Planning Commission for 2016/17.

Motion was made by Chair Obringer to nominate Commissioner Laub for Vice-Chair, and seconded by Commissioner Anderson. The motion was passed by the following vote:

AYES: Obringer, Anderson, Barbour, Laub
NOES: None
ABSTAIN: None
ABSENT: None

V. COMMISSION APPOINTMENTS

1. Nomination and designation of Design Review Board Liaison and Alternate for 2016/17.

Motion was made by Chair Obringer to nominate Vice-Chair Laub for Liaison, and seconded by Commissioner Barbour. The motion was passed by the following vote:

AYES: Obringer, Barbour, Anderson, Laub
NOES: None
ABSTAIN: None
ABSENT: None

Motion was made by Chair Obringer to nominate Commissioner Barbour for Alternate, and seconded by Commissioner Anderson. The motion was passed by the following vote:

AYES: Obringer, Anderson, Barbour, Laub
NOES: None
ABSTAIN: None
ABSENT: None

2. Nomination and designation of TRANSPAC Liaison and Alternate for 2016/17.

Motion was made by Vice-Chair Laub to nominate Chair Obringer for Liaison and Commissioner Anderson for Alternate, and seconded by Commissioner Barbour. The motion was passed by the following vote:

AYES: Laub, Barbour, Anderson, Obringer
NOES: None
ABSTAIN: None
ABSENT: None

3. Nomination and designation of Bicycle and Pedestrian Advisory Committee Representative and Alternate for 2016/17.

Motion was made by Vice-Chair Laub to nominate Chair Obringer for Representative, and seconded by Commissioner Barbour. The motion was passed by the following vote:

AYES: Laub, Barbour, Anderson, Obringer
NOES: None

ABSTAIN: None
 ABSENT: None

Motion was made by Chair Obringer to nominate Vice-Chair Laub for Alternate, and seconded by Commissioner Anderson. The motion was passed by the following vote:

AYES: Obringer, Anderson, Barbour, Laub
 NOES: None
 ABSTAIN: None
 ABSENT: None

VI. ADDITIONS / CONTINUANCES / WITHDRAWALS

None were announced.

VII. CONSENT CALENDAR

No public comment was heard.

APPROVAL OF MINUTES

Motion was made by Commissioner Barbour, and seconded by Commissioner Anderson to approve the meeting minutes of March 16, 2016, as amended. The motion was passed by the following vote:

AYES: Barbour, Anderson, Laub
 NOES: None
 ABSTAIN: Obringer
 ABSENT: None

Carondelet Athletic and Fine Arts Complex Use Permit Amendment and Design Review Extension (PL16068 – UP) – Application for a two-year extension of the approval for the Carondelet Athletic and Fine Arts Complex Use Permit Amendment and Design Review for a 54,970 sq. ft. gymnasium including a permanent stage, locker rooms, weight room, dance/aerobics studio, art studio, music classrooms, landscaping, and lighting improvements on a 9.18-acre high school campus at 1133 Winton Drive. The original entitlement and Addendum to the 2011 Initial Study/Mitigated Negative Declaration were approved by the Planning Commission on February 5, 2014 and extended for two (2) additional years. The General Plan designation is Public/Quasi-Public; Zoning Classification is PQP (Public/Quasi-Public); APN 145-130-024. The proposed use permit extension is not a project within the meaning of Section 15378 of the State CEQA (California Environmental Quality Act) Guidelines. If the proposed extension is a project under CEQA: (a) it is subject to the exemption contained in CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty to have no possibility of a significant effect on the environment, and/or (b) no further environmental analysis is required because the Addendum to the 2011 Initial Study/Mitigated Negative Declaration has been prepared and none of the factors

calling for subsequent environmental review are present, including under Public Resources Code Section 21166 and CEQA Guidelines Section 15162. **Project Planner: G. Ryan Lenhardt (925) 671-3162**

The applicant, Bonnie Cotter, answered questions from the Planning Commission.

Public Comment

Geertje Bolke, a neighbor behind Carondelet, commented on an ongoing light violation by Carondelet that has yet to be fixed.

Motion was made by Vice-Chair Laub and seconded by Commissioner Barbour to adopt Planning Commission Resolution 16-04 PC approving a two-year extension for the Carondelet High School Use Permit Amendment (PL131199 - UA, DR), subject to the Conditions of Approval set forth in Attachment A to Resolution 16-04PC. The motion passed by the following vote:

AYES: Laub, Barbour, Anderson, Obringer
 NOES: None
 ABSTAIN: None
 ABSENT: None

VIII. PUBLIC HEARINGS

There were none.

IX. COMMISSION CONSIDERATIONS

There were none.

X. STAFF REPORTS / ANNOUNCEMENTS

Planning Manager Laura Simpson stated the City Council invited residents in Concord to apply for the vacancy on the Planning Commission at last night's City Council meeting.

XI. COMMISSION REPORTS/ANNOUNCEMENTS

There were none.

XII. FUTURE PUBLIC HEARING ITEMS

Planning Manager Laura Simpson announced the next Planning Commission on April 20th will have an appeal of a Design Review Board decision and a Development Agreement proposal for Swift Realty Partners. She also announced the Planning Commission will have a meeting on May 4, 2016 as it was previously announced it would be cancelled at a previous Planning Commission meeting.

XIII. ADJOURNMENT

Vice Chair Laub moved to adjourn at 7:30 P.M. Commissioner Barbour seconded the motion. Motion to adjourn was passed by unanimous vote of the Commissioners present.

APPROVED:

Laura Simpson
Planning Commission Secretary
Planning Manager

Transcribed by Grant Spilman,
Administrative Coordinator

DRAFT



REPORT TO PLANNING COMMISSION

DATE: April 20, 2016

SUBJECT: CONSIDERATION OF AN APPEAL BY JO-ANN FABRICS AND BURLINGTON COAT FACTORY OF AN ADMINISTRATIVE DESIGN REVIEW DENIAL FOR FAÇADE IMPROVEMENT APPLICATION AT 1675 WILLOW PASS ROAD, AND APPROVING THE MARCH 30TH REVISED DESIGN FOR FAÇADE IMPROVEMENT APPLICATION AT 1675 WILLOW PASS ROAD

Recommendation: Adopt Resolution 16-06PC (Exhibit A) denying the appeal for Jo-Ann Fabrics and Burlington Coat Factory by Montgomery Realty Group, LLC and approving the March 30, 2015 Revised Design.

I. Introduction

The Planning Commission (PC) of the City of Concord, California has received an appeal of the Administrative Design decision of Development Code Section 18.415.100. The business/property owner, Montgomery Realty Group, LLC owns 1675 Willow Pass Road, commonly known as Jo-Ann Fabrics and Burlington Coat Factory tenant space, within the Park and Shop Retail Center. The owner is looking to do façade upgrades to an aging building. The project has appeared before the Design Review Board on September 10, 2015, October 26, 2015 for a working session, and November 19, 2015. At the request of the owner, a final review was scheduled with the Design Review Board (DRB) on February 25th. On February 25, 2016, the project was recommended for denial by the DRB. The recommendation for denial was based on no changes or modifications between the November 19th design and the February 25th design. On March 1st staff issued a decision consistent with the DRB recommendation of denial (“Denial Letter” attached hereto as Exhibit C and incorporated by reference). On March 7, 2016, Reuben, Junius, Rose, LLP filed an appeal of the staff decision on behalf of the property owner.

Pursuant to the 45 day scheduling of an appeal, the February 25th project design was scheduled for an April 6th date before the PC. On March 30th, the owner and appellant submitted a new design by a new architect. The appellant requested in writing a new DRB date of April 14th and a new Planning Commission review date of April 20th. This would allow the new design to be reviewed by the DRB on April 14th prior to the Planning Commission hearing.

A. Request

On March 7, 2016, the appellant, Tuija J. Catalano of the firm Reuben, Junius, Rose, LLP filed an appeal on the design presented at the February 25th DRB meeting (Appeal). Pursuant to Concord Development Code (CDC) Section 18.510.040, the staff decision of denial is based on the Design Review Board recommendation of façade improvements to the exterior of Jo-Ann Fabrics and Burlington Coat Factory at the Park and Shop Retail Center. Pursuant to the CDC Chapter 18.415.100, the applicable design criteria consists of the design criteria listed in CDC Section 18.415.080 a through m, and the review authority is required to

consider the criteria along with the project's consistency with the general plan and the applicable design guidelines adopted by the city council.

The applicant is requesting an appeal of the decision. Since the filing of the appeal, the applicant has met with staff and submitted a new design by a new architect, Johnson Lyman Architects. The design was presented to the Design Review Board with a staff recommendation of approval. It is staff's opinion that the new design presented to DRB meets the criteria set forth in 18.415.080 a through m.

B. Location

The property owner owns 1600 Willow Pass Road, APN 126-281-009. The parcel is within the Downtown Mixed Use (DMX) zoning district.

C. Appellant

Tuija J. Catalano
Reuben, Junius, Rose, LLP
One Bush Street, Suite 600
San Francisco, CA 94101

Property Owner(s)

Rob Canepa
Montgomery Realty Group, LLC
447 Battery Street, Suite 230
San Francisco, CA 94111

II. Background

On September 10, 2015, the owner, Montgomery Realty, LLC and architect, Perter Vatkov of Bay Area Architecture for the Jo-Ann Fabrics and Burlington Coat Factory stores appeared before the Design Review Board for study session. At the September Study Session, the DRB provided the following comments:

1. Jo-Ann Fabrics and Burlington Coat Factory improvements would set a precedent for rest of center.
2. The DRB wanted to see a four-sided architecture.
3. The DRB discouraged a western façade, where improvements only to the front were proposed.
4. It was suggested to vary the heights on the façade.
5. The DRB had difficulty with the plainness of the new façade, and requested articulation at the second floor, for example through windows.
6. There was concern about the boxiness and lack of articulation of the design.
7. The DRB wanted to see a proposal for the sides and back as a future phase.

On October 26, 2015, staff conducted a working session with the architect and two DRB members. At the meeting, the DRB members reviewed a revised concept and provided feedback:

1. The City of Concord is very supportive of improvements at Burlington and Jo-Ann Fabrics.
2. It was suggested to take a simple, minimalist approach, letting the Big Box be expressive through entrances and contemporary materials.
3. Remove the glulam canopy if possible.

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4. Enhance the architecture through an expression of materials. Bay Street in Emeryville and Whole Foods in Dublin were reviewed as good examples and an approach for Big Box retail that staff previously emailed to the applicant.
 5. The small village approach from Windsor, Ca presented by the applicant was too minute and overdone, and would not fit in with recent improvements at Park & Shop. Fake architecture was not encouraged.
 6. Let the Big Box be the anchor, it will set the stage for remaining improvements.
 7. Keep the columns and do upscale renovations at the entrances.
 8. Introduce a horizontal awning with a sloped roof behind a straight horizontal expression.

Staff emailed a summary of the comments from the working session meeting to the applicant.

On November 19, 2015, the Board conducted a second study session review of the project. The applicant presented revisions and stated that the inspiration for the design was Mimi's Café, Concord Gateway Towers on Willow Pass Road and the existing Park & Shop Tower. At that meeting, the Design Review Board discussed the design of the proposed re-model and indicated concerns with the proposal, and provided ideas and examples to guide revisions for the design. The Board was committed to keeping Jo-Ann Fabrics and Burlington Coat Factory in Concord, and was conscious of the budget. At the study session, the DRB requested the applicant revise their proposal, using a creative approach to achieve a design that could be both simple and cost effective. The Board provided comments to guide the redesign, including recommending a simple treatment of the building massing and creating a more pedestrian friendly design. The Board acknowledged that the architect has a challenge of taking a big box design with long spans of plain walls and the difficulty of dealing with a large mass. However, the Board encouraged making the facade people oriented. The Board shared recent store remodels and improvements at the Park & Shop center that they felt were successful, and also indicated successful projects that were done at other similar retail centers as examples. The Board suggested a design approach that was modern, upscale and a simpler design. As a follow-up to the meeting, staff provided expanded verbatim minutes for the benefit of the applicant. The Board provided the following comments:

1. Introduce a variety of materials
2. Introduce a simpler massing
3. Add an edge treatment along the parapet
4. Faux windows were not necessary if they did not work with the design, perhaps look at sign space where faux windows are
5. Have a cornice at the entrance
6. The proposed number of cut-outs was questioned
7. Propose a revised concept that is more people oriented and human scaled

At the request of the property owner, a final DRB was scheduled for February 25, 2016. Since, the project proposed no changes or modifications to the design presented at the November 19th meeting, the DRB made a recommendation of denial. On March 1, 2016, staff sent a decision of denial based on the DRB recommendation. On March 7, 2016, Tuija J. Catalano with the firm Reuben, Junius, Rose, LLP filed an appeal of the staff decision. On March 14, 2016, the applicant submitted 10 sets of drawings with a written request for an April 6, 2016 PC hearing date. The submittal included the

February 25th design as well as a second proposed design with modifications. On March 18, 2016, in a telephone conversation and follow-up email with Ms. Catalano, staff offered a DRB review date of April 14 to review the proposed modifications by the applicant. This would give the DRB an opportunity to weigh in on the design changes. However, even with the proposed modifications, staff was not in support of the second modified design because the proposed design did not address the criteria from 18.415.080 a through m. At the appellant's request, staff coordinated a meeting on March 24th where staff enumerated the Planning Commission process, design review comments and staff position on the project.

On March 30th, the owner and appellant submitted a new design for façade improvements at Jo-Ann Fabrics and Burlington Coat Factory by a new architect, Robert Lyman of Johnson Lyman Architects ("March 30, 2016 Revised Design"). At the written request of the appellant, the project was scheduled for a DRB review on April 14th and a Planning Commission review on April 20th. Staff is in support of the new design and recommended approval to the DRB.

III. General Information

A. **General Plan**

The current General Plan designation is DMX (Downtown Mixed Use).

B. **Zoning**

The site is currently zoned DMX (Downtown Mixed Use) and shopping centers are allowed in the zoning district.

C. **CEQA¹ Status**

The Planning Commission's consideration of and action on the Appeal of Jo-Ann Fabrics and Burlington Coat Factory, is exempt from CEQA pursuant to CEQA Guidelines Sections 15301 Class 1 (Existing Facilities), 15302 Class 2(Replacement or Reconstruction), because, among other things, they involve replacement or reconstruction of existing facilities, as further detailed in this staff report and attachments hereto.

IV. Description of Business

Montgomery Realty owns the large anchor building and leases to the retail tenants, Jo-Ann Fabrics and Burlington Coat Factory. Jo-Ann Fabrics is approximately 30,000 square feet and is occupies the first floor. Burlington Coat Factory is approximately 70,000 square feet with mostly a small first floor entry and vestibule and a large second floor retail presence. Jo-Ann Fabrics is a national chain that retails fabric, crafts, sewing materials and framing. Jo-Ann

¹ California Environmental Quality Act of 1970, Public Resources Code § 21000, et seq., as amended and implementing State CEQA Guidelines, Title 14, Chapter 3 of the California Code of Regulations (collectively, "CEQA").

Appeal of Jo-Ann Fabrics and Burlington Coat Factory Façade Improvements

PL15369

April 20, 2016

Fabrics is open Monday through Saturday from 9 a.m. to 9 p.m. and on Sundays from 10 a.m. to 7 p.m. Burlington Coat Factory is also a national retail chain and retails clothing, apparel and accessories for the entire family. The Burlington Coat Factory is open Monday through Friday from 9:30 a.m. to 10 p.m. and on Sundays from 9:30 a.m. to 9:30 p.m.

Analysis

The Decision and Findings are in 18.415.100 and apply to the February 25th proposal, as detailed in the Denial Letter, Exhibit C.

Staff recommends approval of the March 30, 2015 Revised Design based on analysis of the Development Code Section 18.415.100 Decision and Findings criteria:

1. The project is consistent with the general plan;
The project is an existing retail shopping center in the General Plan is identified as Downtown Mixed Use, no alterations are being made to the use, therefore, it is consistent with the general plan.
2. The project meets the criteria in CDC 18.415.080 (Design Criteria) and 18.415.080 Design Standards:
 - A. The building design and landscaping supports public safety and security by allowing for surveillance of the street by people inside building and elsewhere on the site.
The project provides increased surveillance by introducing a new larger storefront and entry feature with recessed lighting. Therefore, the project increases surveillance from the street as well as from inside the building and elsewhere on the site.
 - B. The design is compatible with the historical or visual character of any area recognized by the city as having such character. **The project is recognized in the Downtown Specific Plan as an area within the Downtown which represents a significant amount of redevelopment potential. The façade redevelopment introduces current retail design which will add to the character and re-development of the existing shopping center. Therefore, the proposed design advances redevelopment potential as outlined in the Downtown Specific Plan.**
 - C. The project design preserves major views and vistas along major streets and open spaces and trails and enhances them by providing project amenities;
The project site is along Willow Pass Road, a major corridor into the downtown. The project relates to Willow Pass Road by introducing pronounced entry towers and increased storefront size. Therefore, the project enhances or preserves major streets.

- D. The proposed lighting and fixtures are designed to complement on-site buildings, are of an appropriate scale for the development and provide adequate light for safety and security while minimizing glare;
The proposed light fixtures are used to enhance the proposed entrance feature. The proposed light fixtures are designed to be visible from Willow Pass Road, and compliment the entry tower features. The proposed light fixtures are of a scale and style that fit with the new entry tower. Recessed lighting is proposed in the lower canopy and will add to the safety and security of the site. Therefore, the proposed lighting provides adequate light, safety and security for the development.
- E. All mechanical, electrical, and utility equipment is located, screened, or incorporated into the design of the buildings so as not to be visible from off site, and screening devices are consistent with the exterior colors and materials of the buildings.
The proposed project does not indicate screening materials or locations of utility equipment. Existing mechanical equipment is not visible from surrounding sites. Therefore sufficient information has been provided to determine the screening of mechanical, electrical and utility equipment.
- F. The overall design of the project, including its scale, massing, site plan, exterior design, and landscaping, enhances the appearance and features of the project site and surrounding natural and built environment.
The proposal is for a façade improvement, and the proposed design introduces new entry towers, articulates the scale, varies the height, varies the materials and color palette, and adds new landscaping. Therefore, the project overall design exhibits features that enhance scale, mass, exterior design, and landscaping.
- G. The project design is appropriate to the function of the project and will provide an attractive and comfortable environment for occupants, visitors, and the general community.
The project design proposes two new prominent entry features along with appropriately scaled columns and spaced canopies. The new design proposes new features, which will provide increased visibility, relationship of the building to the street for the occupants, visitors and general community. Therefore, the project design provides an attractive and comfortable environment for occupants, visitors and the general community.
- H. The architectural details, colors, materials, and landscaping are internally consistent, fully integrated with one another, and used in a manner that is visually consistent with the proposed architectural design.
The proposed new design will enhance an aging center through façade improvement, landscaping, new color palette and varying materials. The improvements will compliment recent improvements that have been made to Park & Shop such as at Korean B-B-Q, Goodwill Store and Bonjour Bakery. Therefore, the project details, colors, materials and landscaping are consistent.

- I. The project is compatible with neighboring development in the same zoning district by avoiding large differences in building scale and character and provides a harmonious transition between the proposed project and surrounding development.
The project as proposed is consistent with recent retail improvements at the Park and Shop Retail Center to the west. The project introduces a four-sided architecture, pedestrian elements at the first floor; such as pedestrian scaled columns, new landscaping, introduced a variety of materials, has an edge treatment along the parapet. The applicant has addressed the fundamental design issues with the building architecture and landscaping. Therefore, the project is compatible with the neighboring development.
- J. The project creates an attractive and visually interesting built environment with a variety of building styles and designs, well-articulated structures that present varied building facades, rooflines, and building heights within a unifying context.
The project varies the building mass and roofline. Within the existing building mass, the project introduces columns at the entrance, columns evenly spaced through-out the length of the façade, canopy elements that relate to the pedestrian scale. The entry feature projects above the existing roofline, new plaster horizontal trim has been added, new steel canopies are introduced. The overall effect is an attractive and visually interesting re-model that is a current retail design. Therefore, the project creates an attractive and visually interesting built environment.
- K. The landscaping is compatible with and enhances the architectural character of the buildings and site features, and blends with the surrounding landscape. Landscape elements complement the buildings and rooflines through color, texture, density, and form. Landscaping is in scale with on-site and off-site buildings, and plantings have been selected and located to avoid conflicts with views, lighting, infrastructure, utilities, and signage.
The project site is predominantly impervious. However, the applicant is proposing new landscaping in an existing island to the east and in a new island to the west of the entry features. Therefore, the project enhances the architectural features through landscaping.
- L. Storm water treatment areas have been integrated into the landscape design.
The project site is existing and storm water treatment is not required as part of the proposal. Therefore, the project is not required to address storm water treatment.
- M. New construction does not need to match existing surrounding development or buildings; however, the design shall complement or enhance existing development. (Ord. 13-5; Ord 13-4. DC 2012 and 122-908).
The new design introduces a façade re-model that relates to the pedestrian and the street level through articulation of the mass, height, and variation in materials. Therefore, the proposed project complements and enhances existing development.

A. Authority Regarding Interpretation of the City's Ordinances

The Development Code constitutes Title 18 of the Concord Municipal Code. Cities have broad latitude to interpret their own municipal codes² and courts will follow an agency's interpretation of its own laws and regulations unless clearly erroneous or unauthorized. Concord's interpretation of its Development Code is subject to this deference. As detailed below, the City has satisfied applicable legal requirements with respect to both the Interpretation, and in connection with the analysis in this staff report.

Per Development Code Section 18.10.060, the Planning Division is enabled to interpret any provision of the development code or its application to a specific site. Planning Division decisions are appealable to the Zoning Administrator, but may be referred to the Planning Commission, as is the case here (Development Code Sec. 18.510).

Because the Planning Commission's review of this matter on appeal is "de novo" under Development Code Section 18.510.050(c), the Planning Commission may consider new materials and testimony in addition to the original application, plans, and related project materials that were the subject of the original decision. Staff has attached the pertinent correspondence to this staff report. However, since the appellant has introduced a new design submitted on March 30th that is also before the Commission in this hearing.

B. Interpretation Letter

Appellant asserts the Decision and Findings thereto, as expressed in staff's letter dated March 1, 2016, are based on a number of erroneously and/or inaccurately applied Criteria. As a result, the Project was inaccurately determined to be noncompliant with respect to the applicable Criteria and thus unjustifiably denied. The appellant states notwithstanding the prior review and process, Montgomery Realty is filing the Appeal so that it can ultimately improve the existing building at the Property, and thus it respectfully requests that the Planning Commission allow the façade improvements to be implemented. In addition to the improvements and the different versions and variations (presented prior to February 25th), thereto that have been discussed/proposed to date, Montgomery Realty would like to provide updated drawings for the Planning Commission Appeal hearing with some additional revisions that will result in an even better and more compatible façade improvements that will benefit not only the building but the entire Park & Shop Center.

Since the above statement was submitted on March 7, 2016 as part of the appeal, the appellant and property owner have submitted the March 30, 2015 Revised Design that is supported by staff and recommended for approval by the Design Review Board. The March 30th Revised

² See *City of Walnut Creek v. County of Contra Costa* (1980) 101 Cal.App.3d 1012, 1021; *MHC Operating Ltd. Partnership v. City of San Jose* (2003) 106 Cal.App.4th 204, 219.

Appeal of Jo-Ann Fabrics and Burlington Coat Factory Façade Improvements

PL15369

April 20, 2016

Design was presented to the DRB on April 14th and recommended for approval. Staff recommends that the Planning Commission approve the March 30, 2015 Revised Design.

C. Public Contact

Notification was mailed to all owners and occupants of property within three-hundred (300) feet of the subject parcel, and has been published in the Contra Costa Times, as required by the Concord Municipal Code. This item has also been posted at the Civic Center and at the subject site at least 10 days prior to the public hearing.

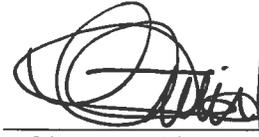
V. Summary and Recommendations

Staff recommends the Commission deny the Appeal and approve the March 30, 2015 Revised Design by adopting the attached Resolution.

VI. Motion

- 1. I (COMM. _____) HEREBY MOVE THAT THE PLANNING COMMISSION PASS RESOLUTION 16-06 DENYING AN APPEAL BY JO-ANN FABRICS AND BURLINGTON COAT FACTORY OF AN ADMINISTRATIVE DESIGN REVIEW DENIAL FOR FAÇADE IMPROVEMENT APPLICATION AT 1675 WILLOW PASS ROAD, AND APPROVING THE MARCH 30TH REVISED DESIGN FOR FAÇADE IMPROVEMENT APPLICATION AT 1675 WILLOW PASS ROAD. (SECONDED BY COMM. _____.)**

Prepared by:



Afshan Hamid, AICP

Associate Planner

afshan.hamid@cityofconcord.org

Exhibits:

- A: Planning Commission Resolution 16-06 PC
- B: Appeal from the Appellant dated March 7, 2016 (received 3/07/16)
- C: Denial Letter
- D: February 25, 2016 Design, Peter Vatkov Bay Area Architecture
- E: March 30, 2016 Design, Johnson Lyman Architects

- CC: Rob Canepa, Montgomery Realty Group, LLC
Tuija Catalano, Reuben, Junius & Rose LLP
Robert Lyman, Johnson Lyman Architects
Laura Simpson, Planning Manager
Susanne Brown, City Attorney

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**BEFORE THE PLANNING COMMISSION
OF THE CITY OF CONCORD,
COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA**

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A RESOLUTION DENYING AN APPEAL BY JO-ANN FABRICS AND BURLINGTON COAT FACTORY OF AN ADMINISTRATIVE DESIGN REVIEW DENIAL FOR FAÇADE IMPROVEMENT APPLICATION AT 1675 WILLOW PASS ROAD, AND APPROVING THE MARCH 30TH REVISED DESIGN FOR FAÇADE IMPROVEMENT APPLICATION AT 1675 WILLOW PASS ROAD

/ Resolution No. 16-06 PC

WHEREAS, on September 10, 2015, Rob Canepa with Montgomery Realty Group, LLC, owner of Jo-Ann Fabrics and Burlington Coat Factory (“Owner”) submitted an application for Design Review Action of Jo-Ann Fabrics and Burlington Coat Factory Improvements (PL15369-DR), located at 1675 Willow Pass Road, Concord CA, APN 126-281-009 (“Site”); and

WHEREAS, the current general plan land use designation and zoning for the Site is Downtown Mixed Use (DMX); and

WHEREAS, the project has appeared before the Design Review Board (“DRB”) on September 10, 2015, October 26, 2015, and November 19, 2015 with minor modifications to the plans submitted with the application for Design Review Action of Jo-Ann Fabrics and Burlington Coat Factory Improvements (PL15369-DR) (“Original Project”)’ and

WHEREAS, the DRB held a final review of the Original Project on February 25, 2016 and recommended denial of the Original Project; and

WHEREAS, on March 1, 2016, the Planning Division issued its decision to deny the Original Project, a copy of which is attached hereto as Attachment C and incorporated by reference (“Denial”), and

WHEREAS, on March 7, 2016, Owner and Tuija J. Catalano with Reuben, Junius & Rose, LLP (individually and collectively, “Appellant”), filed an appeal of the Denial (“Appeal”); and

WHEREAS, since filing the Appeal, Appellant has submitted a revised design for façade improvements at Jo-Ann Fabrics and Burlington Coat Factory by a new architect, Robert Lyman of Johnson Lyman Architects (“March 30, 2015 Revised Design”); and

1 **WHEREAS**, on April 14, 2016, the DRB held a meeting on, considered, and recommended
2 approval of the March 30th Revised Design; and

3 **WHEREAS**, pursuant to Development Code Section 18.510.050.C.1, at an appeal or call for
4 review hearing, the appellate body shall conduct a hearing “de novo” and may consider new materials
5 and testimony in addition to the same application, plans, and related project materials that were the
6 subject of the original decision; and

7 **WHEREAS**, the Planning Commission, after giving all public notices required by State law
8 and the Concord Municipal Code, held a duly noticed public hearing on April 20, 2016 to consider the
9 Appeal and March 30th Revised Design; and

10 **WHEREAS**, at such public hearing, the Planning Commission considered all oral and written
11 testimony, materials, and information received, including the oral reports from City staff and
12 Appellant, the written report from City staff dated April 20, 2016 and all attachments thereto
13 (collectively, “Staff Report”), the Appeal, the March 30th Revised Design, exhibits of correspondence
14 presented, and all other pertinent plans, documents, testimony, other materials, and information
15 contained in the record of proceedings relating to the Use Permits, the Interpretation, and the Appeal,
16 which are maintained at the offices of the City of Concord Planning Division (collectively, “Record”);
17 and

18 **WHEREAS**, on April 20, 2016, the Planning Commission, after consideration of all pertinent
19 plans, documents and testimony, declared their intent to deny the Appeal, and to approve the March
20 30th Revised Design.

21 **NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:** that the Planning Commission
22 does hereby make the following findings:

23 General

- 24 1. The recitals above are hereby incorporated in to the findings by reference.
25 2. The Planning Commission has reviewed, considered, and evaluated the Record.

26 CEQA

- 27 3. Pursuant to the California Environmental Quality Act of 1970, Public Resources Code §
28

1 21000, et seq., as amended and implementing State CEQA Guidelines, Title 14, Chapter 3 of the
2 California Code of Regulations (collectively, “CEQA”), the Planning Commission’s consideration of
3 and action on the Appeal, for Jo-Ann Fabrics and Burlington Coat Factory Façade Improvement
4 PL15369 DR for 1675 Willow Pass Road, action does not constitute a “project” within the meaning of
5 Public Resources Code Section 21065, 14 Cal Code Regs. Sections 15060(c)(2), 15060(c)(3), or
6 15378 because it has no potential for resulting in either a direct physical change in the environment, or
7 a reasonably foreseeable indirect physical change in the environment. Even if such activities did
8 constitute a project under CEQA, the activities fall within the “common sense” exemption set forth in
9 14 Cal Code Regs. Section 15061(b)(3), excluding projects where “it can be seen with certainty that
10 there is no possibility that the activity in question may have a significant effect on the
11 environment...” Moreover, even if the activities did not qualify for the common sense exemption,
12 they are exempt pursuant to CEQA Guidelines Sections 15301 Class 1 (Existing Facilities), 15302
13 Class 2 (Replacement or Reconstruction), because, among other things, they involve replacement or
14 reconstruction of existing facilities, as further detailed in the staff report and attachments thereto.

15 4. The foregoing CEQA determination reflects the independent judgment and analysis of the City
16 as the lead agency for this matter.

17 Denial of Appeal (Original Project)

18 5. The Planning Commission does hereby deny the Appeal, pursuant to Development Code
19 Sections 18.415.100:

- 20
21 1. The project is consistent with the general plan;
22 **The project is an existing retail shopping center in the General Plan is identified as
23 Downtown Mixed Use, no alterations are being made to the use, therefore it is
24 consistent with the general plan.**
- 25
26 2. The project meets the criteria in CDC 18.415.080 (Design Criteria) and 18.415.080 Design
27 Standards:
 - 28 A. The building design and landscaping supports public safety and security by
allowing for surveillance of the street by people inside building and elsewhere on
the site.
The project does not propose to increase surveillance, as the façade remodel

1 does not relate to the street level or within Park and Shop retail center. The
2 project limits the amount of fenestration and produces a project which is
3 predominantly a building wall. The project therefore, does not meet the
4 criteria for public safety and security.

5 B. The design is compatible with the historical or visual character of any area
6 recognized by the city as having such character.

7 **The project is recognized in the Downtown Specific Plan as an area within the**
8 **Downtown which represents a significant amount of redevelopment potential.**
9 **Although a façade redevelopment is proposed, the proposed design maintains**
10 **architectural features of the existing design such as mostly blank walls,**
11 **minimal fenestration, long spans of horizontal canopy, unarticulated building**
12 **mass. Therefore, the proposed design does not advance redevelopment**
13 **potential as outlined in the Downtown Specific Plan.**

14 C. The project design preserves major views and vistas along major streets and open
15 spaces and trails and enhances them by providing project amenities;

16 **The project site is along Willow Pass Road, a major corridor into the**
17 **downtown. The project does not relate to the major corridor in a manner that**
18 **is more visible towards the street. The project maintains a predominantly**
19 **blank wall spaces that creates dead zones and decreases vehicular and**
20 **pedestrian activity. Therefore, the project does not enhance or preserve major**
21 **streets.**

22 D. The proposed lighting and fixtures are designed to complement on-site buildings,
23 are of an appropriate scale for the development and provide adequate light for
24 safety and security while minimizing glare;

25 **The proposed light fixtures are used to enhance the proposed entrance feature**
26 **and signage only. The proposed light fixtures are designed to be visible from**
27 **Willow Pass Road, and through the design will cause glare at night. The**
28 **proposed light fixtures do not enhance on-site adjacent buildings and, with the**
architecture, serve to magnify the scale and proportion of the project.
Therefore, the proposed lighting creates an adverse glare effect and is not
appropriate for the development.

E. All mechanical, electrical, and utility equipment is located, screened, or
incorporated into the design of the buildings so as not to be visible from off site,
and screening devices are consistent with the exterior colors and materials of the
buildings.

The proposed project does not indicate screening materials or locations of
utility equipment. Existing mechanical equipment is not visible from
surrounding sites. Therefore insufficient information has been provided to
determine the screening of mechanical, electrical and utility equipment.

1 F. The overall design of the project, including its scale, massing, site plan, exterior
2 design, and landscaping, enhances the appearance and features of the project site
3 and surrounding natural and built environment.

4 **Although the proposal is for a façade improvement, the proposed design**
5 **maintains the existing overall massing, site plan, landscaping and exterior**
6 **design. The proposed design is a minimal advancement of current conditions.**
7 **It does not relate to nor reflect the adjacent buildings in Park and Shop that**
8 **have recently been renovated or improved with new façade treatments.**
9 **Therefore, the project overall design does not exhibit features that enhance**
10 **scale, mass, site plan, exterior design, and landscaping.**

11 G. The project design is appropriate to the function of the project and will provide an
12 attractive and comfortable environment for occupants, visitors, and the general
13 community.

14 **The project design proposes two new entry features and a horizontal canopy**
15 **along the length of the building. The new design is the same or similar to the**
16 **existing design. The proposed design does not propose new features, such as**
17 **improvements along the sidewalk, increased visibility, relationship of the**
18 **building to the street for the occupants, visitors and general community.**
19 **Therefore, the project design does not provide an attractive and comfortable**
20 **environment for occupants, visitors and the general community.**

21 H. The architectural details, colors, materials, and landscaping are internally
22 consistent, fully integrated with one another, and used in a manner that is visually
23 consistent with the proposed architectural design.

24 **Recent improvements have been made to Park & Shop at Korean B-B-Q,**
25 **Goodwill Store and Bonjour Bakery. The improvements are enhancements**
26 **with materials, colors, canopies and details. Such improvements are visible at**
27 **Korean B-B-Q, Goodwill Store and Bonjour bakery through the landscaping**
28 **pilasters, increased sidewalk areas, quality details and enhanced materials all**
which combine to lend a high quality pedestrian shopping area. The proposed
improvements at Jo-Ann Fabrics and Burlington Coat Factory do not align
with the recent improvements or continue the recent improvements.
Therefore, the project details, colors, materials and landscaping are
inconsistent.

I. The project is compatible with neighboring development in the same zoning district
by avoiding large differences in building scale and character and provides a
harmonious transition between the proposed project and surrounding development.

The project as proposed is inconsistent with recent retail improvements at the
Park and Shop Retail Center to the west. The project has been encouraged to
introduce four-sided architecture, pedestrian elements at the first floor; such
as vitrine windows or display retail windows, introduce landscaping, introduce
a variety of materials, have an edge treatment along the parapet. The
applicant has not addressed the fundamental design issues with the building
architecture and landscaping. Therefore, the project is not compatible with

1 **the neighboring development.**

2 J. The project creates an attractive and visually interesting built environment with a
3 variety of building styles and designs, well-articulated structures that present varied
4 building facades, rooflines, and building heights within a unifying context.

5 **The project keeps the building mass and roofline as is. Within the existing**
6 **building mass, the project retains the long continuous horizontal canopy, and**
7 **projects the major entrances forward for an overall effect that is similar to the**
8 **previous design. Therefore, the project does not create an attractive and**
9 **visually interesting built environment.**

10 K. The landscaping is compatible with and enhances the architectural character of the
11 buildings and site features, and blends with the surrounding landscape. Landscape
12 elements complement the buildings and rooflines through color, texture, density,
13 and form. Landscaping is in scale with on-site and off-site buildings, and plantings
14 have been selected and located to avoid conflicts with views, lighting,
15 infrastructure, utilities, and signage.

16 **The existing project site is predominantly impervious. However, in an urban**
17 **site, improvements to landscaping can be introduced through creative**
18 **solutions such as; landscaped columns or landscaping at the end of parking**
19 **rows. The proposed project does not propose improvements. Therefore, the**
20 **project does not enhance the architectural features through landscaping.**

21 L. Storm water treatment areas have been integrated into the landscape design. **The**
22 **project site is existing and storm water treatment is not required as part of the**
23 **proposal. Therefore, the project is not required to address storm water**
24 **treatment.**

25 M. New construction does not need to match existing surrounding development or
26 buildings; however, the design shall complement or enhance existing development.
27 (Ord. 13-5; Ord 13-4. DC 2012 and 122-908).

28 **The recent improvements at adjacent properties have incorporated greater**
29 **articulation of the pedestrian level at the base of the building through**
30 **enhancements in the quality of materials, introduction of increased**
31 **fenestration, landscaping treatments, sidewalk improvements, signage that is**
32 **visible from the street and under the canopy tree line. The proposed project**
33 **introduces large bulky unarticulated architectural features are monotonous**
34 **and continuous. The overall new effect is similar to the existing design.**
35 **Therefore, the proposed project does not complement or enhance existing**
36 **development.**

1 Approval of March 30th Revised Design

2 6. The Planning Commission does hereby approve the March 30th Revised Design, pursuant to
3 Development Code Sections 18.415.100:

4
5 A. Decision and Findings. The review authority shall consider the recommendations from the design
6 review board and may approve, conditionally approve, or deny the application after finding that:

7 1. The project is consistent with the general plan;
8 **The project is an existing retail shopping center in the General Plan is identified
9 as Downtown Mixed Use, no alterations are being made to the use, therefore it is
10 consistent with the general plan.**

11 2. The project meet the criteria in CDC 18.415.080 (Design Criteria); and

12 A. The building design and landscaping supports public safety and security by allowing
13 for surveillance of the street by people inside building and elsewhere on the site.

14 **The project provides increased surveillance by introducing a new larger
15 storefront and entry feature with recessed lighting. Therefore, the project
16 increases surveillance from the street as well as from inside the building and
17 elsewhere on the site.**

18 B. The design is compatible with the historical or visual character of any area recognized
19 by the city as having such character.

20 **The project is recognized in the Downtown Specific Plan as an area within the
21 Downtown which represents a significant amount of redevelopment potential.
22 The façade redevelopment introduces current retail design which will add to the
23 character and re-development of the existing shopping center. Therefore, the
24 proposed design advances redevelopment potential as outlined in the Downtown
25 Specific Plan.**

26 C. The project design preserves major views and vistas along major streets and open
27 spaces and trails and enhances them by providing project amenities;

28 **The project site is along Willow Pass Road, a major corridor into the downtown.
The project relates to Willow Pass Road by introducing pronounced entry towers
and increased storefront size. Therefore, the project enhances or preserves major
streets.**

D. The proposed lighting and fixtures are designed to complement on-site buildings, are of
an appropriate scale for the development and provide adequate light for safety and
security while minimizing glare;

**The proposed light fixtures are used to enhance the proposed entrance feature.
The proposed light fixtures are designed to be visible from Willow Pass Road, and
compliment the entry tower features. The proposed light fixtures are of a scale
and style that fit with the new entry tower. Recessed lighting is proposed in the**

1 lower canopy and will add to the safety and security of the site. Therefore, the
2 proposed lighting provides adequate light, safety and security for the
development.

- 3 E. All mechanical, electrical, and utility equipment is located, screened, or incorporated
4 into the design of the buildings so as not to be visible from off site, and screening
devices are consistent with the exterior colors and materials of the buildings.

5 **The proposed project does not indicate screening materials or locations of utility**
6 **equipment. Existing mechanical equipment is not visible from surrounding sites.**
7 **Therefore sufficient information has been provided to determine the screening of**
mechanical, electrical and utility equipment.

- 8 F. The overall design of the project, including its scale, massing, site plan, exterior
9 design, and landscaping, enhances the appearance and features of the project site and
surrounding natural and built environment.

10 **The proposal is for a façade improvement, and the proposed design introduces**
11 **new entry towers, articulates the scale, varies the height, varies the materials,**
12 **color palette, and adds new landscaping. Therefore, the project overall design**
exhibits features that enhance scale, mass, exterior design, and landscaping.

- 13 G. The project design is appropriate to the function of the project and will provide an
14 attractive and comfortable environment for occupants, visitors, and the general
community.

15 **The project design proposes two new prominent entry features along with**
16 **appropriately scaled columns and spaced canopies. The new design proposes new**
17 **features, which will provide increased visibility, relationship of the building to the**
18 **street for the occupants, visitors and general community. Therefore, the project**
19 **design provides an attractive and comfortable environment for occupants, visitors**
20 **and the general community.**

- 21 H. The architectural details, colors, materials, and landscaping are internally consistent,
22 fully integrated with one another, and used in a manner that is visually consistent with
the proposed architectural design.

23 **The proposed new design will enhance an aging center through façade**
24 **improvement, landscaping, new color palette and varying materials. The**
25 **improvements will compliment recent improvements that have been made to Park**
26 **& Shop such as at Korean B-B-Q, Goodwill Store and Bonjour Bakery.**
27 **Therefore, the project details, colors, materials and landscaping are consistent.**

- 28 I. The project is compatible with neighboring development in the same zoning district by
avoiding large differences in building scale and character and provides a harmonious
transition between the proposed project and surrounding development.

The project as proposed is consistent with recent retail improvements at the Park
and Shop Retail Center to the west. The project introduces a four-sided
architecture, pedestrian elements at the first floor; such as pedestrian scaled
columns, new landscaping, introduced a variety of materials, has an edge

1 treatment along the parapet. The applicant has addressed the fundamental
2 design issues with the building architecture and landscaping. Therefore, the
project is compatible with the neighboring development.

3 J. The project creates an attractive and visually interesting built environment with a
4 variety of building styles and designs, well-articulated structures that present varied
building facades, rooflines, and building heights within a unifying context.

5 **The project varies the building mass and roofline. Within the existing building**
6 **mass, the project introduces columns at the entrance, evenly spaced columns**
7 **through-out the length of the façade, canopy elements that relate to the pedestrian**
8 **scale. The entry feature projects above the existing roofline, new plaster**
9 **horizontal trim has been added, new steel canopies are introduced. The overall**
effect is an attractive and visually interesting re-model that is a current retail
design. Therefore, the project creates an attractive and visually interesting built
environment.

10 K. The landscaping is compatible with and enhances the architectural character of the
11 buildings and site features, and blends with the surrounding landscape. Landscape
12 elements complement the buildings and rooflines through color, texture, density, and
13 form. Landscaping is in scale with on-site and off-site buildings, and plantings have
14 been selected and located to avoid conflicts with views, lighting, infrastructure,
15 utilities, and signage.

16 **The project site is predominantly impervious. However, the applicant is**
17 **proposing new landscaping in an existing island to the east and in a new island to**
18 **the west of the entry features. Therefore, the project enhances the architectural**
19 **features through landscaping.**

20 L. Storm water treatment areas have been integrated into the landscape design.

21 **The project site is existing and storm water treatment is not required as part of**
22 **the proposal. Therefore, the project is not required to address storm water**
23 **treatment.**

24 M. New construction does not need to match existing surrounding development or
25 buildings; however, the design shall complement or enhance existing development.
26 (Ord. 13-5; Ord 13-4. DC 2012 and 122-908).

27 **The new design introduces a façade re-model that relates to the pedestrian and**
28 **the street level through articulation of the mass, height, and variation in**
materials. Therefore, the proposed project complements and enhances existing
development.

3. The project is consistent with all applicable design guidelines adopted by the city
council that are in effect at the time of approval; and

The project is consistent with the Downtown Specific Plan guidelines.

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Effective Date

7. In accordance with City of Concord Municipal Code Section 18.500.080, approvals, or other decisions of the Planning Commission shall become effective on the 11th calendar day following the date the decision is rendered, if no appeal is filed.

PASSED AND ADOPTED this 20th day of April, 2016, by the following vote:

- AYES:**
- NOES:**
- ABSTAIN:**
- ABSENT:**

Laura Simpson, AICP
Secretary to the Planning Commission



NOTICE OF APPEAL
[Concord Municipal Code 2901(b)]

TO: City Council
City of Concord
1950 Parkside Drive, MS/03
Concord, CA 94519-2578

FOR STAFF USE ONLY	
PUBLIC NOTICE FEE \$	_____
<i>(According to Fees and Charges Resolution)</i>	
DATE PAID	EXHIBIT B
FEE RECVD BY	_____

DATE 3-7-16

I hereby appeal the decision / requirement of the Planning Division
(ADMINISTRATOR OR COMMISSION)

in approving / denying the application of Montgomery Realty Group, LLC
(NAME OF APPLICANT)

for PL15369-DR (Design Review Action for Jo-Ann Fabrics & Burlington Coat Factory facade improvements) on Feb. 25, 192016
(TITLE OF ITEM BEING APPEALED)

Please indicate the specific action(s) or requirement(s) being appealed:
Please see the attached letter,
site address:
1675 Willow Pass Road, Concord

Tuija Catalano/Reuben, Juniors
Rose, LLP on behalf of Montgomery Realty
Group, LLC
(PRINT) NAME OF APPELLANT

Tuija J. Catalano
SIGNATURE OF APPELLANT / REPRESENTATIVE

APPELLANT'S ADDRESS <u>c/o One Bush # 600, San Francisco, CA 94104</u>	HOME PHONE	BUSINESS PHONE <u>415-567-4000</u>
ADDRESS FOR NOTICES <u>11</u>		cell <u>925-404-4255</u>
MY REPRESENTATIVE IS		BUSINESS PHONE

FOR STAFF USE ONLY			
ADDRESS OF PROPERTY INVOLVED <u>1675 Willow Pass Road</u>			
ASSESSOR'S PARCEL NUMBER(S) <u>126-281-009</u>		MUNICIPAL CODE SECTION	
FILE NUMBER <u>PL1600093</u>	FILE TITLE <u>Appeal of PL15-369DR</u>	NAME OF RESPONSIBLE PLANNER <u>AH</u>	REVIEWED BY (PLANNING STAFF) <u>LV</u>
RECEIVED BY	PROJECT PLANNER		

CITY CLERK USE ONLY	
Received written appeal on _____	
Scheduled for Council agenda of _____	to set for Public Hearing on _____
<input type="checkbox"/> Copies distributed to appropriate parties	DEPUTY CITY CLERK

REUBEN, JUNIUS & ROSE, LLP

March 7, 2016

VIA HAND DELIVERY

City of Concord
1950 Parkside Drive, MS/03
Concord, CA 94519

Re: Appeal of PL15369-DR (Design Review Action for Jo-Ann Fabrics and Burlington Coat Factory Improvements)
Our File No.: 7877.02

Our office represents Montgomery Realty Group, LLC ("Montgomery Realty"), the owner of a building currently occupied by Jo-Ann Fabrics and Burlington Coat Factory at 1675 Willow Pass Road, Concord ("Property"). Montgomery Realty has expressed an interest, and subsequently filed an application for site and design review, to improve the exterior facade of the existing building at the Property (the "Project" or "Facade Improvements"). After many formal and informal meetings with staff and the Design Review Board ("DRB") since September 2015, the DRB voted to recommend denial of the Facade Improvements on February 25, 2016. It is our understanding that Ms. Afshan Hamid, on behalf of the Planning Division, immediately thereafter, also on February 25, 2016, made a decision to deny the Project ("Decision") based on the DRB recommendation. The Decision was issued in a letter by Ms. Hamid, dated March 1, 2016, which is (according to the said letter) appealable to the Planning Commission.¹

On behalf of Montgomery Realty, please accept this appeal of the Decision on PL15369-DR pursuant to the enclosed Notice of Appeal form and as further elaborated by this letter (jointly as the "Appeal").

A. Basis for the Appeal per CDC Sec. 18.510.040

The Decision that is the subject of this Appeal is the denial of PL15369-DR for the site and design review application for the Jo-Ann Fabrics and Burlington Coat Factory facade improvements at the Property. Pursuant to Concord's Development Code ("CDC") Chapter 18.415, the applicable design criteria consists of the design criteria listed in CDC Sec. 18.415.080.A-M ("Criteria"), and further per CDC Sec. 18.415.100, the review authority is required to consider the Criteria along with the project's consistency with the general plan and the applicable design guidelines adopted by the City Council and in effect at the time of the approval.

¹ CDC Sec. 18.415.040, including sub-sections A, E, F and G thereto, would appear to indicate that in the event an application for site and design review is referred to the DRB and the DRB recommends denial of the project, such decision must be referred to the "appropriate review authority." Although the March 1, 2016 decision letter by Ms. Hamid does not expressly note that the "decision" on PL15369-DR was made by the staff at the Planning Division, Ms. Hamid concluded via an email dated March 4, 2016 that an appeal of the "decision" would be an appeal of a staff level decision, and thus the Planning Division/staff would appear to have acted as the "appropriate review authority" under the CDC to whom the DRB recommendation was referred.

James A. Reuben | Andrew J. Junius | Kevin H. Rose | Daniel A. Frattin | John Kevlin
Jay F. Drake | Lindsay M. Petrone | Sheryl Reuben¹ | Tuija I. Catalano | Thomas Tunny
David Silverman | Melinda A. Sarjapur | Mark H. Loper | Jody Knight | Stephanie L. Haughey
Chloe V. Angelis | Louis J. Sarmiento | Jared Eigerman^{2,3} | John McInerney III²

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The Decision and the findings thereto, as expressed in Ms. Hamid's letter dated March 1, 2016, are based on a number of erroneously and/or inaccurately applied Criteria. As a result, the Project was inaccurately determined to be noncompliant with respect to the applicable Criteria and thus unjustifiably denied. A more detailed explanation is provided below.

Notwithstanding the prior review and process, Montgomery Realty is filing this Appeal so that it can ultimately improve the existing building at the Property, and thus it respectfully requests that the Planning Commission allow the facade improvements to be implemented. In addition to the improvements and the different versions and variations thereto that have been discussed/proposed to date, Montgomery Realty would like to provide updated drawings for the Planning Commission Appeal hearing with some additional revisions that will result in an even better and more compatible facade improvements that will benefit not only the building but the entire Park & Shop Center. The revisions that will be submitted to the Planning Commission prior to the Appeal hearing are being made in response to Ms. Hamid's letter dated March 1, 2016, and will include e.g. addition of substantial landscaping features.

B. Detailed evaluation of the inaccuracies, errors Criteria

A more detailed analysis of the Criteria is included below. Overall please note that content of the Criteria should be applied somewhat differently to different kinds of projects and that not all of the Criteria apply to each project. In this case, the Project consists of a exterior tenant improvements to an existing building in an existing shopping center. The Project is not a new construction project, nor is it an expansion of the existing building footprint or envelope. Overall, based on the application of the Criteria to the Project, the Project is on balance fully consistent with the Criteria and compatible with the existing context.

General Plan Compliance
APPEAL RESPONSE: The Decision accurately concluded that the Project is consistent with the City's General Plan. Project sponsor fully agrees with this conclusion.

CDC Chapter 18.415 Criteria:

No.	CDC 18.415.080 Criteria	Findings per Ms.Hamid's letter dated Mar. 1, 2016
A	The building design and landscaping supports public safety and security by allowing for surveillance of the street by people inside buildings and elsewhere on the site.	The project does not propose to increase surveillance, as the facade remodel does not relate to the street level within the Park and Shop retail center. The project limits the amount of fenestration and produces a project which is predominantly a building wall. The project therefore, does not meet the criteria for public safety and security.
APPEAL RESPONSE: The Project involves exterior tenant improvements to an existing building and is not a new construction project. Thus the "option" to provide e.g. new openings within the existing solid wall is not feasible, however, it is also <u>not required</u> by this Criteria. The Project includes appropriate lighting and does not change any existing conditions to the detriment of public safety and/or security. The surveillance of the street by those people inside the building will be allowed to continue similarly to any current conditions, and in fact, the existing building contains security cameras, which are not prevalent in the Park & Shop Center, and thus the existing and the proposed design and setting combined with the clear sightlines proposed by the Project is fully consistent with the Criteria.		

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No.	CDC 18.415.080 Criteria	Findings per Ms. Hamid's letter dated Mar. 1, 2016
B	The design is compatible with the historical or visual character of any area recognized by the city as having such character.	The project is recognized in the Downtown Specific Plan as an area within the Downtown which represents a significant amount of redevelopment potential. Although a façade redevelopment is proposed, the proposed design maintains architectural features of the existing design such as mostly blank walls, minimal fenestration, long spans of horizontal canopy, unarticulated building mass. Therefore, the proposed design does not advance redevelopment potential as outlined in the Downtown Specific Plan.

APPEAL RESPONSE: This Criteria addresses the historical or visual character of a particular area if and to the extent such has been recognized. The Decision, however, incorrectly characterizes "redevelopment potential" as a historical and/or visual character for the applicable area. Redevelopment potential refers to a future use of an area, and not to any existing recognized historical or visual character. The findings for the Decision do not identify any recognized existing historical or visual character. The Project proposes facade improvements pursuant to the direction received from staff without any substantial changes or additions that would render the building incompatible with the existing context, let alone any existing recognized historical or visual character, if any exists. Thus the Project has no impact on this Criteria.

No.	CDC 18.415.080 Criteria	Findings per Ms. Hamid's letter dated Mar. 1, 2016
C	The project design preserves major view and vistas along major streets and open spaces and trails and enhances them by providing project amenities.	The project site is along Willow Pass Road, a major corridor into the downtown. The project does not relate to the major corridor in a manner that is more visible towards the street. The project maintains a predominantly blank wall space that creates dead zones and decreases vehicular and pedestrian activity. Therefore, the project does not enhance or preserve major streets.

APPEAL RESPONSE: This Criteria calls for the preservation of major view and vistas, which are not in any way affected by the minimal exterior facade improvements proposed by the Project. The Project does not propose new or additional building height or massing that would obstruct any existing views or vistas. In fact, due to the location and distance of the building frontage from Willow Pass Road and the intervening parking lot and street tree areas, the building facade is minimally visible from the street as of today. Further, the Criteria does not address vehicular or pedestrian activity levels at all, but rather focuses on preservation of major views and vistas. In sum, the Project has no impact on existing major views and vistas, and if anything, with the proposed facade improvements, the Project will result in enhanced and upgraded perspective to any persons viewing the site from a street. The updated drawings will include additional design features that are similar to the adjacent properties, and thus overall the Project has a positive impact on this Criteria.

No.	CDC 18.415.080 Criteria	Findings per Ms. Hamid's letter dated Mar. 1, 2016
D	The proposed lighting and fixtures are designed to complement on-site buildings, are of an appropriate scale for the development, and provide adequate light for safety and security while minimizing glare.	The proposed light fixtures are used to enhance the proposed entrance feature and signage only. The proposed light fixtures are designed to be visible from Willow Pass Road, and through the design will cause glare at night. The proposed light fixtures do not enhance on-site adjacent buildings and, with the architecture, serve to magnify the scale and proportion of the project. Therefore, the proposed lighting creates an adverse glare effect and is not appropriate for the development.

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APPEAL RESPONSE: The Project includes several different kinds of lighting with different purposes, including security lighting. With the revised to be submitted to the Planning Commission, the proposed lighting is overall very consistent and similar to the adjacent properties, and proportional with the context of the building size and scope. In sum, the proposed lighting has been designed to be consistent with and the Project will advance this Criteria.

No.	CDC 18.415.080 Criteria	Findings per Ms. Hamid's letter dated Mar. 1, 2016
E	All mechanical, electrical, and utility equipment is located, screened, or incorporated into the design of the buildings so as not to be visible from off site, and screening devices are consistent with the exterior colors and materials of the buildings.	The proposed project does not indicate screening materials or locations of utility equipment. Existing mechanical equipment is not visible from surrounding sites. Therefore insufficient information has been provided to determine the screening of mechanical, electrical and utility equipment.

APPEAL RESPONSE: Pursuant to CDC Sec. 18.415.030.A, existing uses and structures are exempt from the design and site review process. The plans themselves show the existing mechanical room at the rooftop, and no changes thereto are proposed. The project is not adding any new utility equipment and does not propose to expand any existing equipment or decrease the amount of any existing screening. Without any such changes being proposed and with the existing mechanical equipment being invisible from the surrounding streets (as noted by staff's findings), there does not appear to be any other information that could be provided, and overall the Project has no impact on this Criteria.

No.	CDC 18.415.080 Criteria	Findings per Ms. Hamid's letter dated Mar. 1, 2016
F	The overall design of the project, including its scale, massing, site plan, exterior design, and landscaping, enhances the appearance and features of the project site and surrounding natural and built environment.	Although the proposal is for a facade improvement, the proposed design maintains the existing overall massing, site plan, landscaping and exterior design. The proposed design is a minimal advancement of current conditions. It does not relate to nor reflect the adjacent buildings in Park and Shop that have recently been renovated or improved with new facade treatments. Therefore, the project overall design does not exhibit features that enhance scale, mass, site plan, exterior design, and landscaping.

APPEAL RESPONSE: As noted above, the Project involves tenant improvements to an existing building, and proposes to enhance it with exterior improvements and upgrades. The Project is not proposed as a demolition and new construction. The surrounding other development includes tens of other uses and business frontages, and thus the references to few selected, recently modified storefronts is not an accurate representation of the current conditions and context. The Project is designed to improve and enhance the overall appearance, and it successfully proposes significant upgrades to the existing conditions. Even if the Project were characterized only as "minimal advancement" of the existing conditions, such project would nevertheless be an improvement over the existing facade, and thus consistent with this Criteria. The addition of landscaping features and the provision of clear sightlines, as will be shown on the revised and updated drawings to the Planning Commission, are similar to the adjacent properties, and entirely compliant with the intent of this Criteria.

No.	CDC 18.415.080 Criteria	Findings per Afshan Hamid's letter dated Mar. 1, 2016
G	The project design is appropriate to the function of the project and will provide an attractive and comfortable environment for occupants, visitors, and the general community.	The project design proposes two new entry features and a horizontal canopy along the length of the building. This new design is the same or similar to the existing design. The proposed design does not propose new features, such as improvements along the sidewalk, increased visibility, relationship of the building to the street for the occupants, visitors and general community. Therefore, the project design does not provide an attractive and comfortable environment for occupants, visitors and the general community.

APPEAL RESPONSE: This Criteria does not call for or require introduction of new features. The Project proposes improvements to the existing facade, thus making the building more attractive and comfortable to visitors and occupants. The additions revisions, including the landscaping features, result in a tasteful and attractive enhancements to the existing facade, and thus the Project complies with this Criteria.

No.	CDC 18.415.080 Criteria	Findings per Afshan Hamid's letter dated Mar. 1, 2016
H	The architectural details, colors, materials, and landscaping are internally consistent, fully integrated with one another, and used in a manner that is visually consistent with the proposed architectural design.	Recent improvements have been made to Park & Shop at Korean B-B-Q, Goodwill Store and Bonjour Bakery. The improvements are enhancements with materials, colors, canopies and details. Such improvements are visible at Korean B-B-Q, Goodwill Store and Bonjour Bakery through the landscaping pilasters, increased sidewalk areas, quality details and enhanced materials all which combine to lend a high quality pedestrian shopping area. The proposed improvements at Jo-Ann Fabrics and Burlington Coat Factory do not align with the recent improvements or continue the recent improvements. Therefore, the project details, colors, materials and landscaping are inconsistent.

APPEAL RESPONSE: The Decision incorrectly concludes that the Project to be inconsistent with respect to this Criteria based on comparison to three (3) other recently improved stores at the Park & Shop center (considering e.g. the overall number of existing Park & Shop businesses which far exceeds three selected businesses). Furthermore, the City has allowed a variety of different kinds of improvements to be added in recent years, e.g. the improvements to the Harvest Church building few years ago. However, more importantly this criteria itself does not even address consistency with nearby projects, but instead expressly refers to "internal consistency". The Decision does not provide any elaboration as to how or why the Project would be internally inconsistent, which is the purpose of this Criteria. The facade improvements that have been proposed are compatible for the building and well integrated, and therefore the Project is fully compliant with this Criteria.

No.	CDC 18.415.080 Criteria	Findings per Afshan Hamid's letter dated Mar. 1, 2016
I	The project is compatible with neighboring development in the same zoning district by avoiding large differences in building scale and character and provides a harmonious transition between the proposed	The project as proposed is inconsistent with recent retail improvements at the Park & Shop Retail Center to the west. The project has been encouraged to introduce four-sided architecture, pedestrian elements at the first floor; such as vitrine windows or display retail windows, introduce landscaping, introduce a variety of materials, have an edge treatment along the parapet. The applicant has not addressed the fundamental

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	project and surrounding development.	design issues with the building architecture and landscaping. Therefore, the project is not compatible with the neighboring development.
<p>APPEAL RESPONSE: The revisions to the plans that will be provided in time for the Planning Commission consideration will include landscaping improvements and introduction of a cap for the building that, among other revisions, are consistent with the context and the adjacent properties. Overall, the context is varied, and the Project does not in any way increase any undesirable impacts regarding scale or character. The Project is consistent with adjacent properties and the larger context and thus <u>compliant with this Criteria</u>.</p>		
No.	CDC 18.415.080 Criteria	Findings per Afshan Hamid's letter dated Mar. 1, 2016
J	The project creates an attractive and visually interesting built environment with a variety of building styles and designs, well-articulated structures that present varied building facades, rooflines, and building heights within a unifying context.	The project keeps the building mass and roofline as is. Within the existing building mass, the project retains the long continuous horizontal canopy, and projects the major entrances forward for an overall effect that is similar to the previous design. Therefore, the project does not create an attractive and visually interesting built environment.
<p>APPEAL RESPONSE: Pursuant to CDC Sec. 18.415.030.A, existing uses and structures are exempt from the design and site review process, and accordingly the intent of this Criteria is not to require creation of a new built environment in the place of existing buildings. The Project involves exterior facade improvements to an existing building, and is not seeking to create any new built environment. The proposed improvements and upgrades increase and enhance the existing environment and context and thus the <u>Project complies with this Criteria</u>.</p>		
No.	CDC 18.415.080 Criteria	Findings per Afshan Hamid's letter dated Mar. 1, 2016
K	The landscaping is compatible with and enhances the architectural character of the buildings and site features, and blends with the surrounding landscape. Landscape elements complement the buildings and rooflines through color, texture, density, and form. Landscaping is in scale with on-site and off-site buildings, and plantings have been selected and located to avoid conflicts with views, lighting, infrastructure, utilities, and signage.	The existing project site predominantly impervious. However, in an urban site, improvements to landscaping can be introduced through creative solutions such as; landscaped columns or landscaping at the end of parking rows. The proposed project does not propose improvements. Therefore, the project does not enhance the architectural features through landscaping.
<p>APPEAL RESPONSE: Landscaping improvements are being proposed with the Planning Commission submittal for this Appeal, however, overall the Project proposes significant improvement over the existing building and context <u>consistent with the intent of this Criteria</u>.</p>		

No.	CDC 18.415.080 Criteria	Findings per Afshan Hamid's letter dated Mar. 1, 2016
L	Storm water treatment areas have been integrated into the landscape design.	The project site is existing and storm water treatment is not required as part of the proposal. Therefore, project is not required to address storm water treatment.
APPEAL RESPONSE: As noted by the Decision, this Criteria is <u>not applicable</u> to the Project.		
No.	CDC 18.415.080 Criteria	Findings per Afshan Hamid's letter dated Mar. 1, 2016
M	New construction does not need to match existing surrounding development or buildings; however, the design shall complement or enhance existing development.	The recent improvements at adjacent properties have incorporated greater articulation of the pedestrian level at the base of the building through enhancements in the quality of materials , introduction of increased fenestration, landscaping treatments, sidewalk improvements, signage that is visible from the street and under the canopy tree line are. The proposed project introduces large bulky unarticulated architectural features are monotonous and continuous. The overall new effect is similar to the existing design. Therefore, the proposed project does not complement or enhance existing development.
APPEAL RESPONSE: This Criteria refers to new construction projects (which the Project is not), and further to the existing surrounding development in general. The Decision, however, incorrectly focuses only on "recent improvements at adjacent properties" without acknowledging that the Project is a exterior tenant improvement project. According to the Downtown Specific Plan, Park & Shop is an approx. "450,000-sf shopping center with more than 50 businesses". ² According to this Criteria, even new construction would not need to match with the existing surrounding buildings, and thus there is no justification to require identical improvements for the Property and Project. The Project does however significantly enhance the existing building and is complementary to the existing Park & Shop Center and promote its viability consistent with teh Downtown Specific Plan and this Criteria.		

CDC 18.415.100	Findings per Afshan Hamid's letter dated Mar. 1, 2016
The project is consistent with all applicable design guidelines adopted by the city council that are in effect at the time of approval.	The project is not consistent with the Downtown Specific Plan guidelines, nor draft Design Guidelines that have been shared with the applicant.
<p>APPEAL RESPONSE: This requirement refers expressly to those guidelines that have been adopted by the city council and are in effect at the time of the approval. The Decision, however, refers to the <u>draft</u> Design Guidelines (i.e. the 3-2-2012 Draft Park & Shop Design Guidelines), which based on the express language of the CDC are simply <u>not</u> applicable.</p> <p>With respect to the Downtown Specific Plan, no specific references were provided in the findings for the Decision in terms of the alleged inconsistencies. The design guidelines in the Downtown Specific Plan include minimal reference to the Park & Shop area, and therein focus primarily on future redevelopment of the area, an activity that is beyond the scope of the proposed facade improvements to the existing building. Overall, the Downtown Specific Plan recognizes that the redevelopment potential is unlikely to occur as "short/mid-term development" at Park & Shop,³ and thus the Project should be approved in order to advance one of the key land use objectives of retaining and supporting existing viable businesses within the Downtown area.</p>	

² See p. 29.

³ See p. 46.

March 7, 2016

Page 8

C. Conclusion

Presumably the City and Montgomery Realty both agree that the existing building at the Property would benefit from some exterior facade improvements. The two (2) existing tenants are among the few anchor tenants for the Park & Shop Center, and thus the continued use and viability of the building at the Property is of utmost importance to the other tenants and businesses. The benefits of allowing Montgomery Realty to complete facade improvements extend significantly beyond the subject building, and thus, we respectfully request that the Planning Commission reverse the staff denial of PL15369-DR and approve the site and design review application for the Project with the revisions and updated drawings that will be submitted to the Planning Commission prior to the Appeal hearing date.

Please contact me should you have any questions.

Very truly yours,

REUBEN, JUNIUS & ROSE, LLP



Tuija I. Catalano

Enclosures

cc: Afshan Hamid, Associate Planner, City of Concord
Robert Canepa, Montgomery Realty Group, LLC

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925

CITY COUNCIL
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Valerio J. Barone, City Manager



Telephone:

March 1, 2016

VIA E-MAIL

rob@bluestoneamc.com

(HARD COPY SENT VIA REGULAR MAIL)

Robert A. Canepa
Senior Vice-President
Montgomery Realty Group, LLC
447 Battery Street
Suite 230
San Francisco, CA 94111

RE: Design Review Action of Jo-Ann Fabrics and Burlington Coat Factory Improvements
(PL15369-DR)

Dear Mr. Canepa:

The Design Review Board (DRB) held a final review of the Jo-Ann Fabrics and Burlington Coat Factory Façade Re-model project on February 25, 2016. The Board voted to deny the project, as follows:

I, Jack Moore, Chairman hereby move that the Design Review Board recommend denial of the JoAnn Fabrics and Burlington Coat Factory Façade Improvements (PL15369 - DR), subject to all applicable provisions of the Development Code or as amended by the Design Review Board.

The motion was seconded by Peter Harmon.

Ayes: All

Nays: None

The Decision and finding are in 18.415.100 and apply as follows with the City response in bold:

1. The project is consistent with the general plan, **the project is an existing retail shopping center in the General Plan is identified as Downtown Mixed Use, no alterations are being made to the use, therefore it is consistent with the general plan.**
2. The project meets the criteria in CDC 18.415.080 (Design Criteria) and 18.415.080 Design Standards:
 - A. The building design and landscaping supports public safety and security by allowing for surveillance of the street by people inside buildings and elsewhere on the site. **The project does not propose to increase surveillance, as the façade remodel does not relate to the street level within the Park and Shop retail center. The project limits the amount of fenestration and**

produces a project which is predominantly a building wall. The project therefore, does not meet the criteria for public safety and security.

B. The design is compatible with the historical or visual character of any area recognized by the city as having such character. The project is recognized in the Downtown Specific Plan as an area within the Downtown which represents a significant amount of redevelopment potential. Although a façade redevelopment is proposed, the proposed design maintains architectural features of the existing design such as mostly blank walls, minimal fenestration, long spans of horizontal canopy, unarticulated building mass. Therefore, the proposed design does not advance redevelopment potential as outlined in the Downtown Specific Plan.

C. The project design preserves major views and vistas along major streets and open spaces and trails and enhances them by providing project amenities; The project site is along Willow Pass Road, a major corridor into the downtown. The project does not relate to the major corridor in a manner that is more visible towards the street. The project maintains a predominantly blank wall space that creates dead zones and decreases vehicular and pedestrian activity. Therefore, the project does not enhance or preserve major streets.

D. The proposed lighting and fixtures are designed to complement on-site buildings, are of an appropriate scale for the development and provide adequate light for safety and security while minimizing glare; The proposed light fixtures are used to enhance the proposed entrance feature and signage only. The proposed light fixtures are designed to be visible from Willow Pass Road, and through the design will cause glare at night. The proposed light fixtures do not enhance on-site adjacent buildings and, with the architecture, serve to magnify the scale and proportion of the project. Therefore, the proposed lighting creates an adverse glare effect and is not appropriate for the development.

E. All mechanical, electrical, and utility equipment is located, screened, or incorporated into the design of the buildings so as not to be visible from off site, and screening devices are consistent with the exterior colors and materials of the buildings. The proposed project does not indicate screening materials or locations of utility equipment. Existing mechanical equipment is not visible from surrounding sites. Therefore insufficient information has been provided to determine the screening of mechanical, electrical and utility equipment.

F. The overall design of the project, including its scale, massing, site plan, exterior design, and landscaping, enhances the appearance and features of the project site and surrounding natural and built environment. Although the proposal is for a façade improvement, the proposed design maintains the existing overall massing, site plan, landscaping and exterior design. The proposed design is a minimal advancement of current conditions. It does not relate to nor reflect the adjacent buildings in Park and Shop that have recently been renovated or improved with new façade treatments. Therefore, the project overall design does not exhibit features that enhance scale, mass, site plan, exterior design, and landscaping.

G. The project design is appropriate to the function of the project and will provide an attractive and comfortable environment for occupants, visitors, and the general community. The project design proposes two new entry features and a horizontal canopy along the length of the building. This new design is the same or similar to the existing design. The proposed design does not propose new features, such as improvements along the sidewalk, increased visibility, relationship of the building to the street for the occupants, visitors and general community. Therefore, the project design does not provide an attractive and comfortable environment for occupants, visitors and the general community.

H. The architectural details, colors, materials, and landscaping are internally consistent, fully integrated with one another, and used in a manner that is visually consistent with the proposed architectural design. **Recent improvements have been made to Park & Shop at Korean B-B-Q, Goodwill Store and Bonjour Bakery. The improvements are enhancements with materials, colors, canopies and details. Such improvements are visible at Korean B-B-Q, Goodwill Store and Bonjour Bakery through the landscaping pilasters, increased sidewalk areas, quality details and enhanced materials all which combine to lend a high quality pedestrian shopping area. The proposed improvements at Jo-Ann Fabrics and Burlington Coat Factory do not align with the recent improvements or continue the recent improvements. Therefore, the project details, colors, materials and landscaping are inconsistent.**

I. The project is compatible with neighboring development in the same zoning district by avoiding large differences in building scale and character and provides a harmonious transition between the proposed project and surrounding development. **The project as proposed is inconsistent with recent retail improvements at the Park & Shop Retail Center to the west. The project has been encouraged to introduce four-sided architecture, pedestrian elements at the first floor; such as vitrine windows or display retail windows, introduce landscaping, introduce a variety of materials, have an edge treatment along the parapet. The applicant has not addressed the fundamental design issues with the building architecture and landscaping. Therefore, the project is not compatible with the neighboring development.**

J. The project creates an attractive and visually interesting built environment with a variety of building styles and designs, well-articulated structures that present varied building facades, rooflines, and building heights within a unifying context. **The project keeps the building mass and roofline as is. Within the existing building mass, the project retains the long continuous horizontal canopy, and projects the major entrances forward for an overall effect that is similar to the previous design. Therefore, the project does not create an attractive and visually interesting built environment.**

K. The landscaping is compatible with and enhances the architectural character of the buildings and site features, and blends with the surrounding landscape. Landscape elements complement the buildings and rooflines through color, texture, density, and form. Landscaping is in scale with on-site and off-site buildings, and plantings have been selected and located to avoid conflicts with views, lighting, infrastructure, utilities, and signage. **The existing project site predominantly impervious. However, in an urban site, improvements to landscaping can be introduced through creative solutions such as; landscaped columns or landscaping at the end of parking rows. The proposed project does not propose improvements. Therefore, the project does not enhance the architectural features through landscaping.**

L. Stormwater treatment areas have been integrated into the landscape design. **The project site is existing and stormwater treatment is not required as part of the proposal. Therefore, project is not required to address storm water treatment.**

M. New construction does not need to match existing surrounding development or buildings; however, the design shall complement or enhance existing development. [Ord. 13-5; Ord. 12-4. DC 2012 § 122-908]. **The recent improvements at adjacent properties have incorporated greater articulation of the pedestrian level at the base of the building through enhancements in the quality of materials, introduction of increased fenestration, landscaping treatments, sidewalk improvements, signage that is visible from the street and under the canopy tree line. The proposed project introduces large bulky unarticulated architectural features are**

monotonous and continuous. The overall new effect is similar to the existing design.
Therefore, the proposed project does not complement or enhance existing development.

3. The project is consistent with all applicable design guidelines adopted by the city council that are in effect at the time of approval. **The project is not consistent with the Downtown Specific Plan guidelines, nor draft Design Guidelines that have been shared with the applicant.**

You may appeal the decision to the Planning Commission by filing an appeal form within 10 business days from the meeting date of February 25, 2016; the deadline is 5:00 pm Monday March 7th. The appeal process is outlined in Chapter 18.510, a copy of which is enclosed for your convenience.

If you have any questions regarding the process, you may reach me at 925-671-3281.

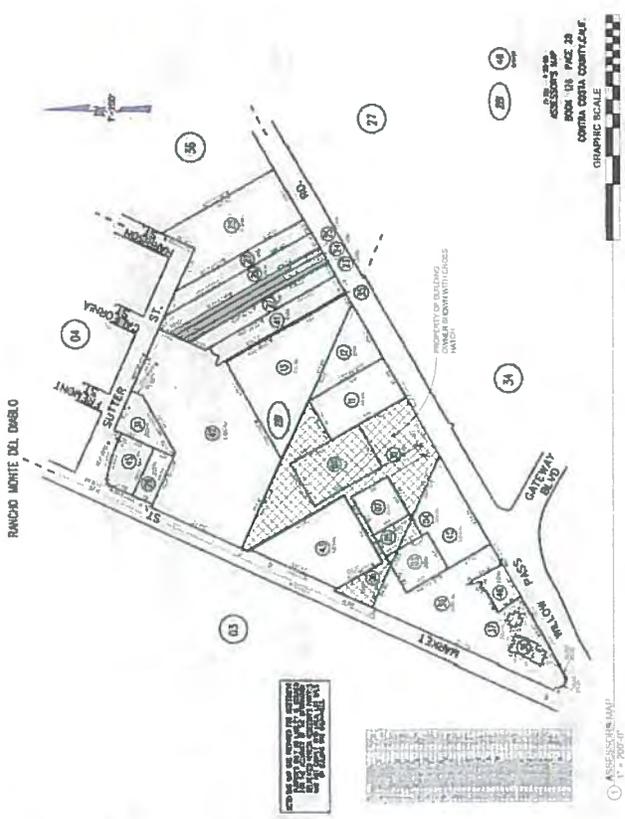
Sincerely,

A handwritten signature in black ink, appearing to read 'Afshan Hamid', written over a circular scribble.

Afshan Hamid, AICP
Associate Planner

Attachment

cc: Susanne Brown, Senior Assistant City Attorney
Victoria Walker, Director of CED
Laura Simpson, Planning Manager
Peter Vatkov, Bay Area Architecture and Construction



Sheet Number	Sheet Name
A101	TITLE PAGE
A102	EXISTING CONDITIONS PHOTOS
A103	PROPOSED EXISTING SETBACK NOTATION
A104	EXISTING PLANS
A105	EXISTING SECTIONS
A106	EXISTING ELEVATIONS
A107	EXISTING 3D VIEWS
A108	PROPOSED IMPROVEMENTS
A109	ELEVATION SOUTH COLORS
A110	PROPOSED OVERALL VIEW FRONT
A111	PROPOSED FRONT VIEW RENDERING
A112	PROPOSED PLANS
A113	PROPOSED SECTIONS
A114	PROPOSED ELEVATIONS
A115	PROPOSED 3D VIEWS
A116	PROPOSED ENLARGED SECTION AND ELEVATION CANOPY
A117	PROPOSED ENLARGED SECTIONS AND ELEVATIONS
A118	PROPOSED ENLARGED PLANS AND ELEVATIONS
A119	PROPOSED ENLARGED 3D VIEWS AND ELEVATIONS
A120	PROPOSED AND ENLARGED IMPROVEMENTS
A121	DETAILS BURLINGTON
A122	DETAILS JO-ANN
A123	DATA SHEET B

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PLANNING



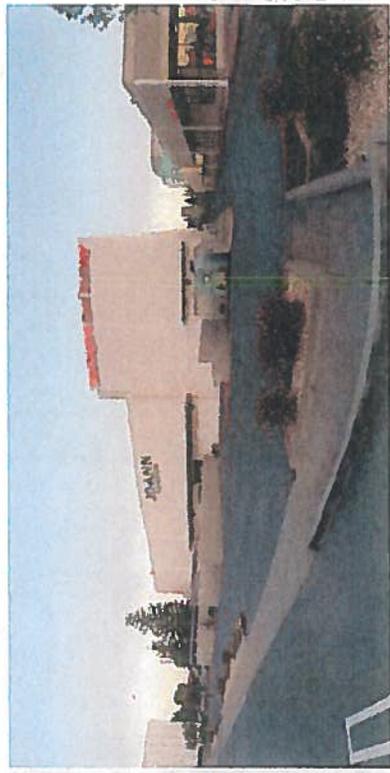
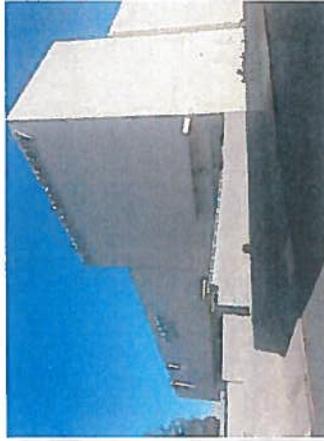
FACADE IMPROVEMENTS
Burlington/Jo-Ann Store
1875 Willow Park Road, Concord, CA 94520



Burlington Asset Management Corp
Montgomery Realty Group, Inc.
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DATE: 4/28/16
PAGE # A101
PAGE: TITLE PAGE

REVISIONS



NOT FOR CONSTRUCTION

FACE # A102
DATE 01/22/2015
PROJECT EXISTING CONDITIONS PHOTOS

BlueStone Asset Management Corp
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FAÇADE IMPROVEMENTS

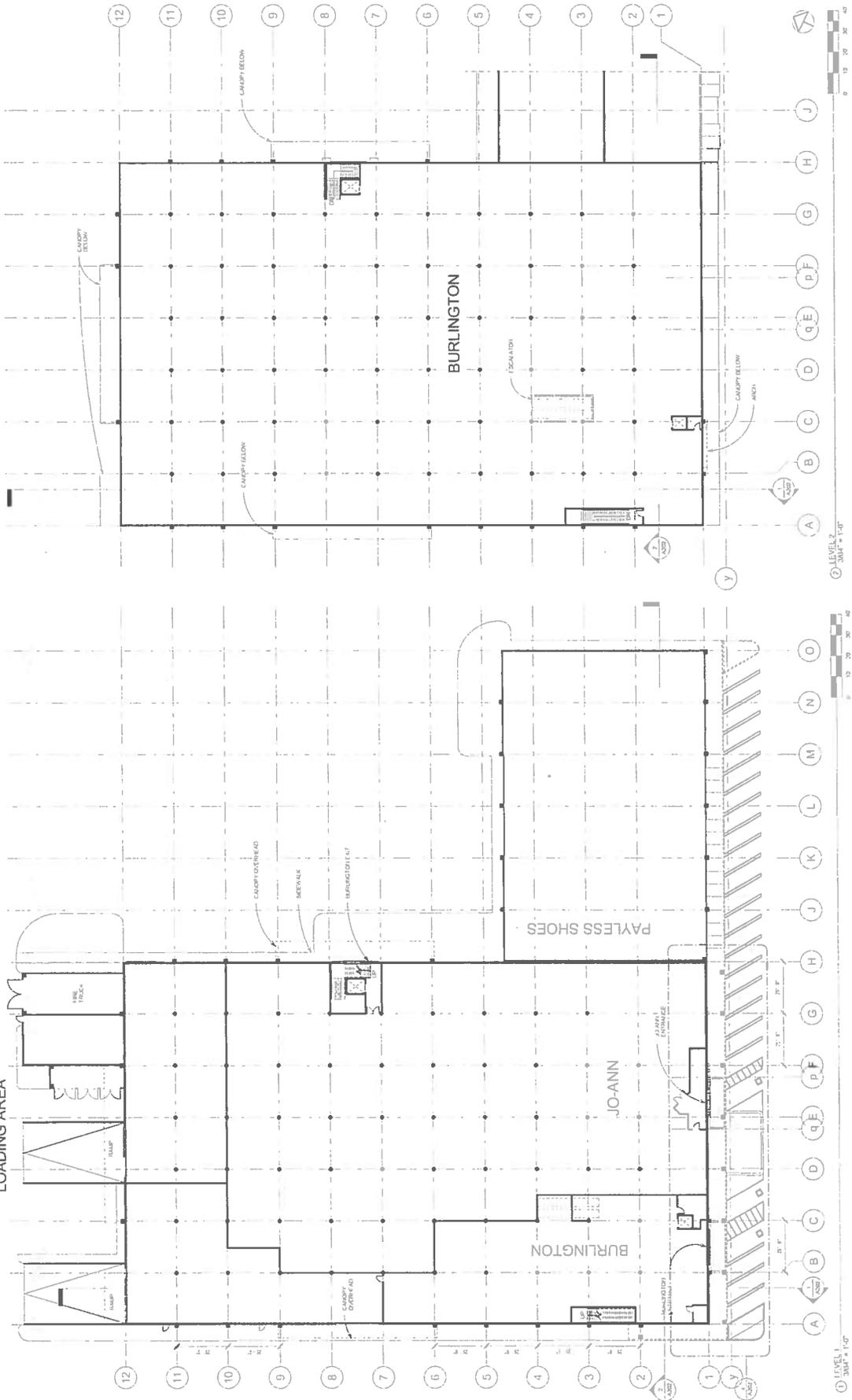
Burlington/Jo-Ann Store

18 1/2 Willow Pass Road, Concord, CA 94520



LOOM
LAW & ARCHITECTURE AND
CONSTRUCTION
8041 Court Lane, Concord, CA 94518
(925) 755-0701

LOADING AREA



1 LEVEL 1
3/8" = 1'-0"

2 LEVEL 2
3/8" = 1'-0"



FAÇADE IMPROVEMENTS

Burlington/Jo-Ann Store

1075 Willow Pass Road, Concord, CA 94520



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P (415) 291-3300 (415) 291-3377

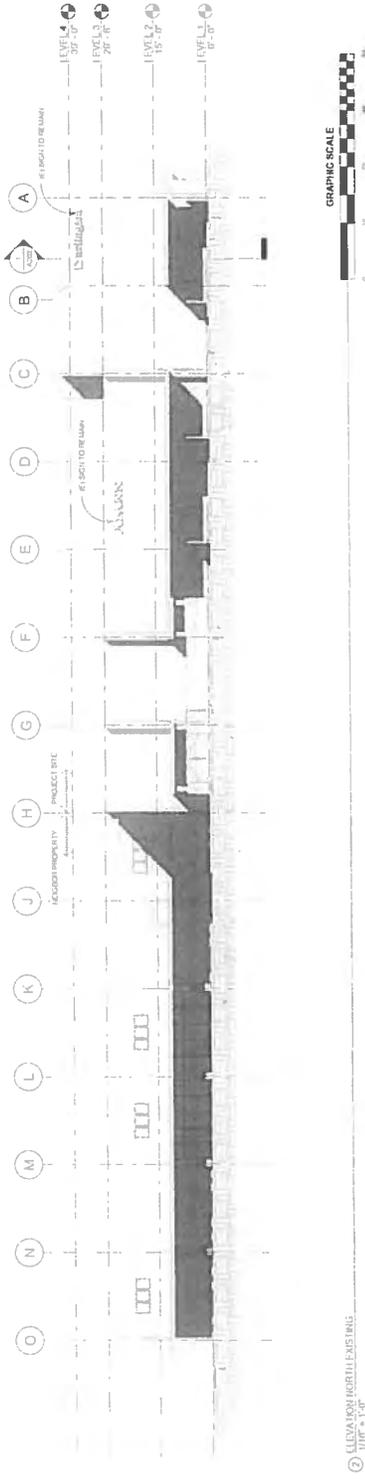
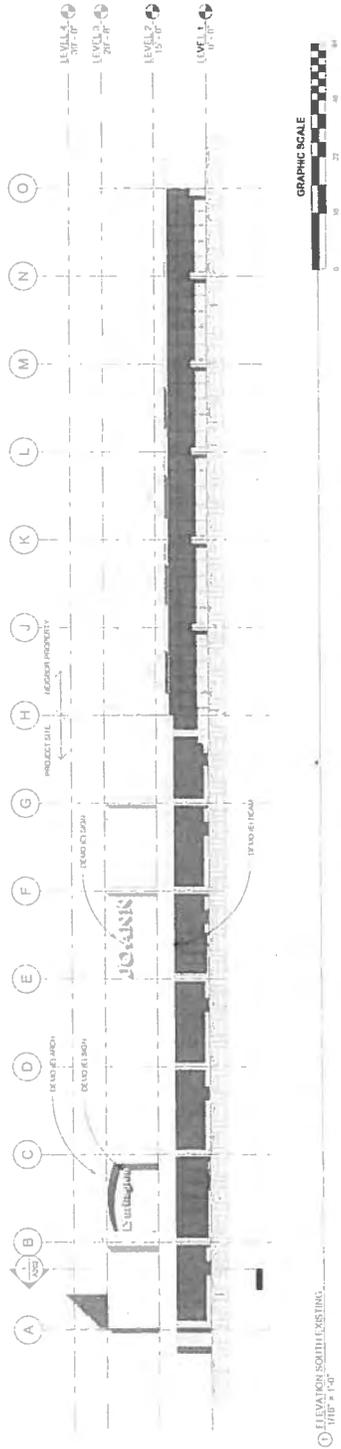
PROJECT #
A201

DATE
01/27/2018

REVISIONS

EXISTING PLANS

NOT FOR CONSTRUCTION



NOT FOR CONSTRUCTION

REVISIONS
 DATE 08/28/15
 PAGE # A203
 ADDRESS 447 LUTHERY STREET, SUITE 230
 PAGE EXISTING ELEVATIONS

BlueStone Asset Management Corp.
 Montgomery Realty Group, Inc.
 447 LUTHERY STREET, SUITE 230
 SAN FRANCISCO, CA 94111
 PH: (415) 380-1111 FAX: (415) 381-3377

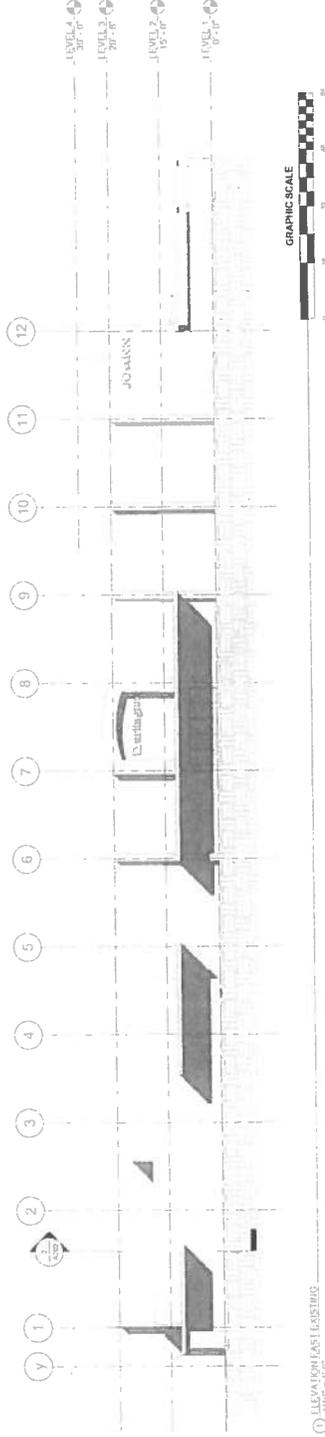


FACADE IMPROVEMENTS
Burlington/Jo-Ann Store

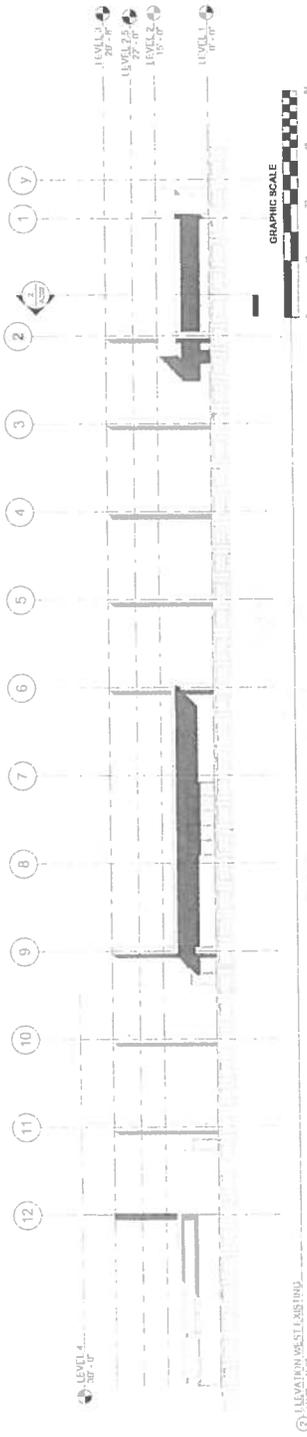
1875 Willow Park Road, Concord, CA 94520



DLA
 BAY AREA ARCHITECTURE AND
 CONSTRUCTION
 10000 Willow Park Road, Concord, CA 94520
 925-706-6880



① ELEVATION EAST EXISTING
1/16" = 1'-0"



② ELEVATION WEST EXISTING
1/16" = 1'-0"

NOT FOR CONSTRUCTION

REVISIONS

DATE:
07/20/15

PAGE #
A204

PAGE
EXISTING ELEVATIONS

BlueStone Asset Management Corp.
Montgomery Realty Group, Inc.
407 Battery Street Suite 230
415(213) 3901 F(415) 291-3377



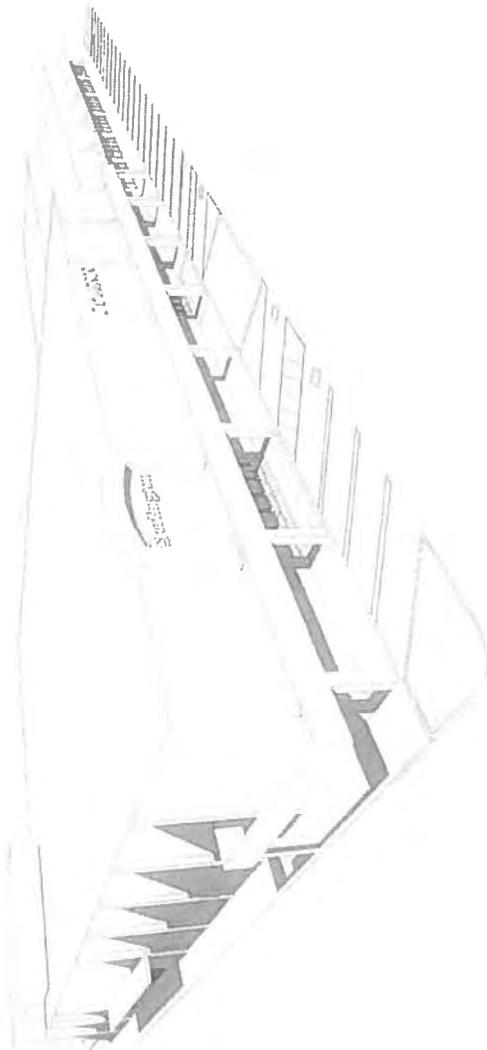
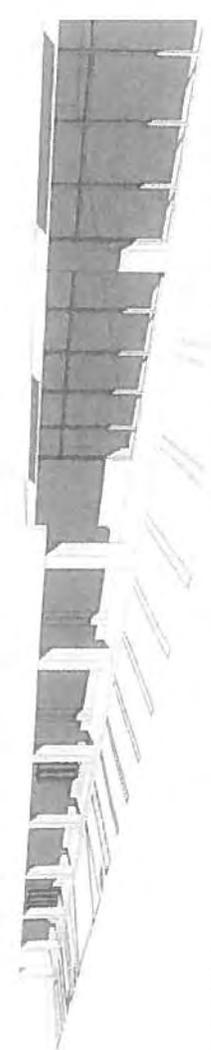
FACADE IMPROVEMENTS

Burlington/Jo-Ann Store

1675 Wilcox Place, Foothill, Concord, CA 94620



K&A ARCHITECTURE AND
CONSTRUCTION
3040 Grant Street, Concord, CA 94618
925/765-0301



(1) Existing Elevation

(2) Existing Elevation



L & M ARCHITECTURE AND CONSTRUCTION
3881 Coast Highway, Concord, CA 94518
925.705.0001



FACADE IMPROVEMENTS

Burlington/Jo-Ann Store

1015 Willow Pass Road, Concord, CA 94520



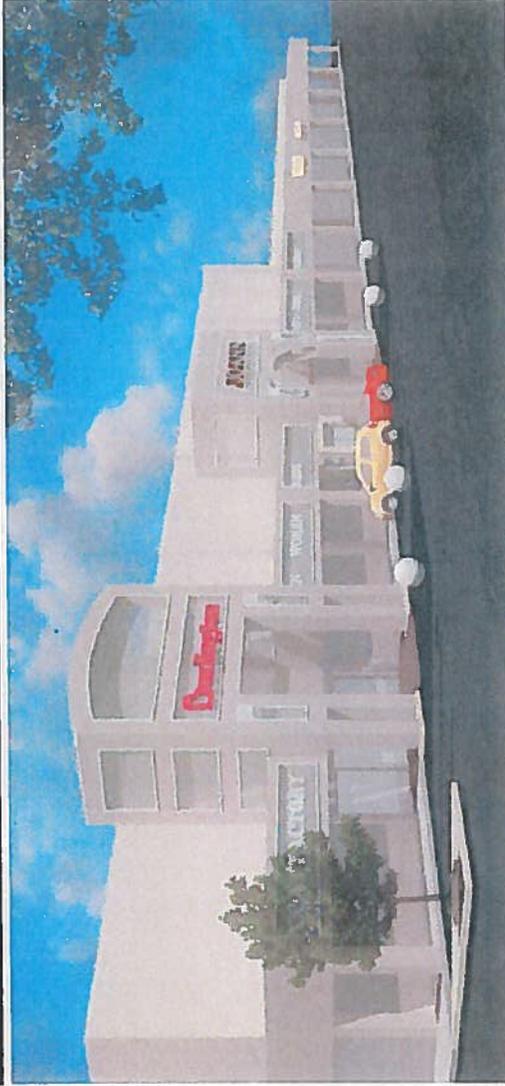
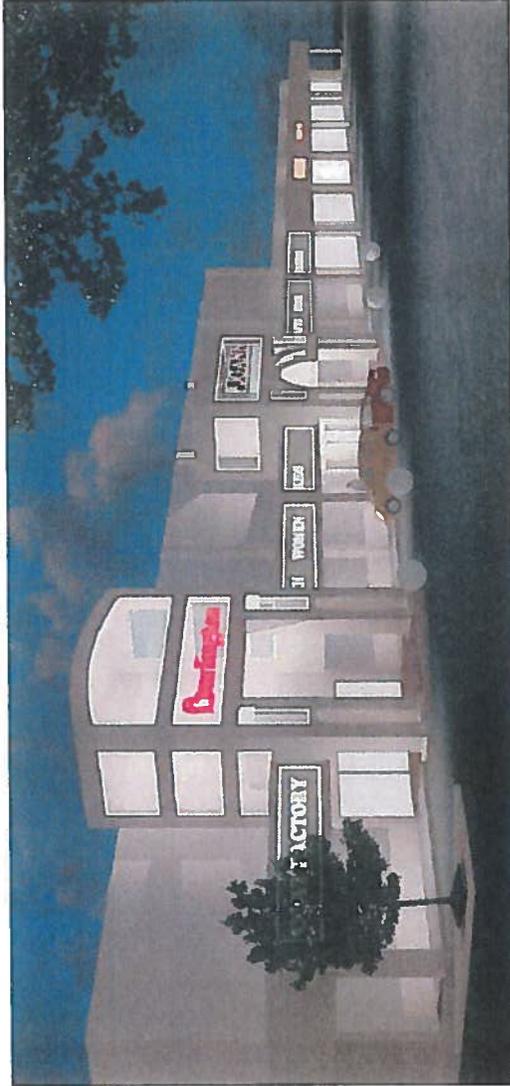
BlueStone Asset Management Corp
Montgomery Realty Group, Inc.
447 Battery Street, Suite 230
San Francisco, CA 94111
P (415) 291-3300 | F (415) 291-3377

PAGE #
A205

DATE
6/19/2016

3D VIEWS

NOT FOR CONSTRUCTION



FACADE IMPROVEMENTS

Burlington/Jo-Ann Store

1075 Willow Park Road Concord CA 94520



Iberstone Asset Management Corp
 407 Battery Street, Suite 230
 San Francisco, CA 94111
 P (415) 291-3300 F (415) 291-3377

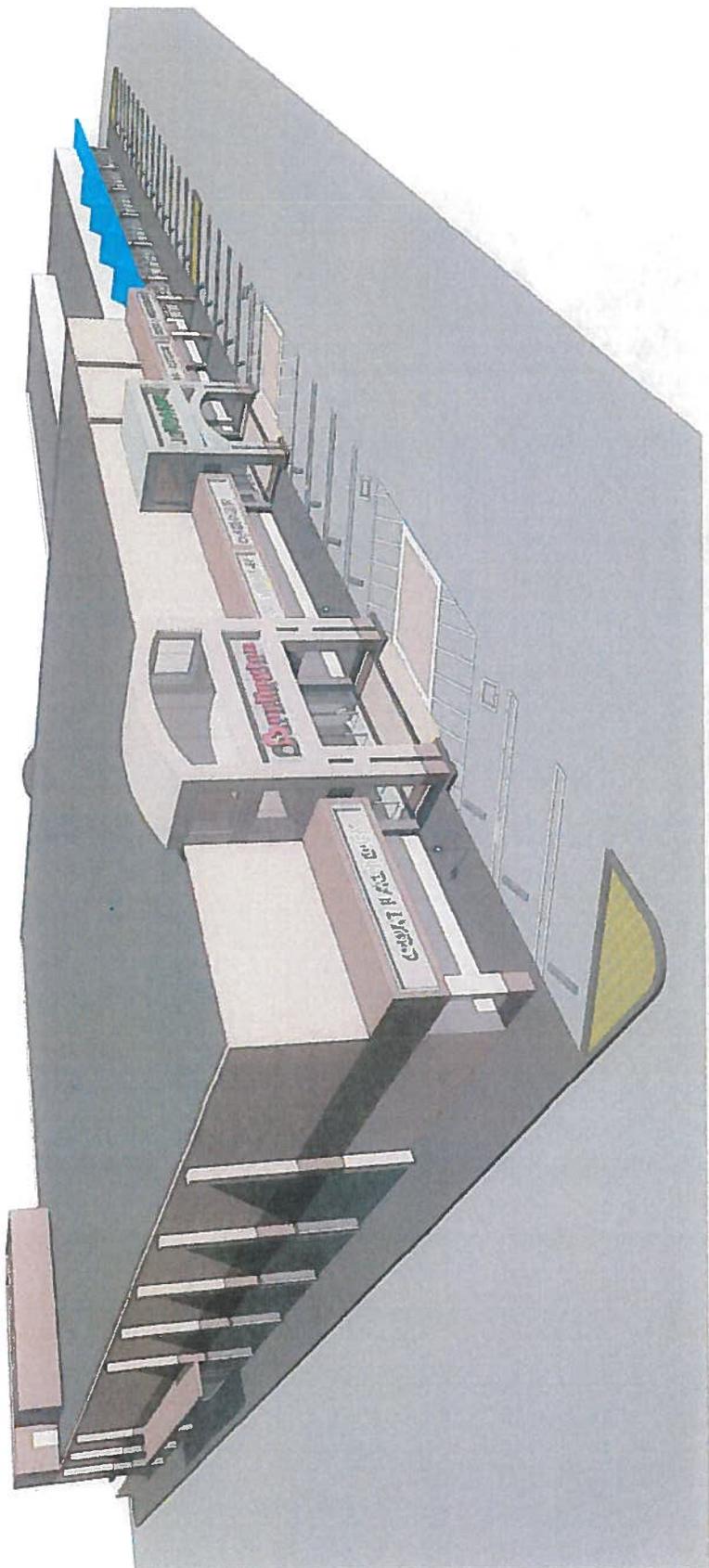
REVISIONS

NOT FOR CONSTRUCTION

PAGE #
 AZ06

DATE
 08/19/19

RENDERINGS OF PROPOSED IMPROVEMENT



3 OVERALL VIEW FRONT



FACADE IMPROVEMENTS

Burlington/Jo-Ann Store

1075 V/Bow Pass Road Concord, CA 94520



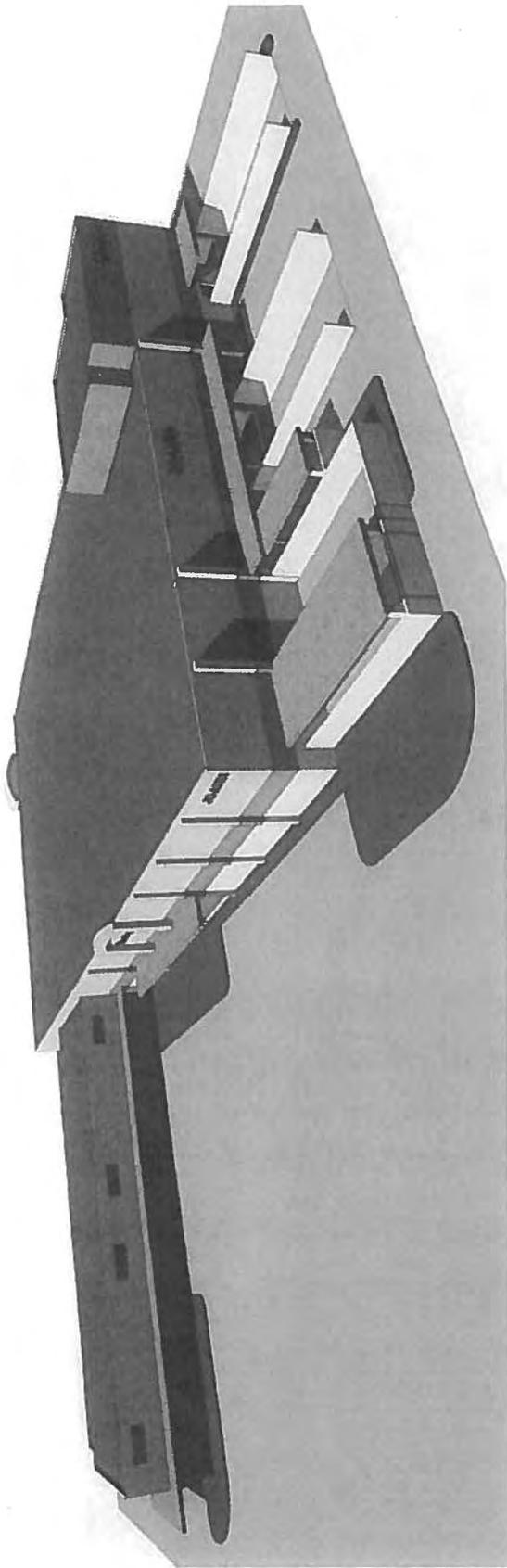
BlueLine Airport Management Corp
 Montgomery Realty Group, Inc.
 San Francisco, CA 94111
 P (415) 291-3300 F (415) 291-3327

PAGE #
A208

DATE
 8/18/11

PROPOSED OVERALL VIEW FRONT

NOT FOR CONSTRUCTION



① SPECIAL VIEW BACK



BAY AREA ARCHITECTURE AND CONSTRUCTION
 1847 Coast Bank, Concord, CA 94503
 925.466.8881



FACADE IMPROVEMENTS
Burlington/Jo-Ann Store
 1875 Willow Lane Road, Concord, CA 94520



Blackstone Asset Management Corp.
 Montgomery Realty Group, Inc.
 447 Battery Street, Suite 230
 San Francisco, CA 94111
 P (415) 291-3300 | (415) 291-1177

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 A209

DATE:
 03/07/2015

REVISIONS

NOT FOR CONSTRUCTION

PROPOSED OVERALL VIEW BACK



① Camera 1 VIEW RENDERING 0
17" x 14"



FACADE IMPROVEMENTS

Burlington/Jo-Ann Store

1875 Willow Pine Road Concord, CA 94520



BlueStone Asset Management Corp
Montgomery Realty Group, Inc.
447 Battery Street Suite 330
P (415) 251 3300 F (415) 251 3137

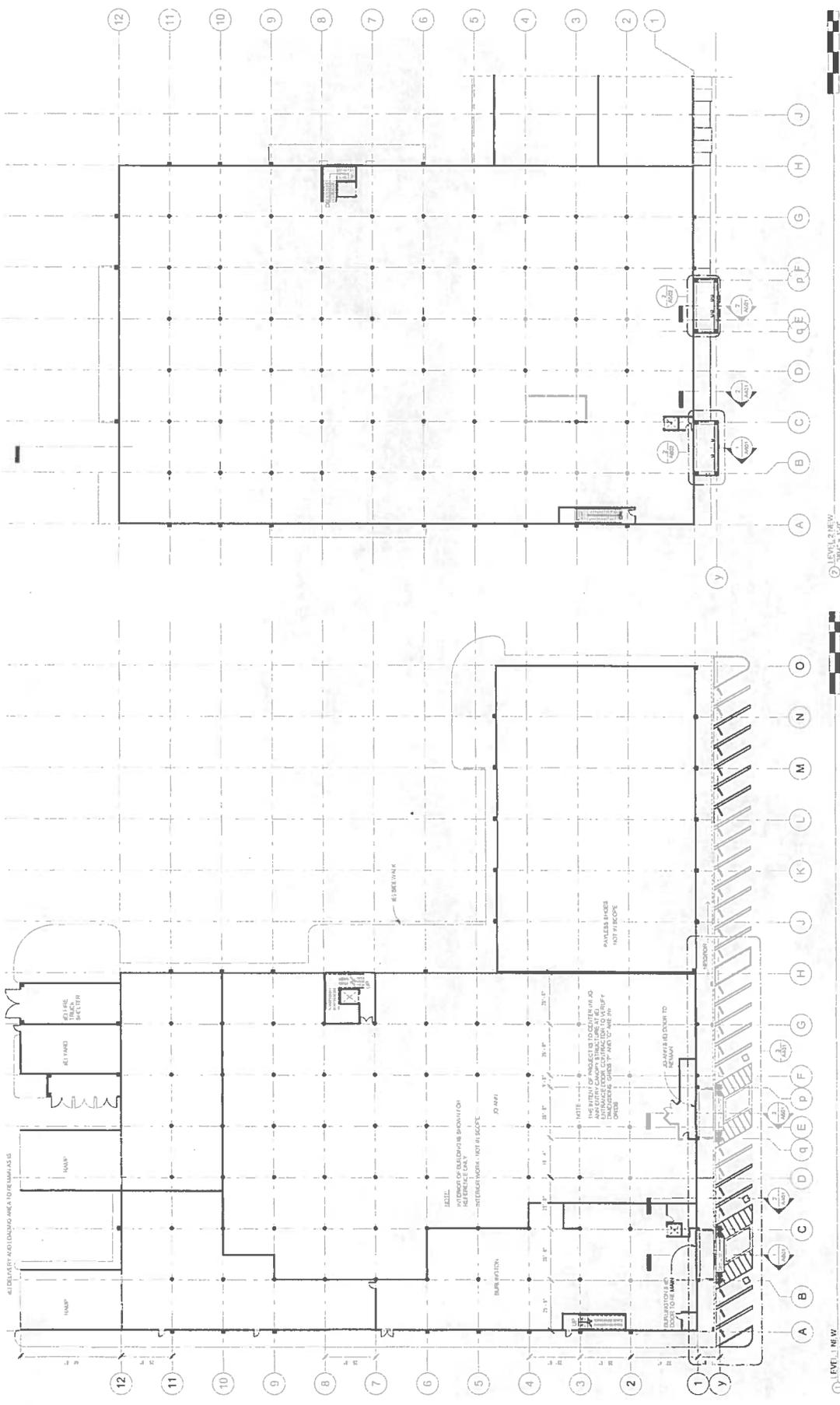
PAGE #
A210

REVISIONS

NOT FOR CONSTRUCTION

DATE:
10/20/18

PROPOSED FRONT VIEW RENDERING



① LEVEL 1 NEW
 3/8" = 1'-0"

② LEVEL 2 NEW
 3/8" = 1'-0"

DATE: 8/23/24
 PAGE # OF 2
 PROJECT: A301
 FACILITY: PROPOSED PLANS

Blackstone Asset Management Corp.
 447 Battery Street, Suite 230
 San Francisco, CA 94111
 P (415) 261-3300 F (415) 291-3377



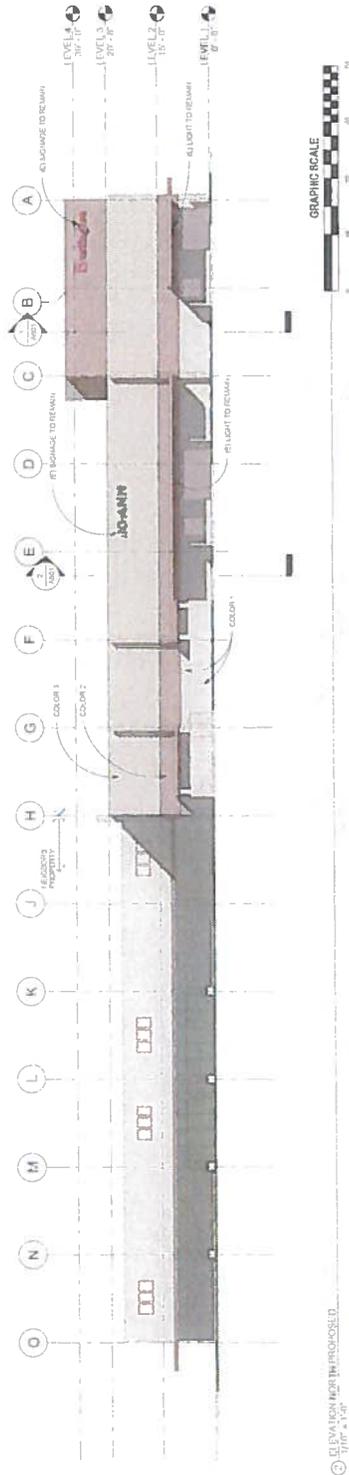
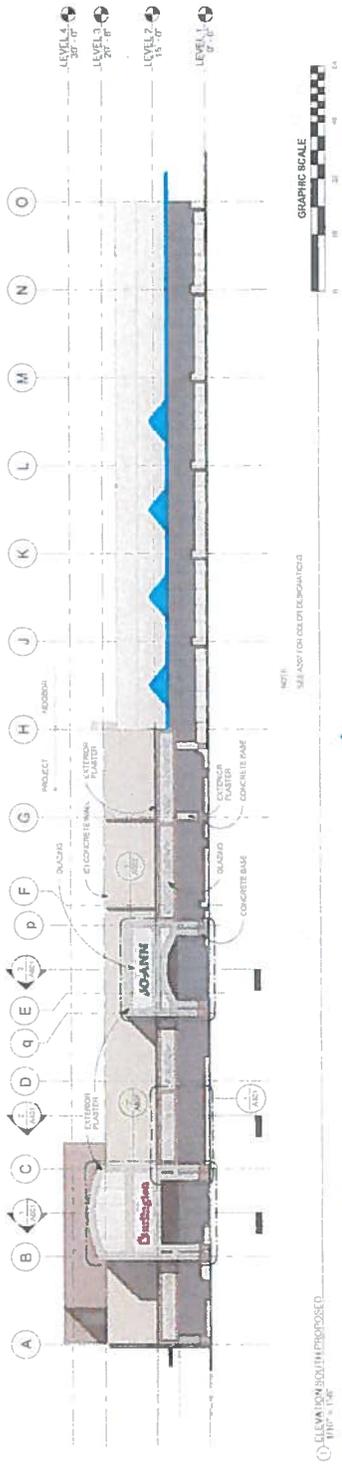
FACADE IMPROVEMENTS

Burlington/Jo-Ann Store

1075 Wilbur Place Road, Concord, CA 94520



LOSC
 LORAIN OFFSHORE CONSTRUCTION
 804 Court View, Concord, CA 94518
 925-765-0801



NOT FOR CONSTRUCTION

REVISIONS

DATE

PAGE #
A302

PAGE

PROPOSED ELEVATIONS

Burton Group Management Corp
Montgomery Realty Group, Inc.
1000 Montgomery Street, Suite 220
San Francisco, CA 94111
P (415) 291 3300 (415) 291 3177



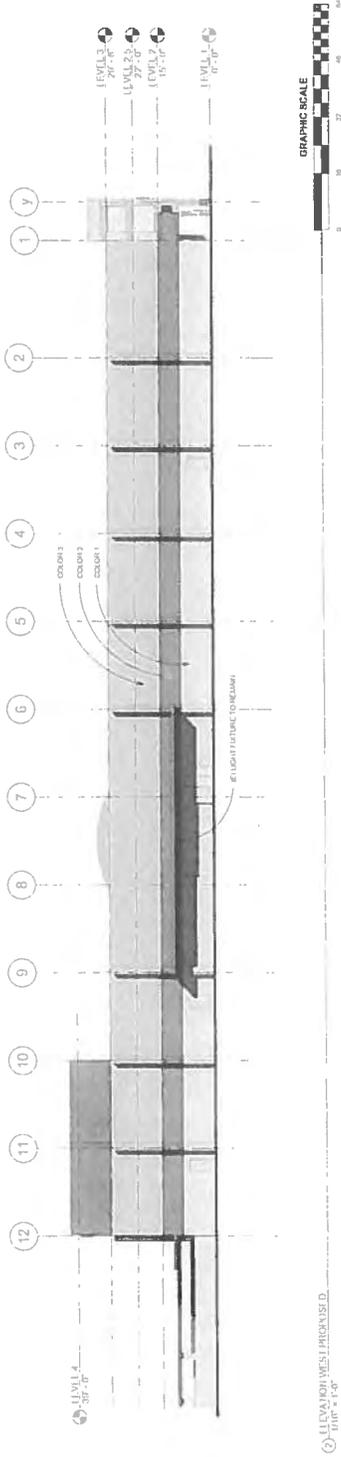
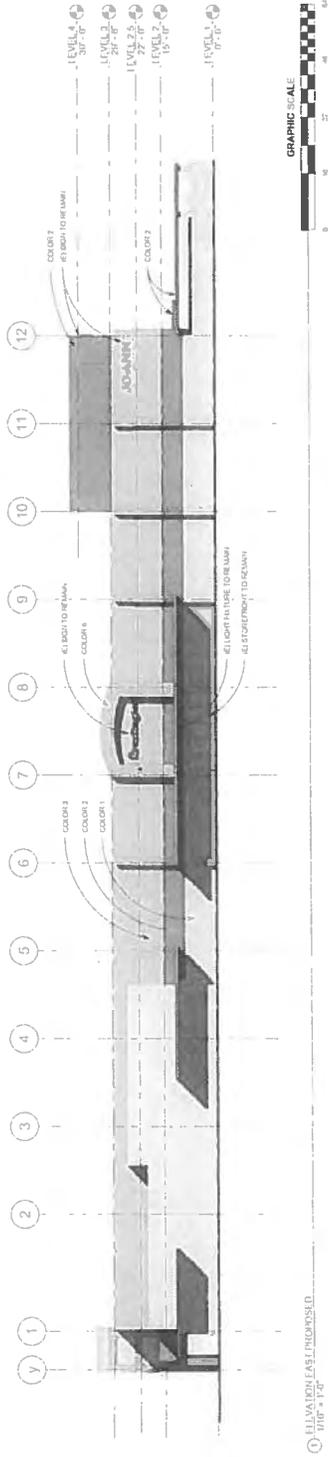
FACADE IMPROVEMENTS

Burlington/Jo-Ann Store

1975 Wilcox Place, Alameda, CA 94530



BOB
BAY AREA ARCHITECTURE AND
CONSTRUCTION
1000 Wilcox Place, Alameda, CA 94530
925 755-0051



LOSC
 LORAIN & SONS
 ARCHITECTURE AND
 CONSTRUCTION
 1041 Coast Blvd., Concord, CA 94518
 925/665-1901

FACADE IMPROVEMENTS

Burlington/Jo-Ann Store

1975 Wilbur Phase Report, Concord, CA 94520



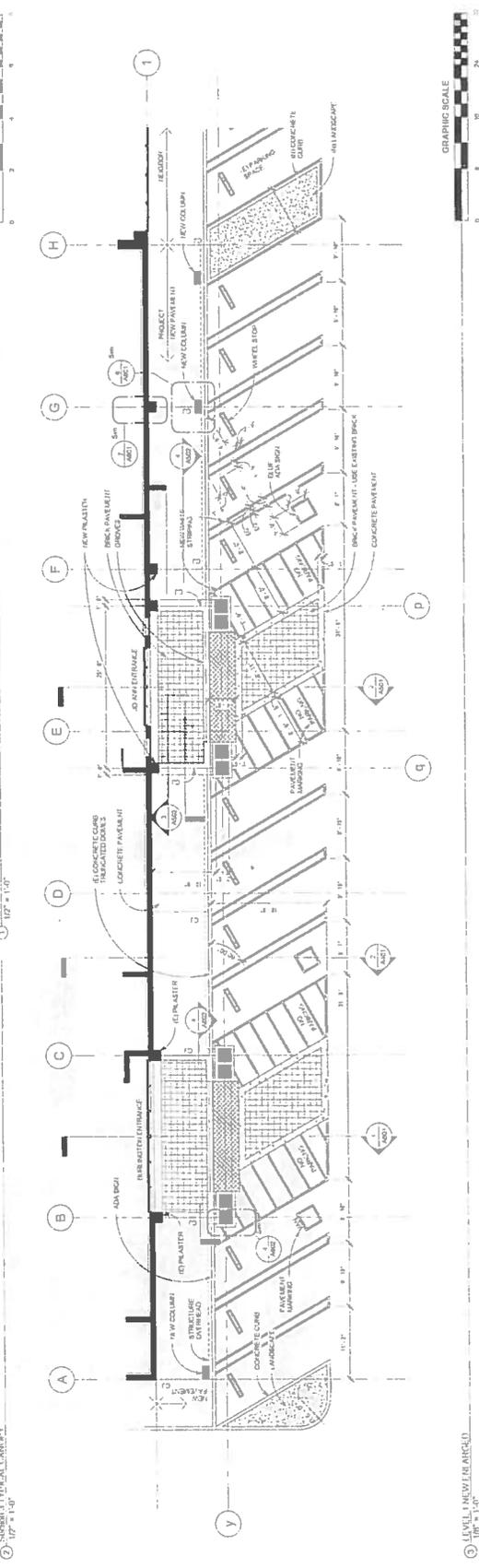
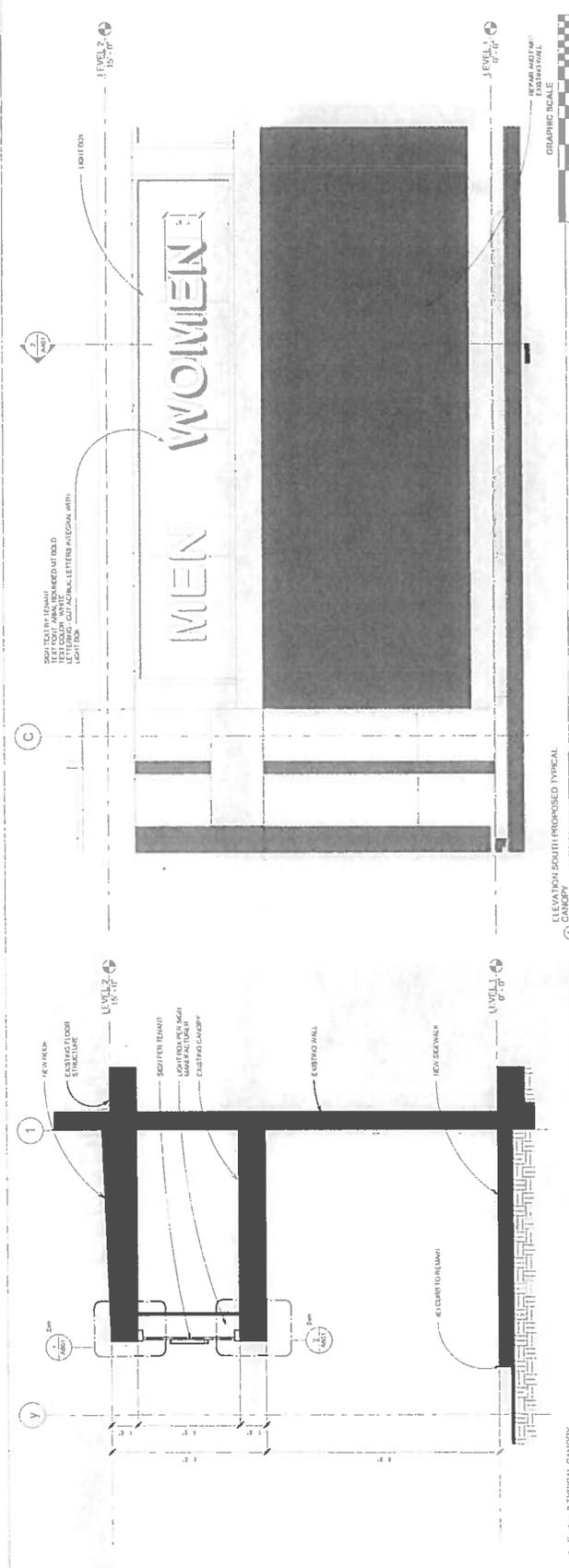
Montgomery Asset Management Corp.
 Montgomery Realty Group, Inc.
 447 Hattery Street, Suite 230
 San Francisco, CA 94111
 P (415) 291-3300 F (415) 291-3327

PAGE #:
A303
 OF
108
PROPOSED ELEVATIONS

REVISIONS

DATE:
 01/22/2014

NOT FOR CONSTRUCTION



LEVEL 1 TYPICAL CANOPY
1/12" = 1'-0"

LEVEL 2 TYPICAL CANOPY
1/12" = 1'-0"

ELEVATION SOUTH PROPOSED TYPICAL CANOPY
1/12" = 1'-0"

LEVEL 1 NEW ENRAGED
1/12" = 1'-0"

LEVEL 2 NEW ENRAGED
1/12" = 1'-0"

GRAPHIC SCALE
0 5 10 15 20 25 30

REVISIONS

DATE
01/20/20

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A401

PAGE
PAGE

PROPOSED ENLARGED SECTION AND ELEVATION
CANOPY

BURKESTON ASSET MANAGEMENT CORP.
Montgomery Realty Group, Inc.
San Francisco, CA 94111
P (415) 291 3300 F (415) 291 1377

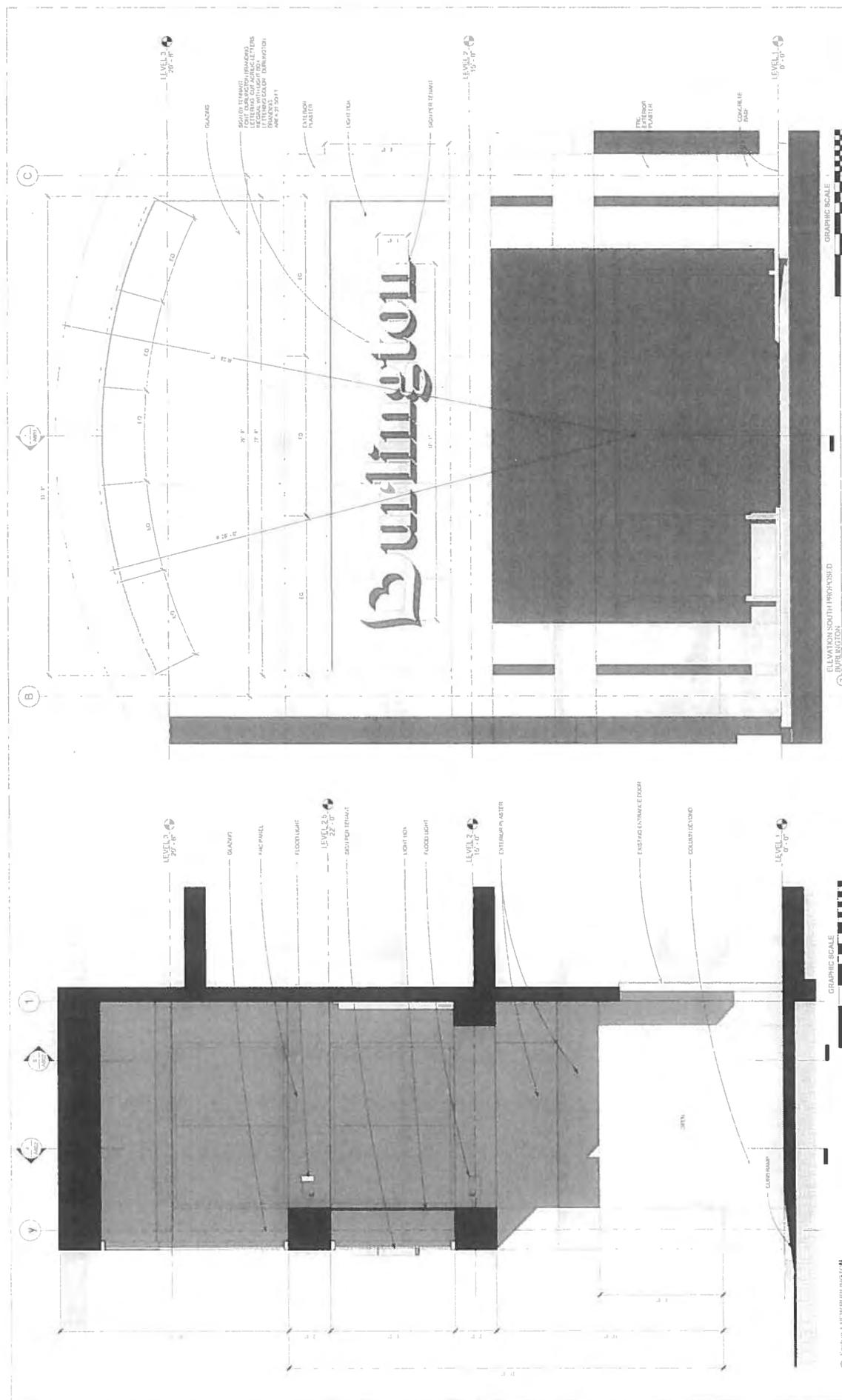
MONTGOMERY
REALTY GROUP

FACADE IMPROVEMENTS
Burlington/Jo-Ann Store

1875 Midway Plaza (Roslindale, Concord), CA 94520

BAY AREA ARCHITECTURE AND ENGINEERING
944 Coast Lane, Concord, CA 94518
925 305 8001

NOT FOR CONSTRUCTION



FACADE IMPROVEMENTS
Burlington/Jo-Ann Store

1875 Willow Park Road, Concord, CA 94520



BAVARIA ARCHITECTURE AND CONSTRUCTION
 1845 Colton Ave., Concord, CA 94518
 925-765-8811



MONTICOURTY
 REALTY GROUP

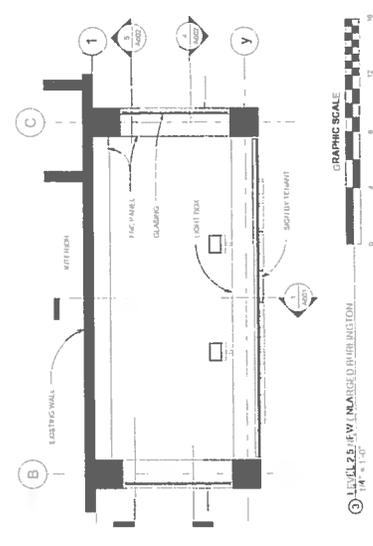
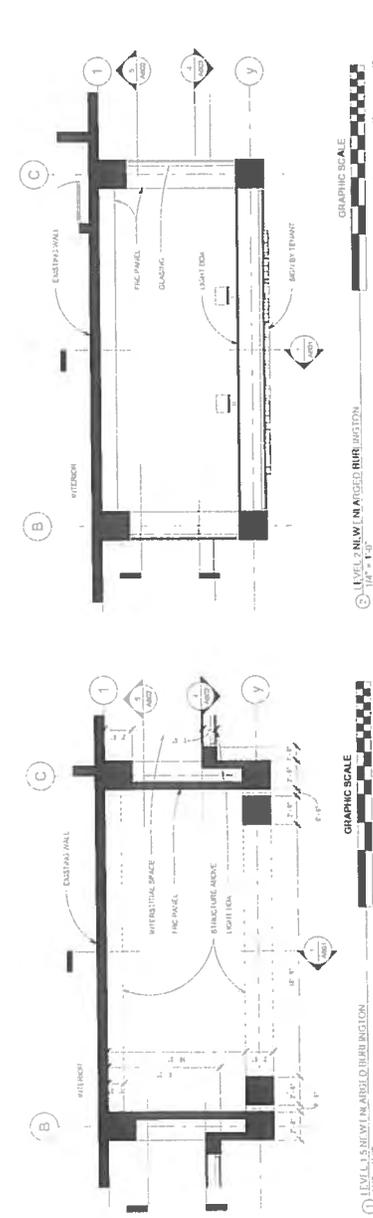
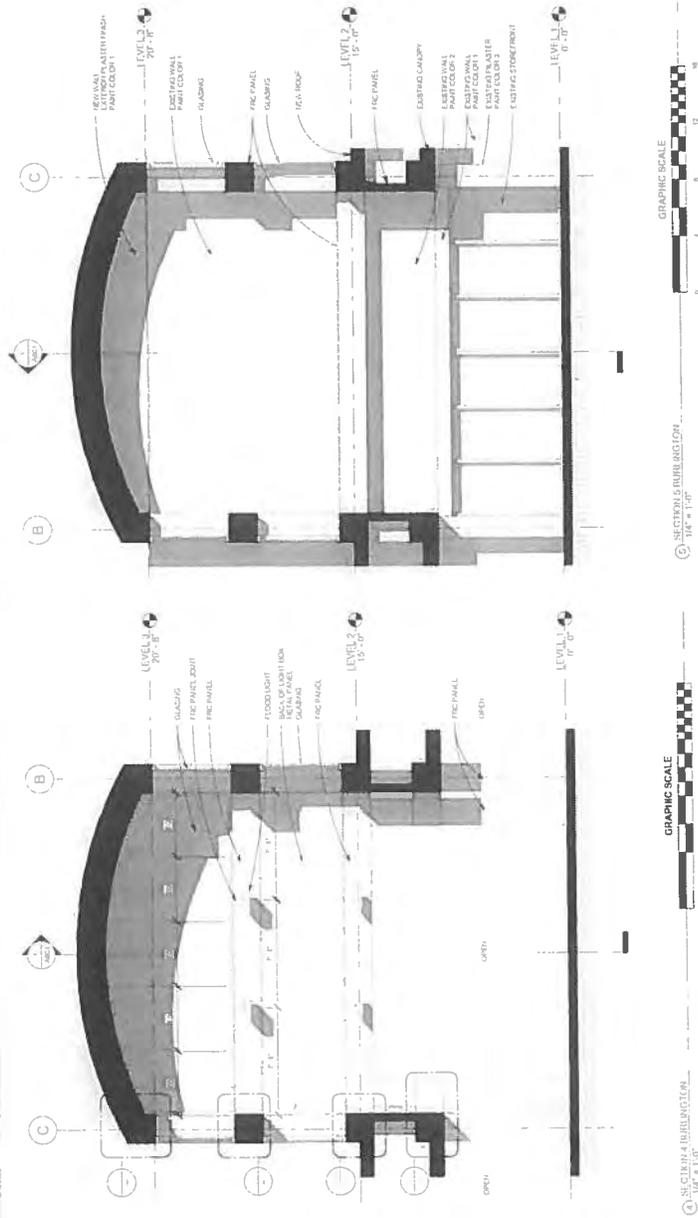
Illustrative Asset Management Corp
 Montgomery Family Group, Inc.
 447 Battery Street, Suite 230
 San Francisco, CA 94111
 PH (415) 213-3807 / (415) 291-3317

DATE: 8/12/2016
 PAGE # A601
 PAGE 1

ELEVATION SOUTH PROPOSED
 1/2" = 1'-0"

NOT FOR CONSTRUCTION

PROPOSED ENLARGED SECTIONS AND ELEVATIONS



FACADE IMPROVEMENTS

Burlington/Jo-Ann Store

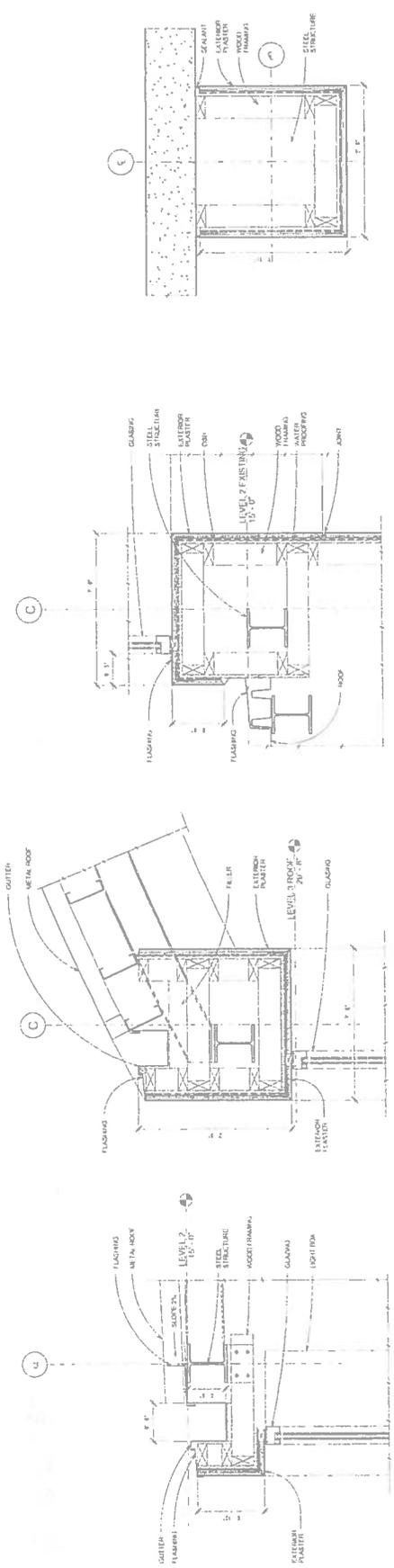
Bluestone Asset Management Corp.
 Montgomery Realty Group, Inc.
 447 Gateway Street, Suite 230
 San Francisco, CA 94107-1337
 P: 415.774.3100 F: 415.774.3377



1875 Wilshire Plaza Road, Concord, CA 94520

PAGE # A602
 DATE: 02/20/14
 REVISIONS:
 NOT FOR CONSTRUCTION

K&M
 K&M ARCHITECTURE AND
 CONSTRUCTION
 824 Court Lane, Concord, CA 94518
 925-355-3801



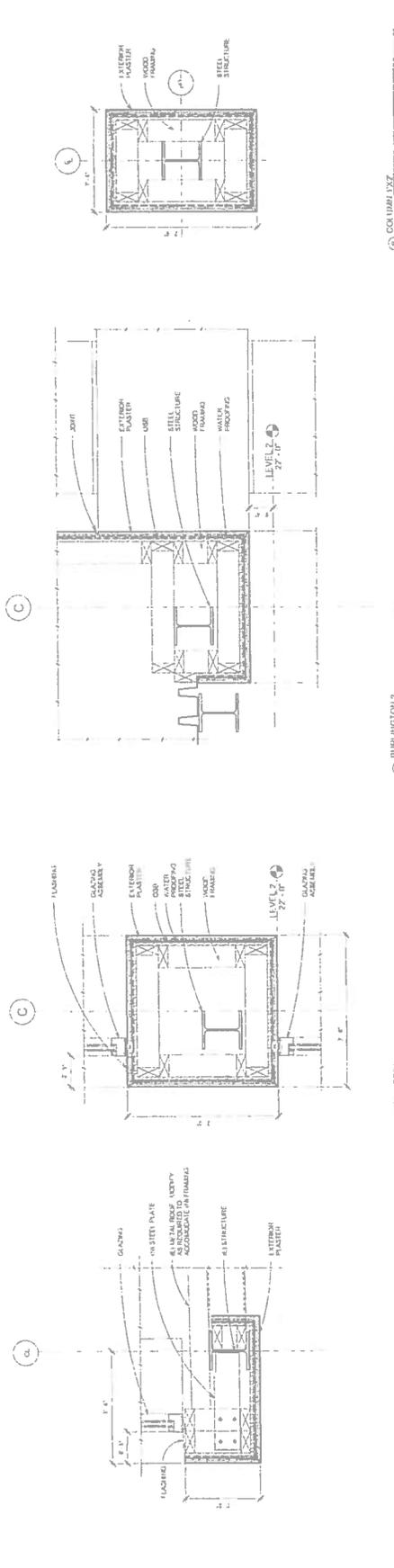
1 GANTRY 1
1/16" = 1'-0"

2 CANOPY 2
1/16" = 1'-0"

3 BURLINGTON 3
1/16" = 1'-0"

4 BURLINGTON 4
1/16" = 1'-0"

5 BURLINGTON 5
1/16" = 1'-0"



6 CANOPY 2
1/16" = 1'-0"

7 BURLINGTON 7
1/16" = 1'-0"

8 BURLINGTON 8
1/16" = 1'-0"

9 BURLINGTON 9
1/16" = 1'-0"

NOT FOR CONSTRUCTION

REVISIONS

DATE

PAGE #

BlueStone Asset Management Corp.
Montgomery Realty Group, Inc.
San Francisco, CA 94111
P (415) 291 3300 F (415) 291 3327

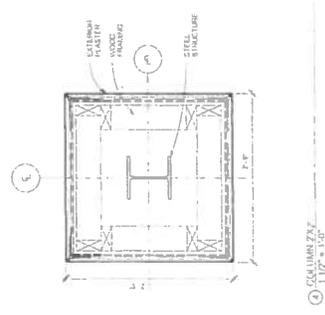
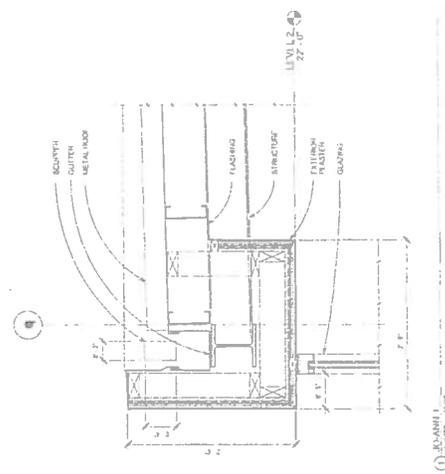
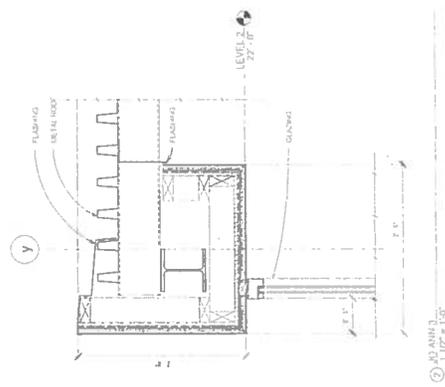
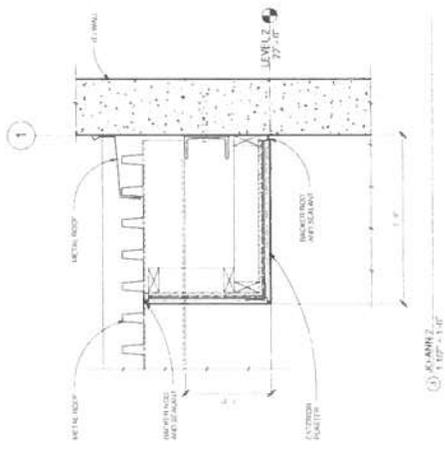
MONTGOMERY
REALTY GROUP

FACADE IMPROVEMENTS
Burlington/Jo-Ann Store



BAY AREA ARCHITECTURE AND
CONSTRUCTION, Concord, CA 94518
1025 BEE BERRY

1875 Willow Pasture Road, Concord, CA 94520



NOT FOR CONSTRUCTION

DATE: 01/20/20

PAGE # A802

DETAILS JO-ANN

Montgomery West Management Group
 Montgomery Realty Group, Inc.
 447 Battery Street, Suite 230
 San Francisco, CA 94111
 P 415.779.3300 F 415.791.3377



FACADE IMPROVEMENTS

Burlington/Jo-Ann Store

1015 Willow/Paris Road, Concord, CA 94520



MARCH 30 REVISED DESIGN

FLINTSTONE
DUNN EDWARDS
DE6221



DOWNING TO EARTH
DUNN EDWARDS
DET634



GRANITE COLOR TO BE
SELECTED
REFER TO COLOR BOARD



VISA LIGHTING OW1334

MEDALLION
DUNN EDWARDS
DEC729



DESERT GRAY
DUNN EDWARDS
DEC760



OATMEAL COOKIE
DUNN EDWARDS
DEC763



BARNWOOD GRAY
DUNN EDWARDS
DET620



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APR 11 · 2016
PLANNING



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Montgomery Realty Group, Inc.
447 Battery Street, Suite 230
San Francisco, CA 94111
P (415) 291-3300 F(415) 291-3327



FACADE IMPROVEMENTS

Burlington/Jo-Ann Store

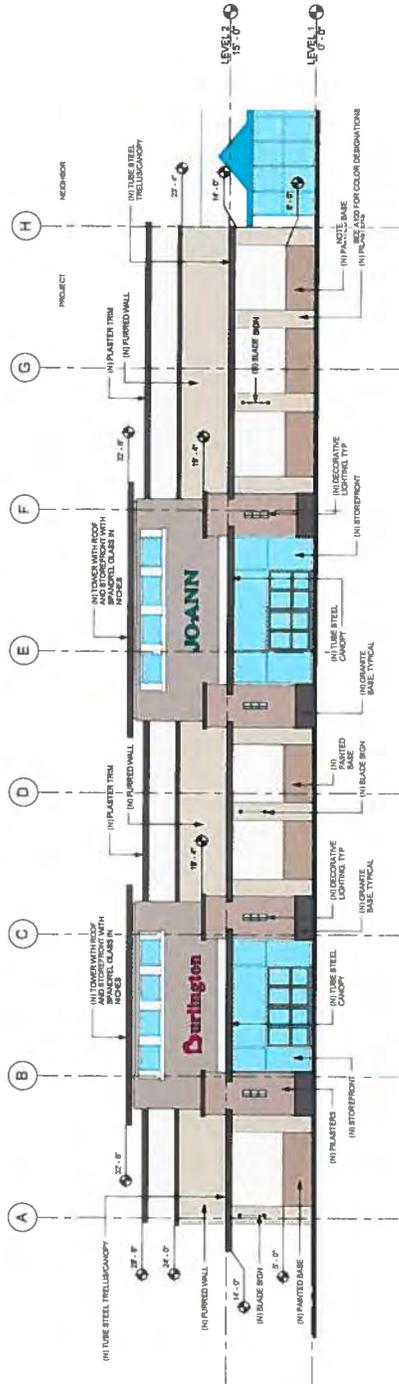
1875 Willow Pass Road, Concord, CA 94520

PAGE #
A100
PAGE
TITLE SHEET

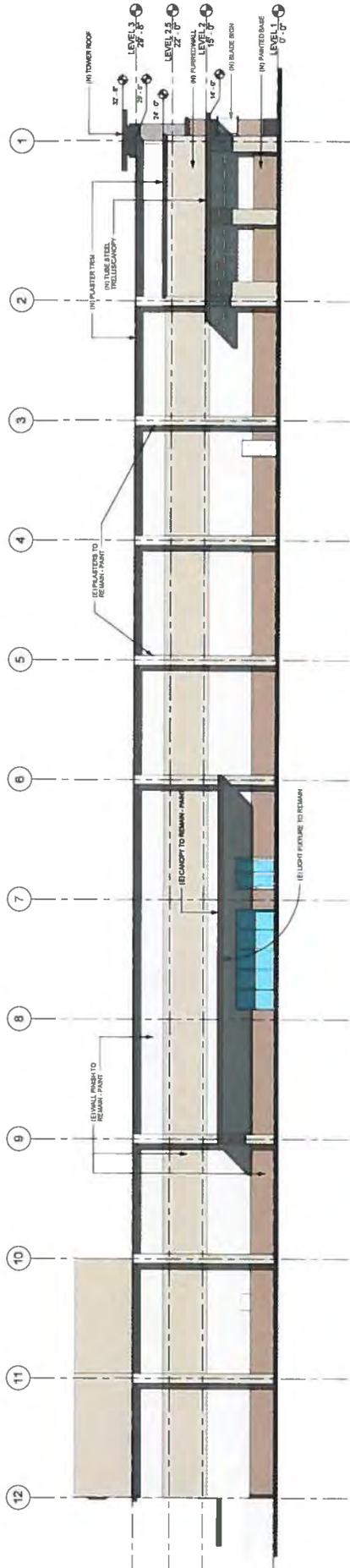
REVISIONS
ISSUES TO BE REPEATED

NOT FOR CON.

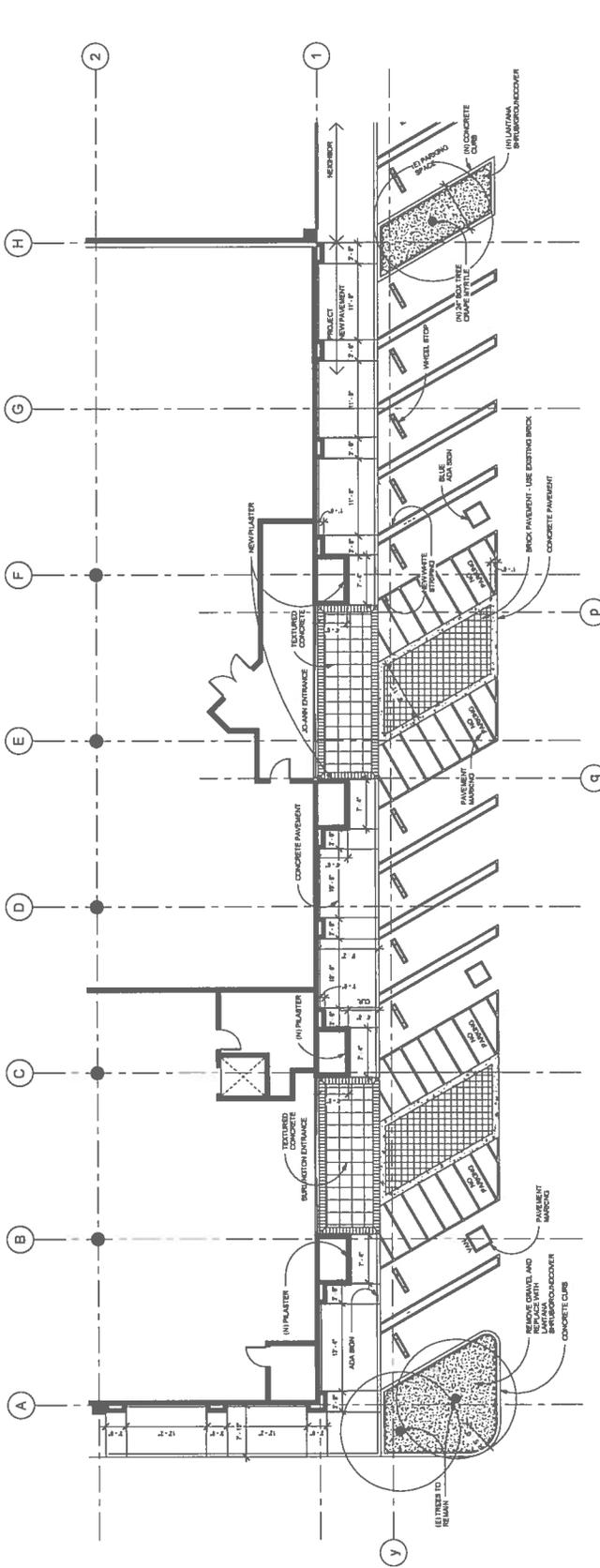
EXHIBIT E



1 ELEVATION SOUTH PROPOSED
1" = 10'-0"



2 ELEVATION WEST PROPOSED
1" = 10'-0"



3 LEVEL 1 NEW ENLARGED
1/8" = 1'-0"



**JOHNSON
LYMAN
ARCHITECTS**
1155 LUCHETTI ST. SAN FRANCISCO, CA 94111
TEL: 415.774.8800
WWW.JOHNLYMAN.COM

**THE MONTGOMERY
REALTY GROUP**

Bullington Asset Management Corp.
Montgomery Realty Group, Inc.
447 Battery Street Suite 230
San Francisco, CA 94111
P (415) 251-3300 F (415) 251-3327

FACADE IMPROVEMENTS

Burlington/Jo-Ann Store

1675 Willow Pass Road, Concord, CA 94520

PAGE #:
A103

DATE:
04/11/2018

REVISIONS:
DATE: BY: DESCRIPTION

NOT FOR CONSTRUCTION



REPORT TO PLANNING COMMISSION

DATE: April 20, 2016

SUBJECT: CONSIDERATION OF A RESOLUTION RECOMMENDING CITY COUNCIL APPROVAL AND ADOPTION OF A DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF CONCORD AND SWIFT REALTY PARTNERS, LLC, REGARDING THE DEVELOPMENT OF PROPERTY LOCATED IN DOWNTOWN CONCORD DESCRIBED AS ASSESSOR'S PARCEL NUMBERS: 126103001, 126103015, 126103016 AND 126103017 (EXEMPT FROM CEQUA PURSUANT TO 14 CAL. CODE REGS. SECTIONS 15060(c)(2), 15060(c)(3), 15061(b)(3) AND 15378). CITY GENERAL PLAN DESIGNATION IS DOWNTOWN MIXED USE AND CITY ZONING IS DOWNTOWN MIXED USE.

Recommendation: Adopt Resolution No. 16-07PC PC, approving Swift Development Agreement.

I. Introduction

A. Application Request

The project sponsor and the City staff have proposed a Development Agreement to provide for the orderly development of the subject site located at 1680, 1672, 1654 and 1638 Grant Street (Property). The Development Agreement calls for the City to vest, for a certain time period, the existing land uses as delineated in the 2030 General Plan, the 2014 Downtown Specific Plan and zoning at the time the Development Agreement is executed. Other deal points are described in this report and are fully detailed in the proposed Development Agreement (Attachment 1 to Exhibit A). The proposed Development Agreement would foster and expedite economic development and private investment by encouraging future development on the Property. Staff recommends that the Planning Commission hear the report, take public comment and adopt Resolution 16-07PC (Exhibit A) recommending to the City Council approval of the Development Agreement.

B. Applicant

Willard M. Lund
Swift Realty Partners
One Concord Center
2300 Clayton Road, Suite 110
Concord, CA 94520
(925) 969-1000

Owner(s)

Willard M. Lund
Swift Realty Partners
One Concord Center
2300 Clayton Road, Suite 110
Concord, CA 94520
(925) 969-1000

**CONSIDERATION OF A RESOLUTION RECOMMENDING CITY COUNCIL APPROVAL AND
ADOPTION OF A DEVELOPMENT AGREEMENT BY AND BETWEEN THE
CITY OF CONCORD AND SWIFT REALTY PARTNERS, LLC, REGARDING THE
DEVELOPMENT OF PROPERTY LOCATED IN DOWNTOWN CONCORD**

April 20, 2016

Page 2

II. Background

Swift Realty is the owner and manager of more than 1 million square feet of Class A office space in downtown Concord at Swift Plaza and One Concord Center. Swift has invested considerable funds renovating and improving the former Bank of America Technology Center from a single user occupant to professional multi-tenant office buildings to attract businesses/office uses to Concord who want to be located next to BART and enjoy the downtown amenities.

Swift Realty also owns vacant land located along east side of Grant Street and south side of Clayton Road as shown in Exhibit B. The property consists of four parcels totaling approximately .57 acres or 25,000 square feet.

Swift Realty representatives approached City staff members to pursue a Development Agreement to facilitate future development of the site to attract a major tenant and/or facilitate future development of the site by ensuring a future project would be consistent with existing development policies and standards as they exist when the Development Agreement is signed.

The following provides the existing land uses for the subject properties:

General Plan

The General Plan land use designation of the Property is Downtown Mixed Use and is defined in the General Plan as follows:

Downtown Mixed Use is intended for a high density and intensity mix of residential, commercial and office development in Central Concord. It allows for a mix of uses that balances jobs and housing opportunities, including offices, commercial development, hotels, public/quasi-public, and residential uses. Residential densities range from a minimum of 33 units per acre to a maximum of 100 units per net acre. The Floor Area Ratio that dictates the intensity of development ranges from a minimum of 1.0 to a maximum of 6.0.

Development Code

The Development Code designation for the Property is Downtown Mixed-Use and is defined in the Development Code as follows:

This district is applied to downtown areas appropriate for a cohesive mix of high density residential, commercial and office, and mixed-uses, including hotels with a minimum FAR of 1.0 up to 6.0 FAR, and residential densities of 33 to 100 units per net acre. Well-designed vertical mixed-use within a single building is encouraged with retail at ground level and office and multifamily residential on upper floors. Single uses and horizontal mixed-use with retail, office, and residential uses located in separate buildings but within a single development may

**CONSIDERATION OF A RESOLUTION RECOMMENDING CITY COUNCIL APPROVAL AND
ADOPTION OF A DEVELOPMENT AGREEMENT BY AND BETWEEN THE
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DEVELOPMENT OF PROPERTY LOCATED IN DOWNTOWN CONCORD**

April 20, 2016

Page 3

also occur. The Downtown Mixed Use district is consistent with and implements the downtown mixed-use land use designation of the general plan

III. Discussion

State law, Government Code section 65864 et seq., and Chapter 18.460 of the Concord Municipal Code set forth the authority and procedures for the City's consideration of development agreements. Development agreements typically provide that the rules and regulations governing land use, density and development regulations applicable to the development of the property at issue shall be those in place at the time of execution of the agreement. Development agreements are often said to "vest" the right to develop property in a certain manner for a specified period of time.

The proposed Development Agreement is attached to this report as Exhibit A to the proposed Planning Commission Resolution which is Attachment 1 to this report. The agreement includes an initial term of five years. During the term, Swift Realty/Developer would have the right to develop the property in accordance with the existing land use regulations, including the zoning, in place as of the date of the Agreement. Other key terms of the Development Agreement include:

- Term of the agreement is for an initial five years with two possible five year extensions that may be granted by the City, but not unreasonably withheld, if Developer has demonstrated progress toward development of the Project
- The City would vest the existing land uses as delineated in the 2030 General Plan, the June 24, 2014 Downtown Specific Plan, and the Site zoning as of the effective date of and for the term of the Development Agreement, except for:
 - a. General Plan provisions other than land use;
 - b. New City development impact fee and exaction laws and regulations;
 - c. New City laws and regulations regarding procedural matters, such as hearing bodies, appeals and applications;
 - d. New City and other applicable laws and regulations that revise Title 24 of the California Code of Regulations, the California Building Standards Code and any other uniform construction codes;
 - e. New City and other applicable laws and regulations that are necessary to protect physical health and safety of the public or do not conflict with the DA; and

**CONSIDERATION OF A RESOLUTION RECOMMENDING CITY COUNCIL APPROVAL AND
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DEVELOPMENT OF PROPERTY LOCATED IN DOWNTOWN CONCORD**

April 20, 2016

Page 4

- f. Changes to the law mandated by State or Federal Law, as provided in Government Code section 65869.5.
- Developer would be subject to the development impact fees in place as of the effective date of the Development Agreement, subject to increases in accordance with the Consumer Price Index, and would pay any newly enacted fees and exactions, including sewer fees, at the rate in effect at the time of payment.
 - Developer would pay any new, existing, increased or modified taxes or assessments and would pay any fees, taxes, assessments or other payments charged by other agencies.
 - Developer would pay all processing fees in effect as of the effective date of the Development Agreement, subject to increases in accordance with the Consumer Price Index, to cover the actual costs to City of processing applications for any project approvals and all reasonable costs incurred or payable by City for engaging third-party consultants as City may deem reasonably necessary to process such applications.
 - Developer would maintain the Property in a good, clean and orderly condition.
 - Assignments of Developer's rights and obligations under the Development Agreement would be subject to City's review and approval.
 - Developer would provide City with annual written documentation demonstrating good faith compliance with the terms of the Development Agreement. If the City determines that Developer has not complied in good faith, City could terminate the Development Agreement in accordance with Government Code section 65865.1.
 - Developer would acknowledge that any future projects would be subject to review under the California Environmental Quality Act.

The Development Code requires that the Planning Commission make a recommendation to the City Council on proposed Development Agreements. The recommendation must include the Commission's determination as to whether the agreement is consistent with the objectives, policies, general land uses, and programs specified in the City's General Plan and any applicable specific plan; the proposed Development Agreement substantially complies with the uses authorized in, and the regulations prescribed for, the zoning district in which the real property is located; and the proposed Development Agreement will not be detrimental to the health, safety and general welfare of the residents of the City. Staff believes that the proposed Development Agreement meets these criteria.

**CONSIDERATION OF A RESOLUTION RECOMMENDING CITY COUNCIL APPROVAL AND
ADOPTION OF A DEVELOPMENT AGREEMENT BY AND BETWEEN THE
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DEVELOPMENT OF PROPERTY LOCATED IN DOWNTOWN CONCORD**

April 20, 2016

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IV. Analysis

Environmental Findings

Pursuant to the California Environmental Quality Act of 1970, Public Resources Code §21000, et seq., as amended and implementing State CEQA Guidelines, Title 14, Chapter 3 of the California Code of Regulations (collectively, "CEQA"), the Development Agreement does not constitute a "project" within the meaning of Public Resources Code Section 21065, 14 Cal Code Regs. Section 15060(c)(2), 15060(c)(3), or 15378 because it has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. Even if the Development Agreement did constitute a project under CEQA, the Development Agreement falls within the "common sense" exemption set forth in 14 Cal. Code Regs. Section 15061(b)(3), excluding projects where "it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment...".

V. Fiscal Impact

There is no direct fiscal impact. In the event future development occurs on the Property, then permit fees and property taxes would be realized. A development would likely be a major project for the downtown adding job, commercial and/or residential uses to the area.

VI. Public Contact

Notice of this public hearing has been provided as required by State law and the Concord Development Code. The agenda for this meeting has been posted.

VII. Summary and Recommendations

Staff recommends that the Planning Commission approve the resolution recommending to the City Council approval of the Development Agreement between the City of Concord and Swift Realty.

Prepared by:



John Montagh
Economic Development and Housing
Manager
925-671-3082
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Reviewed by:



Laura Simpson
Planning Manager
925-671-3339
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Exhibits:

- A - PC Resolution No. 16-07PC, Conditions of Approval
- B - Map

1 and the Concord Municipal Code, held a duly noticed public hearing on April 20, 2016 on the
2 proposed Development Agreement; and

3 **WHEREAS**, at such public hearing, the Planning Commission considered all oral and written
4 information, testimony, and comments received during the public review process, including
5 information received at the public hearing, the oral report from City staff, the written report from City
6 staff dated April 20, 2016, materials, exhibits presented, and all other information that constitutes the
7 record of proceedings on which the Planning Commission has based its decision that are maintained at
8 the offices of the City of Concord Planning Division (collectively, "Information"); and

9 **WHEREAS**, the Development Agreement has complied with the requirements of "The Rules
10 to Implement the California Environmental Quality Act of 1970" (CEQA) in that the City of Concord
11 has reviewed the Development Agreement under the provisions of CEQA, and has determined that the
12 Development Agreement does not constitute a "project" within the meaning of Public Resources Code
13 Section 21065, 14 Cal Code Regs. Section 15060(c)(2), 15060(c)(3), or 15378 because it has no
14 potential for resulting in either a direct physical change in the environment, or a reasonably
15 foreseeable indirect physical change in the environment. Even if the Development Agreement did
16 constitute a project under CEQA, the Development Agreement falls within the "common sense"
17 exemption set forth in 14 Cal. Code Regs. Section 15061(b)(3), excluding projects where "it can be
18 seen with certainty that there is no possibility that the activity in question may have a significant effect
19 on the environment..."; and

20 **WHEREAS**, on April 20, 2016, the Planning Commission, after consideration of all pertinent
21 plans, documents, and testimony, declared their intent to recommend approval of the Development
22 Agreement.

23 **NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:**

24 Findings

- 25 1. The Planning Commission of the City of Concord does hereby make the following findings:
- 26 a. The recitals above are true and correct and are incorporated herein by reference.
- 27 b. The proposed Development Agreement is consistent with the objectives, policies,
28 general land uses, and programs specified in the City's General Plan and any

1 applicable specific plan.

2 c. The proposed Development Agreement substantially complies with the uses authorized
3 in, and the regulations prescribed for, the zoning district in which the real property is
4 located.

5 d. The proposed Development Agreement will not be detrimental to the health, safety and
6 general welfare of the residents of the City.

7 General

8 2. The Planning Commission has reviewed, considered, and evaluated all of the Information prior
9 to acting upon the Development Agreement.

10 3. The documents and other materials that constitute the record of proceedings upon which the
11 Planning Commission has based its recommendation are located in and may be obtained from
12 the City of Concord Planning Division, 1950 Parkside Drive, Concord, CA 94519.

13 CEQA

14 4. Pursuant to the California Environmental Quality Act of 1970, Public Resources Code §21000,
15 et seq., as amended and implementing State CEQA Guidelines, Title 14, Chapter 3 of the
16 California Code of Regulations (collectively, “CEQA”), the Development Agreement does not
17 constitute a “project” within the meaning of Public Resources Code Section 21065, 14 Cal
18 Code Regs. Section 15060(c)(2), 15060(c)(3), or 15378 because it has no potential for
19 resulting in either a direct physical change in the environment, or a reasonably foreseeable
20 indirect physical change in the environment. Even if the Development Agreement did
21 constitute a project under CEQA, the Development Agreement falls within the “common
22 sense” exemption set forth in 14 Cal. Code Regs. Section 15061(b)(3), excluding projects
23 where “it can be seen with certainty that there is no possibility that the activity in question may
24 have a significant effect on the environment...”.

25 Development Agreement

26 5. The Planning Commission does hereby recommend that the City Council approve and adopt
27 the Development Agreement, consistent with the version attached as Attachment A.

28 This resolution shall become effective immediately upon its passage and adoption.

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PASSED AND ADOPTED this ____ day of _____, 2016, by the following vote:

- AYES:**
- NOES:**
- ABSTAIN:**
- ABSENT:**

Laura Simpson,
Secretary to the Planning Commission

Attachments:

- 1. Attachment A: Proposed Development Agreement

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

City of Concord
1950 Parkside Drive, MS/03
Concord, CA 94519
Attention: City Clerk

Record Without Fee
*Pursuant to Government Code
Section 27383*

Space Above Reserved for Recorder's Use Only

DEVELOPMENT AGREEMENT

BY AND BETWEEN

CITY OF CONCORD

AND

SWIFT REALTY PARTNERS, LLC

Effective Date: _____

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DEVELOPMENT AGREEMENT

This Development Agreement (“**Agreement**”), dated as _____ (the “**Effective Date**”) is entered into by and between the City of Concord, a California municipal corporation (“**City**”) and Swift Realty Partners, LLC, a Delaware limited liability corporation (“**Developer**”). Developer and City may be referred to individually in this Agreement as a “**Party**” and collectively as the “**Parties.**”

R E C I T A L S

This Agreement is entered into on the basis of the following facts, understandings and intentions of the Parties. The following recitals are a substantive part of this Agreement; capitalized terms used herein and not otherwise defined are defined in Article 1 of this Agreement.

A. In order to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic costs and risks of development, the Legislature of the State of California enacted section 65864 *et seq.* of the Government Code (“**Development Agreement Statute**”) which authorizes a city and a developer having a legal or equitable interest in real property to enter into a binding, long-term development agreement establishing certain development rights in the property.

B. In accordance with the Development Agreement Statute, the City Council of the City of Concord enacted the provisions of Municipal Code Chapter 18.460 Development Agreements (“**Development Agreement Regulations**”), which authorize the execution of development agreements and set forth the required contents and form of those agreements. The provisions of the Development Agreement Statute and the Development Agreement Regulations are collectively referred to herein as the “**Development Agreement Law.**”

C. Developer is the owner of that certain real property located in Downtown Concord with the following Assessor’s Parcels Numbers: 126103001, 126103015, 126103016 and 126103017, as more particularly described and depicted in Exhibits A and B attached hereto and incorporated herein (“**Property**”).

D. Developer intends to apply to the City for approvals to develop the Property in accordance with existing land use and zoning (“**Project**”) and has applied for a Development Agreement to vest the existing regulations.

E. It is the intent of City and Developer to establish certain conditions and requirements related to review and development of the Project, which are or will be the subject of subsequent development applications and land use entitlements.

F. City finds that the Agreement is consistent with the City’s General Plan and any applicable specific plan; is in conformity with public convenience, general welfare, and good land use practices; will not be detrimental to the health, safety, and general welfare of persons residing in the immediate area nor be detrimental or injurious to property or persons in the general neighborhood or to the general welfare of the residents of the City as a whole; will not

adversely affect the orderly development of property or the preservation of property values; and is consistent with California Government Code sections 65864 through 65869.5.

G. City and Developer have reached mutual agreement and desire to voluntarily enter into this Agreement to facilitate development of the Project subject to the conditions and requirements set forth herein.

H. City has given the required notice of its intention to adopt this Agreement and has conducted public hearings thereon pursuant to Government Code section 65867 and Municipal Code section 18.460.040. The City has reviewed and evaluated this Agreement in accordance with the Development Agreement Law and found that the provisions of this Agreement and its purposes are consistent with the Development Agreement Law and the goals, policies, standards and land use designations specified in the General Plan.

I. On _____ the City Council introduced Ordinance No. _____ approving this Agreement and authorizing its execution, and adopted that Ordinance on _____. That Ordinance became effective on _____.

A G R E E M E N T

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and other valuable consideration, the Parties hereby agree as follows:

**ARTICLE 1
DEFINITIONS**

1.1 Definitions.

“*Affiliated Party*” is defined in Section 10.1.

“*Agreement*” shall mean this Development Agreement between City and Developer, including all Exhibits hereto.

“*Applicable Law*” is defined in Section 3.2.

“*Assignee*” is defined in Section 10.1.

“*Assignment*” is defined in Section 10.1.

“*CEQA*” means the California Environmental Quality Act of 1970, California Public Resources Code section 21000, *et seq.* together with and implementing State CEQA Guidelines, Title 14, Chapter 3 of the California Code of Regulations, all as amended from time to time.

“*Changes in the Law*” is defined in Section 3.7.

“*City*” means the City of Concord, a municipal corporation.

“*City Council*” means the City Council of the City of Concord.

“City Parties” means and includes City and its elected and appointed officials, officers, employees, agents, volunteers, attorneys, contractors and representatives.

“Claims” means any and all liabilities, obligations, judgments, orders, claims, damages, fines, penalties and expenses, actions, causes of action, claims, cross-claims, disputes, demands, losses, taxes, costs, loss of service, expenses, liabilities, debts whatsoever, in law or in equity, whether known or unknown, of any kind or character, including attorneys’ fees and costs.

“Connection Fee(s)” means any fees charged by City on a citywide basis or by a utility provider to utility users as a cost for connecting water, sanitary sewer, and other applicable utilities, except for any such fee or portion thereof that constitutes an Impact Fee, as defined below.

“Default” is defined in Section 12.1.

“Developer” means Swift Realty Partners, LLC, and its permitted successors and assigns.

“Development Agreement Law” is defined in Recital B.

“Development Agreement Regulations” is defined in Recital B.

“Development Agreement Statute” is defined in Recital A.

“Effective Date” means the date that this Agreement becomes effective as determined under Section 2.1.

“Enacting Ordinance” refers to the Ordinance identified in Recital I.

“Exactions” means exactions that may be imposed by the City as a condition of developing the Project, including requirements for acquisition, dedication or reservation of land; and obligations to construct on-site or off-site public and private infrastructure improvements such as roadways, utilities or other improvements necessary to support the Project, whether such exactions constitute subdivision improvements, mitigation measures in connection with environmental review of the Project, or impositions made under Applicable City Regulations. For purposes of this Agreement, Exactions do not include Impact Fees.

“First Extension Term” is defined in Section 2.2.2.

“Impact Fee(s)” means any monetary amount charged by City in connection with a development project for the purpose of defraying all or a portion of the cost of mitigating the impacts of the development project or development of the public facilities related to the development project, including, any “fee” as that term is defined by Government Code section 66000(b). For purposes of this Agreement, a fee that meets both the definitions of an Impact Fee and an Exaction will be considered to be an Impact Fee.

“Initial Term” is defined in Section 2.2.1.

“Litigation Challenge” is defined in Section 9.3.

“Major Amendment” is defined in Section 8.2.

“Minor Amendment” is defined in Section 8.3.

“Mortgage” means any mortgage, deed of trust, security agreement, and other like security instrument encumbering all or any portion of the Property or any of the Developer’s rights under this Agreement

“Mortgagee” means the holder of any Mortgage, and any successor, assignee or transferee of any such Mortgage holder.

“Municipal Code” means and refers to the City of Concord’s Municipal Code, as amended from time to time.

“New City Laws” means and includes any ordinances, resolutions, orders, rules, official policies, standards, specifications, guidelines or other regulations, which are promulgated or adopted by the City (including but not limited to any City agency, body, department, officer or employee) or its electorate (through their power of initiative or otherwise) after the Effective Date.

“Notice of Breach” is defined in Section 12.1.

“Other Agency Fees” is defined in Section 4.3.

“Permitted Delay” is defined in Section 13.3.

“Plans and Approvals” is defined in Section 3.2.2.

“Processing Fees” is defined in Section 4.3.

“Project Approval(s)” is defined in Section 7.1.

“Project” is defined in Recital D.

“Property” is defined in Recital C.

“Second Extension Term” is defined in Section 2.2.3.

“Term” is defined in Section 2.2.4.

ARTICLE 2 EFFECTIVE DATE AND TERM

2.1 **Effective Date.** The Effective Date of this Agreement shall be the later of (a) the date that is 30 days after the date that the Enacting Ordinance is adopted, or (b) the date this Agreement is fully executed by the Parties. The Effective Date is inserted at the beginning of this Agreement. The Parties acknowledge that section 65868.5 of the Development Agreement

Statute requires that this Agreement be recorded with the County Recorder no later than 10 days after the City enters into this Agreement, and that the burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the Parties to this Agreement, subject to the assignment provisions in Article 10 below.

2.2 Term of Agreement.

2.2.1 Initial Term. The “**Initial Term**” of this Agreement shall commence on the Effective Date and shall expire on the fifth anniversary of the Effective Date, unless earlier terminated.

2.2.2 First Extension. The Initial Term of this Agreement may be extended by City until the date which is five years from the date of expiration of the Initial Term (the “**First Extension Term**”), provided that at the end of the Initial Term: (a) Developer is not, at the time, in Default of any of its obligations hereunder following notice and expiration of applicable cure periods; (b) the applicable Developer warranties and representations in Section 2.4 below continue to be true and correct; (c) no event has occurred which with the passage of time or giving of notice or both would constitute a Default by Developer hereunder; and (d) Developer has demonstrated progress toward the development of the Property by submitting a complete planning application for the Project in accordance with Applicable Law or entering into a purchase and sale agreement for the Property with a future developer. Upon City’s approval of the First Extension Term, which approval shall not be unreasonably withheld, the Initial Term shall be extended an additional five years.

2.2.3 Second Extension. The Term of this Agreement may be extended until the date which is five years from the date of expiration of the First Extension Term (the “**Second Extension Term**”), provided that at the end of the First Extension Term: (a) Developer is not, at the time, in Default of any of its obligations hereunder following notice and expiration of applicable cure periods; (b) the applicable Developer warranties and representations in Section 2.4 below continue to be true and correct; (c) no event has occurred which with the passage of time or giving of notice or both would constitute a Default by Developer hereunder; and (d) Developer has demonstrated continued progress toward the development of the Property beyond that demonstrated as required for approval of the First Extension Term. Upon City’s approval of the Second Extension Term, which approval shall not be unreasonably withheld, the Initial Term as extended by the First Extension Term shall be extended an additional five years.

2.2.4 Term. The Initial Term, together with the First Extension Term (if any) and the Second Extension Term (if any) shall be defined as the “**Term**.” In no event shall there be a First Extension Term if this Agreement has been terminated on or before the fifth (5th) anniversary of the Effective Date. In no event shall there be a Second Extension Term if this Agreement has been terminated on or before the date of expiration of the First Extension Term. Unless earlier terminated, following the expiration of the Term or the earlier completion of development of the Project and satisfaction of all of Developer’s obligations in connection therewith, this Agreement shall be deemed terminated and of no further force and effect, except for the provisions of this Agreement that survive termination.

2.2.5 Memorandum of Extension. If the First Extension Term or the Second Extension Term is granted, City and Developer agree to execute, acknowledge and record in the Official Records of Contra Costa County a memorandum evidencing approval of such extension.

2.3 City Representations and Warranties. City represents and warrants to Developer that, as of the Effective Date:

2.3.1 City is a municipal corporation, and has all necessary powers under the laws of the State of California to enter into and perform the undertakings and obligations of City under this Agreement.

2.3.2 The execution and delivery of this Agreement and the performance of the obligations of the City hereunder have been duly authorized by all necessary City Council action and all necessary approvals have been obtained.

2.3.3 This Agreement is a valid obligation of City and is enforceable in accordance with its terms.

During the Term of this Agreement, City shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 2.3 not to be true, immediately give written notice of such fact or condition to Developer.

2.4 Developer Representations and Warranties. Developer represents and warrants to City that, as of the Effective Date:

2.4.1 Developer is duly organized and validly existing under the laws of the State of Delaware, and is in good standing and has all necessary powers under the laws of the State of California to own property interests and in all other respects enter into and perform the undertakings and obligations of Developer under this Agreement.

2.4.2 The execution and delivery of this Agreement and the necessary performance of the obligations of Developer hereunder have been duly authorized by all necessary corporate action and all necessary approvals have been obtained.

2.4.3 This Agreement is a valid obligation of Developer and is enforceable in accordance with its terms.

2.4.4 Developer has not (a) made a general assignment for the benefit of creditors; (b) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by Developer's creditors; (c) suffered the appointment of a receiver to take possession of all, or substantially all, of Developer's assets; (d) suffered the attachment or other judicial seizure of all, or substantially all, of Developer's assets; or (e) admitted in writing its inability to pay its debts as they come due.

During the Term of this Agreement, Developer shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 2.4 not to be true, immediately give written notice of such fact or condition to City.

**ARTICLE 3
DEVELOPMENT OF THE PROPERTY**

3.1 Vested Rights. The Property is hereby made subject to the provisions of this Agreement. Developer shall have the vested right to develop the Property in accordance with and subject to Applicable Law, the Project Approvals, and this Agreement, which shall control the permitted uses, density and intensity of use of the Property and the maximum height and size of buildings on the Property.

3.2 Applicable Law. City and Developer acknowledge and agree that City is restricted in its authority to limit its police power by contract and that the limitations, reservations and exceptions contained in this Agreement are intended to reserve to City all of its police power that cannot be so limited. Notwithstanding the foregoing reservation of City, it is the intent of City and Developer that this Agreement be construed to provide Developer with rights afforded by law, including but not limited to, the Development Agreement Statute. Therefore, the laws, rules, regulations, official policies, standards and specifications of City applicable to the development of the Property and/or the Project shall be (collectively, "**Applicable Law**"):

3.2.1 Those rules, regulations, official policies, standards and specifications of the City set forth in this Agreement;

3.2.2 With respect to matters not addressed by and not otherwise inconsistent with the this Agreement, those laws, rules, regulations, official policies, standards and specifications (including City ordinances and resolutions) governing land use, including permitted uses, densities and intensities of uses, maximum building heights and sizes, requirements for on- and off-site infrastructure and public improvements ("**Plans and Policies**"), including the 2030 General Plan (including the Complete Streets Text Amendment to the Transportation and Circulation Element of the Concord 2030 General Plan adopted on December 10, 2013 and the Housing Element Update 2014-2022 General Plan Amendment adopted on January 6, 2015), the Concord Trails Master Plan, the Downtown Specific Plan approved as of June 24, 2014, and zoning provisions set forth in the Municipal Code (including Chapter 18 thereof, commonly referred to as the "**Development Code**"), the Concord Citywide Climate Action Plan adopted in July 2013, and any other Plans and Policies in force and effect on the Effective Date;

3.2.3 New City Laws set forth in the General Plan and Municipal Code that relate to any provision of law except for those laws, rules, regulations, official policies, standards and specifications (including City ordinances and resolutions) governing land use set forth in Section 3.2.2 above, provided such New City Laws are uniformly applied on a City-wide basis to all substantially similar types of development projects and properties;

3.2.4 New City Laws that relate to or impose Impact Fees, provided such New City Laws are uniformly applied on a City-wide basis to all substantially similar types of development projects and properties;

3.2.5 New City Laws that relate to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure

imposed at any time, provided such New City Laws are uniformly applied on a City-wide basis to all substantially similar types of development projects and properties;

3.2.6 New City Laws that revise City's uniform construction codes, including City's building code, plumbing code, mechanical code, electrical code, fire code, grading code and other uniform construction codes, as of the date of permit issuance, provided, that such New City Laws are uniformly applied on a City-wide basis to all substantially similar types of development projects and properties;

3.2.7 New City Laws that are necessary to protect physical health and safety of the public; provided, that such New City Laws are uniformly applied on a City-wide basis to all substantially similar types of development projects and properties;

3.2.8 New City Laws that do not conflict with this Agreement or the Project Approvals, provided such new City Laws are uniformly applied on a City-wide basis to all substantially similar types of development projects and properties; and

3.2.9 New City Laws that do not apply to the Property and/or the Project due to the limitations set forth above, but only to the extent that such New City Laws are accepted in writing by Developer in its sole discretion.

3.3 Acknowledgement of Receipt of City Fee Schedule and Development Code. City has provided Developer, and Developer acknowledges receipt of, the Municipal Code and the City's fee schedule (<http://www.cityofconcord.org/citygov/municode/feescharges/fees-charges.pdf>), which are in force and effect as of the Effective Date. Copies of both documents are available in the City Clerk's office and are incorporated herein by this reference.

3.4 Development Timing. City and Developer acknowledge that Developer cannot at this time predict what portions of the Project will be included within any phase of the Project, when or the rate at which the phases will be developed or the order in which each phase will be developed. Such decisions depend upon numerous factors that are not within the control of Developer, such as market orientation and demand, interest rates, absorption, completion, availability of financing and other similar factors. In particular, and not in any limitation of any of the foregoing, since the California Supreme Court held in *Pardee Construction Co. v. The City of Camarillo*, 37 Cal.3d 465 (1984), that the failure of the parties therein to consider and expressly provide for the timing of development resulted in a later-adopted initiative restricting the timing of development prevailing over such parties' agreement, it is the desire to avoid that result by acknowledging that, unless otherwise provided for in this Agreement, Developer's vested rights under this Agreement include the right to develop the Property and the Project in such order and at such rate and at such times as Developer deems appropriate in the exercise of its discretion, subject to the terms, requirements and conditions of the Project Approvals and this Agreement.

3.5 Regulation by Other Public Agencies. City and Developer acknowledge and agree that other governmental or quasi-governmental entities not within the control of City possess authority to regulate aspects of the development of the Property and the Project and that this Agreement does not limit the authority of such other public agencies. City shall reasonably

cooperate with Developer in Developer's effort to obtain such permits and approvals as may be required by other governmental or quasi-governmental entities in connection with the development of, or the provision of services to, the Property and/or the Project; provided, however, City shall have no obligation to incur any costs, without compensation or reimbursement, or to amend any City policy, regulation or ordinance in connection therewith.

3.6 Life of Project Approvals. The term of any and all Project Approvals shall automatically be extended for the longer of the Term or the term otherwise applicable to such Project Approval.

3.7 Regional, State and Federal Law. As provided in Section 65869.5 of the Development Agreement Statute, this Agreement shall not preclude the applicability to the Project of changes in laws, regulations, plans or policies, to the extent that such changes are specifically mandated and required by changes in State or Federal laws or by changes in laws, regulations, plans or policies of special districts or other governmental entities, other than City, created or operating pursuant to the laws of the State of California, such as changes to the National Pollution Discharge Elimination System (NPDES) permit ("**Changes in the Law**"). In the event Changes in the Law prevent or preclude, or render substantially more expensive or time consuming, compliance with one or more provisions of this Agreement, the City and Developer shall meet and confer in good faith in order to determine whether such provisions of this Agreement shall be modified or suspended, or performance thereof delayed, as may be necessary to comply with Changes in the Law. Nothing in this Agreement shall preclude City or Developer from contesting by any available means (including administrative or judicial proceedings) the applicability to the Project of any such Changes in the Law. If Changes in the Law preclude, substantially prevent, or render substantially more expensive or time consuming, performance of this Agreement in a manner that makes the Project economically infeasible, Developer, in its sole and absolute discretion, may terminate this Agreement by providing written notice thereof to City.

ARTICLE 4 FEES AND EXACTIONS

4.1 Impact Fees; Exactions; Taxes and Assessments. Developer shall pay all Impact Fees in place as of the Effective Date, at the rate in effect as of the Effective Date, with annual increases in accordance with the Consumer Price Index for the San Francisco Bay Area. In addition, City may charge and Developer shall pay any and all new Impact Fees imposed by City, including new Impact Fees, such as sewer fees, adopted after the Effective Date, at the rate in effect at the time of payment; provided, however, City shall only require Developer to pay new Impact Fees that are uniformly applied by City to all substantially similar types of development projects and properties. Further, City may impose and Developer shall comply with those Exactions required by this Agreement and the Project Approvals. Lastly, Developer shall pay any and all taxes and assessments imposed on the Project or Property, at the rate in effect at the time of payment.

4.2 Processing Fees. "**Processing Fees**" means all fees for processing development project applications, including any required supplemental or other further environmental review, plan checking (time and materials) and inspection and monitoring for land use approvals, design

review, peer review, grading and building permits, General Plan maintenance fees, and other permits and entitlements required to implement the Project, which are in effect at the time those permits, approvals or entitlements are applied for, and which are intended to cover the actual costs of processing the foregoing. Subject to Developer's right to protest and/or pursue a challenge in law or equity to any new or increased Processing Fee, City may charge and Developer agrees to pay all Processing Fees, at the rate in effect as of the Effective Date, with annual increases in accordance with San Francisco-Oakland-San Jose Consumer Price Index, All Items (1982-84=100) for All Urban Consumers (CPI-U), published by the Bureau of Labor Statistics for the U.S. Department of Labor Consumer Price Index for the San Francisco Bay Area.

4.3 Other Agency Fees. Nothing in this Agreement shall preclude City from collecting fees from Developer that are lawfully imposed on the Project or Property by another agency having or asserting jurisdiction over the Project or Property, which the City is required to collect or impose ("**Other Agency Fees**").

4.4 Connection Fees. Subject to Developer's right to protest and/or pursue a challenge in law or equity to any new or increased Connection Fee, City may charge and Developer shall pay any Connection Fee that is lawfully adopted.

ARTICLE 5 DEVELOPER OBLIGATIONS

5.1 Developer Obligations. In consideration of the rights and benefits conferred by City to Developer under this Agreement, Developer shall perform the obligations set forth in this Article 5.

5.1.1 Developer shall maintain the Property in a good, clean and orderly condition, at Developer's sole cost and expense. If Developer does not maintain the Property in such condition, City shall have the right to maintain the Property, or to contract for such maintenance, after written notice to Developer. However, prior to taking any such action, City shall notify Developer in writing identifying the deficiencies. Upon notification of any deficiency, Developer shall have 30 days within which to correct, remedy or cure the deficiency. If the written notification states that any deficiency is urgent and relates to the public health and safety, then Developer shall have a reasonable time not to exceed three business days to rectify the problem. If Developer fails to cure any such deficiencies following written notice and an opportunity to cure as provided above, or should an emergency require immediate action, City, at its option, may perform the necessary maintenance or other work at Developer's expense, and Developer shall reimburse City, as applicable, all such costs, plus a 20 percent administrative fee, within 30 days of City's demand therefor. If such costs and fees are not paid within the prescribed time period, City may assess Developer the cost of the work, and said assessment shall be a lien against the Property or may be placed on the property tax bill and collected as ordinary taxes by the City.

5.1.2 Developer shall cooperate with City and the Bay Area Rapid Transit (BART) in their efforts to increase pedestrian connectivity between the Concord BART Station and the City Downtown. Developer shall work with the City to incentivize BART to expend resources to

update the Concord BART Station and make improvements, such as pedestrian improvements and signage, to the surrounding area, including the area adjacent to and near the Property.

5.1.3 Developer shall work with City to assess interim parking opportunities to attract investors and major tenants to the Property and adjacent properties owned by Developer.

5.2 City of Concord Business License. Developer, at its expense, shall obtain and maintain a City of Concord business license at all times during the Term, and shall include a provision in all general contractor agreements for the Project requiring each such general contractor to obtain and maintain a City of Concord business license during performance of the work of construction.

5.3 Sales Tax Point of Sale Designation. Developer shall use good faith, diligent efforts to the extent allowed by law to require all persons and entities providing bulk lumber, concrete, structural steel and pre-fabricated building components, such as roof trusses, to be used in connection with the construction and development of, or incorporated into, the Project, to: (a) obtain a use tax direct payment permit; (b) elect to obtain a subcontractor permit for the job site of a contract valued at Five Million Dollars (\$5,000,000) or more; or (c) otherwise designate the Property as the place of use of material used in the construction of the Project in order to have the local portion of the sales and use tax distributed directly to City instead of through the county-wide pool. Developer shall instruct its general contractor(s) for the Project to, and cause such general contractor(s) to instruct its/their subcontractors to, cooperate with City to ensure the local sales/use tax derived from construction of the Project is allocated to City to the fullest extent possible. To assist City in its efforts to ensure that such local sales/use tax is so allocated to City, Developer shall on an annual basis provide City with such information as shall be reasonably requested by City regarding subcontractors working on the Project with contracts in excess of the amount set forth above, including a description of all applicable work and the dollar value of such subcontracts. City may use such information to contact each subcontractor who may qualify for local allocation of use taxes to City.

ARTICLE 6 ANNUAL REVIEW

6.1 Annual Review.

6.1.1 Purpose. As required by California Government Code section 65865.1 and Municipal Code section 18.460.090, City and Developer shall review this Agreement and all actions taken pursuant to the terms of this Agreement with respect to the development of the Project every 12 months from the date this Agreement is recorded to determine good faith compliance with this Agreement.

6.1.2 Conduct of Annual Review. The annual review shall be conducted as provided in this Section 6.1.2 and Municipal Code section 18.460.090. If the Planning Division finds and determines that Developer has not complied in good faith with the terms and conditions of this Agreement, a public hearing shall be held by the City Council, at which time Developer must demonstrate good faith compliance with the terms and conditions of this Agreement. The burden of proof of compliance is on Developer. The City Council shall determine, upon the basis of substantial evidence, whether or not Developer has, for the time period under review, complied

in good faith with the terms and conditions of this Agreement. If the City Council finds and determines, based upon substantial evidence, that Developer has complied in good faith with the terms and conditions of this Agreement during the period under review, no further action is required. If the City Council finds and determines, based upon substantial evidence, that Developer has not complied in good faith with the terms and conditions of this Agreement during the period under review, the City Council may modify or terminate the Agreement or extend the time or waive compliance upon a showing of good cause. The decision to terminate or modify the Agreement is final. As part of that final determination, the City Council may impose conditions as necessary to protect the interests of the City. The decision of the City Council shall be final and any court action or proceeding to attack, review, set aside, void, or annul any decision of the determination by the City Council shall be commenced within the time period specified in California Government Code section 65009.

6.1.3 Failure to Conduct Annual Review. Failure of City to conduct an annual review shall not constitute a waiver by the City of its rights to otherwise enforce the provisions of this Agreement nor shall Developer have or assert any defense to such enforcement by reason of any such failure to conduct an annual review.

ARTICLE 7 COOPERATION AND IMPLEMENTATION

7.1 Project Approvals. Certain subsequent land use approvals, entitlements, and permits will be necessary or desirable for implementation of the Project (each a “**Project Approval**” and collectively the “**Project Approvals**”). The Project Approvals may include, without limitation, the following: use permits, design review permits, lot line adjustments, site plans, development plans or permits, building permits, parcel maps and/or subdivision maps, and any amendments to, or repealing of, any of the foregoing. Except as otherwise expressly provided herein, the City shall not impose requirements or conditions upon the development and construction of the Project that are inconsistent with the terms and conditions of this Agreement.

7.2 Processing Applications for Project Approvals.

7.2.1 Timely Submittals by Developer. Developer acknowledges that City cannot begin processing applications for Project Approvals until Developer submits complete applications on a timely basis. Developer shall use diligent good faith efforts to: (a) provide to City in a timely manner any and all documents, applications, plans, and other information necessary for City to carry out its obligations hereunder; and (b) cause Developer’s planners, engineers, and all other consultants to provide to City in a timely manner all such documents, applications, plans and other materials required under Applicable Law. It is the express intent of the Parties to cooperate and diligently work to pursue and process any and all Project Approvals.

7.2.2 Expedited Processing by City. Upon submission by Developer of all appropriate applications and Processing Fees for any pending Project Approval, City shall, to the full extent allowed by Applicable Law, promptly and diligently, subject to City ordinances, policies and procedures regarding hiring and contracting, commence and complete all steps necessary to expeditiously act on Developer’s currently pending Project Approval applications including: (a) providing at Developer’s sole cost and expense, third-party consultants for planning and

processing of each pending Project Approval application (Developer shall pay such costs at cost plus 20 percent for administrative costs incurred); and (b) if legally required, providing notice and holding public hearings.

ARTICLE 8 AMENDMENT OF AGREEMENT AND PROJECT APPROVALS

8.1 Amendment by Written Consent. Except as otherwise expressly provided herein (including Section 6.1 relating to City’s annual review and Section 12.1 relating to termination in the event of a breach), this Agreement may be terminated, modified or amended only by mutual written consent of the Parties hereto or their successors in interest or assignees and in accordance with the provisions of Government Code sections 65967, 65867.5 and 65868.

8.2 Major Amendments. Any amendment to this Agreement which affects or relates to: (a) the Term except as provided in Section 2.2 (Term of Agreement); (b) permitted uses of the Property; (c) provisions for the reservation or dedication of land; (d) conditions, terms restrictions or requirements for subsequent discretionary actions; (e) the density or intensity of the use of the Property or the maximum height or size of proposed buildings; or (f) monetary contributions by Developer, shall be deemed a “**Major Amendment**” and shall require giving of notice and a public hearing before the Planning Commission and City Council. Any amendment which is not a Major Amendment shall be deemed a “**Minor Amendment**” and shall not, except to the extent otherwise required by Applicable Law, require notice of public hearing before the Parties may execute an amendment hereto. The City Manager or his or her designee shall have the authority to determine if an amendment is a Major Amendment or a Minor Amendment.

8.3 Minor Amendment. The City Manager or his or her designee shall have the authority to review and approve Minor Amendments.

8.4 Requirement for Writing. No modification, amendment, or other change to this Agreement or any provision hereof shall be effective for any purpose unless specifically set forth in a writing which refers expressly to this Agreement and is signed by duly authorized representatives of both Parties or their successors in interest.

8.5 CEQA Review. Developer agrees and acknowledges that additional CEQA review will be legally required for any discretionary Project Approval. The City, at Developer’s sole cost and expense, shall conduct such CEQA review as expeditiously as possible. Developer agrees and acknowledges that it will subject to any and all mitigation measures adopted in connection with such CEQA review and the provisions of any Mitigation and Monitoring Plan. Further, if the CEQA review requires an Environmental Impact Report and the City determines that a Statement of Overriding Considerations is required for Developer to move forward with the Project Approval, the City reserves its absolute discretion to consider adoption of the findings required by CEQA and the Statement of Overriding Considerations. If the City does not adopt the Statement of Overriding Considerations, Developer may choose to modify its Project and submit an amended application or may terminate this Agreement upon written notice to City.

ARTICLE 9
INSURANCE, INDEMNITY AND COOPERATION IN THE EVENT OF
LEGAL CHALLENGE

9.1 Insurance Requirements. Developer shall, at its own expense, procure and maintain in full force at all times during the term of this Agreement the following insurance:

9.1.1 Commercial General Liability Coverage. Developer shall maintain commercial general liability insurance with limits of no less than one million dollars (\$1,000,000) combined single limit per occurrence or two million dollars (\$2,000,000) aggregate limit for bodily injury, personal injury, and property damage.

9.1.2 Automobile Liability Coverage. Developer shall maintain automobile liability insurance covering all vehicles used in the performance of this Agreement providing a one million dollar (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

9.1.3 Professional Liability Coverage (Errors and Omissions). Developer shall maintain professional liability insurance with coverage for all negligent errors, acts or omissions committed by Developer, its agents and employees in the performance of this Agreement. The amount of this insurance shall be not less than one million dollars (\$1,000,000) on a claims made annual aggregate basis or a combined single limit per occurrence basis.

9.1.4 Compliance with State Workers' Compensation Requirements. Developer covenants that it will insure itself against liability for Workers' Compensation pursuant to the provisions of California Labor Code §3700, et seq. Developer shall, at all times, upon demand of the City, furnish proof that Workers' Compensation Insurance is being maintained by it in force and effect in accordance with the California Labor Code. The insurer shall also agree to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses arising from work performed by Developer for City. This provision shall not apply upon written verification by Developer that Developer has no employees.

9.1.5 Other Insurance Provisions. The policies are to contain, or be endorsed to contain the following provisions:

(a) Additional Insured. City, its officers, agents, employees, and volunteers are to be covered as an additional insured as respects: Liability arising out of activities performed by or on behalf of Developer and operations of Developer, premises owned, occupied, or used by Developer. The coverage shall contain no special limitations on the scope or protection afforded to City, its officers, officials, employees, or volunteers. Except for worker's compensation and professional liability insurance, the policies mentioned in this subsection shall name City as an additional insured and provide for notice of cancellation to City. Developer shall also provide timely and prompt notice to City if Developer receives any notice of cancellation or nonrenewal from its insurer.

(b) Primary Coverage. Developer's insurance coverage shall be primary insurance with respect to City, its officers, officials, employees, and volunteers. Any insurance,

risk pooling arrangement, or self-insurance maintained by City, its officers, officials, employees, or volunteers shall be in excess of Developer's insurance and shall not contribute with it.

(c) **Reporting Provisions.** Any failure to comply with the reporting provisions of the policy shall not affect the coverage provided to the City, its officers, officials, employees, or volunteers.

(d) **Verification of Coverage.** Developer shall furnish City with certificates of insurance and the original endorsements effecting coverage required by this Agreement. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The aforementioned policies shall be issued by an insurance carrier having a rating of Best A-7 or better which is satisfactory to the City Attorney and shall be delivered to City at the time of the execution of this Agreement or before work commences. Such policies and certificates shall be in a form approved by the City Attorney. City reserves the right to require complete certified copies of all required insurance policies at any time.

9.2 **Indemnity and Hold Harmless.** Developer shall indemnify, defend (with counsel reasonably acceptable to City) and hold harmless City Parties from and against any and all Claims, including but not limited to Claims for any bodily injury, death, or property damage, resulting directly or indirectly from, arising out of, or connected in any way with the Property, the development or construction of the Project by or on behalf of Developer, third party Claims, and/or from any other acts or omissions of Developer under this Agreement, whether such acts or omissions are by Developer or any of Developer's contractors, subcontractors, agents, or employees, except to the extent such Claims arise from the sole or gross negligence or willful misconduct of City or City Parties. This Section 9.2 shall survive expiration or other termination of this Agreement.

9.3 **Defense and Cooperation in the Event of a Litigation Challenge.** At Developer's sole cost and expense, City and Developer shall cooperate in the defense of any court action or proceeding instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, or the Project Approvals ("**Litigation Challenge**"). To the extent Developer desires to contest or defend such Litigation Challenge, Developer shall take the lead role defending such Litigation Challenge and shall indemnify, defend (with legal counsel reasonably acceptable to the City Attorney) and hold harmless, City Parties, from and against any and all Claims raised in connection with the Litigation Challenge. City may, in its sole discretion, elect to be separately represented by the legal counsel of its choice in any such action or proceeding with the reasonable costs of such representation to be paid by Developer, in which case Developer shall reimburse City, within ten (10) business days following the date of City's written demand therefor (City may make multiple demands from time to time during the course of such Litigation Challenge), all actual costs incurred by City in connection with the Litigation Challenge, including City's fully loaded administrative, legal, expert, witness, consultant, and court costs and City Attorney oversight expenses. Developer shall indemnify, defend, and hold harmless City Parties from and against any and all Claims, including attorneys' fees awarded under Code of Civil Procedure section 1021.5, assessed or awarded against City by way of judgment, settlement, or stipulation. Any proposed settlement of a Litigation Challenge shall be subject to City's approval not to be unreasonably withheld, conditioned or delayed. If

the terms of the proposed settlement would constitute an amendment or modification of this Agreement or any Project Approval, the settlement shall not become effective unless such amendment or modification is approved by City in accordance with Applicable Law, and City reserves its full legislative discretion with respect thereto. If Developer opts not to contest or defend such Litigation Challenge, City shall have no obligation to do so. This Section 9.39.2 shall survive expiration or other termination of this Agreement.

ARTICLE 10 ASSIGNMENT, TRANSFER AND NOTICE

10.1 Assignment. Because of the necessity to coordinate development of the entirety of the Property pursuant to plans for the Project, certain restrictions on the right of Developer to assign or transfer its interest under this Agreement with respect to the Property, or any portion thereof, are necessary in order to assure the achievement of the goals, objectives and public benefits of the Project and this Agreement. Developer agrees to and accepts the restrictions set forth in this Section 10.1 as reasonable and as a material inducement to City to enter into this Agreement. Developer shall have the right to sell or transfer its fee interest, or ground lease its interests in the Property, in whole or in part to any person, partnership, joint venture, firm, company, corporation or other entity (any of the foregoing, an “**Assignee**”) subject to the written consent of City, which consent shall not be unreasonably withheld ; provided that Developer may assign its rights under this Agreement without the consent of City to any corporation, limited liability company, partnership or other entity which is controlling of, controlled by, or under common control with Developer, and “control,” for purposes of this definition, means effective management and control of the other entity, subject only to major events requiring the consent or approval of the other owners of such entity (“**Affiliated Party**”). Developer shall provide the City with written notice of any proposed transfer or assignment of Developer’s rights or obligations hereunder (each, an “**Assignment**”) at least 30 days prior to such Assignment. Each such notice of proposed Assignment shall be accompanied by evidence of Assignee’s agreement to assume Developer’s obligations hereunder. Developer shall pay the actual costs borne by City in connection with its review of the proposed Assignment, including the costs incurred by the City Attorney’s Office. If City consents to such Assignment, a written assignment and assumption agreement, in a form approved by City, shall be recorded in the Official Records of Contra Costa County. Assignee shall succeed to the rights, duties and obligations of Developer only with respect to the parcel or parcels, or portion of the Property so purchased, transferred, ground leased or assigned, and Developer shall continue to be obligated under this Agreement with respect to any remaining portions of the Property retained by Developer and not assigned.

10.2 Successive Assignment. In the event there is more than one Assignment under the provisions of this Article 10, the provisions of this Article 10 shall apply to each successive Assignment and Assignee.

ARTICLE 11 MORTGAGEE PROTECTION

11.1 Mortgagee Protection. Neither entering into this Agreement nor a breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value. Nothing in this Agreement shall prevent or limit Developer, at its sole discretion, from

granting one or more Mortgages encumbering all or a portion of Developer's interest in the Property or portion thereof or improvement thereon as security for one or more loans or other financing, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against and shall run to the benefit of Mortgagee who acquires title or possession to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise. Developer shall provide the City with a copy of the deed of trust or mortgage within 10 days after its recording in the official records of Contra Costa County; provided, however, that Developer's failure to provide such document shall not affect any Mortgage, including without limitation, the validity, priority or enforceability of such Mortgage.

11.2 Mortgagee Not Obligated. No Mortgagee (including one who acquires title or possession to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise) shall have any obligation to construct or complete construction of improvements, or to guarantee such construction or completion; provided, however, that a Mortgagee shall not be entitled to devote the Property to any use except in full compliance with this Agreement and the other Project Approvals nor to construct any improvements thereon or institute any uses other than those uses or improvements provided for or authorized by this Agreement, or otherwise under the Project Approvals. Except as otherwise provided in this Section 11.2, all of the terms and conditions contained in this Agreement and the other Project Approvals shall be binding upon and effective against and shall run to the benefit of any person or entity, including any Mortgagee, who acquires title or possession to the Property, or any portion thereof.

11.3 Notice of Default to Mortgagee. If City receives a notice from a Mortgagee requesting a copy of any Notice of Default given Developer hereunder and specifying the address for service thereof, then City agrees to use its diligent, good faith efforts to deliver to such Mortgagee, concurrently with service thereon to Developer, any Notice of Default given to Developer. Each Mortgagee shall have the right during the same period available to Developer to cure or remedy, or to commence to cure or remedy, the event of Default claimed or the areas of noncompliance set forth in City's Notice of Default. If a Mortgagee is required to obtain possession in order to cure any Default, the time to cure shall be tolled so long as the Mortgagee is attempting to obtain possession, including by appointment of a receiver or foreclosure, but in no event may this period exceed 120 days from the date the City delivers the Notice of Default to Developer.

11.4 No Supersedure. Nothing in this Article 11 shall be deemed to supersede or release a Mortgagee or modify a Mortgagee's obligations under any subdivision or public improvement agreement or other obligation incurred with respect to the Project outside this Agreement, nor shall any provision of this Article 11 constitute an obligation of City to such Mortgagee, except as to the notice requirements of Section 11.3.

ARTICLE 12 DEFAULT; REMEDIES; TERMINATION

12.1 Breach and Default. Subject to a Permitted Delay or by mutual consent in writing, and except as otherwise provided by this Agreement, breach of, failure, or delay by either Party to perform any term or condition of this Agreement shall constitute a "**Default.**" In the event of any alleged Default of any term, condition, or obligation of this Agreement, the Party alleging such Default shall give the defaulting Party notice in writing specifying the nature of the alleged

Default and the manner in which the Default may be satisfactorily cured (“**Notice of Breach**”). The defaulting Party shall cure the Default within 30 days following receipt of the Notice of Breach, provided, however, if the nature of the alleged Default is non-monetary and such that it cannot reasonably be cured within such 30-day period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, provided that if the cure is not diligently prosecuted to completion, then no additional cure period shall be provided. If the alleged failure is cured within the time provided above, then no Default shall exist and the noticing Party shall take no further action to exercise any remedies available hereunder. If the alleged failure is not cured, then a Default shall exist under this Agreement and the non-defaulting Party may exercise any of the remedies available under this Agreement.

12.2 Withholding of Permits. In the event of a Default by Developer, or following Notice of Breach to Developer pursuant to Section 12.1 above and during the cure period provided therein, upon a finding by the Planning Division that Developer is in breach, City shall have the right to refuse to issue any permit or Project Approval to which Developer would otherwise have been entitled pursuant to this Agreement until such Default or breach is cured. This provision is in addition to and shall not limit any actions that City may take to enforce the conditions of the Project Approvals.

12.3 Termination. In the event of a Default by Developer, in addition to the right to terminate under Article 6, the City shall have the right to terminate this Agreement upon giving notice of intent to terminate pursuant to Government Code section 65868. Following notice of intent to terminate, the matter shall be scheduled for consideration and review in the manner set forth in Government Code section 65867. Following consideration of the evidence presented in said review before the City Council, the City may give written notice of termination of this Agreement to the Developer. Termination of this Agreement shall be subject to the provisions of Section 12.8. In the event of a Default by City, Developer may terminate this Agreement upon written notice to City.

12.4 Specific Performance for Violation of a Condition. If City issues a Project Approval pursuant to this Agreement in reliance upon a specified condition being satisfied by Developer in the future, and if Developer then fails to satisfy such condition, City shall be entitled to specific performance for the purpose of causing Developer to satisfy such condition.

12.5 Legal Actions.

12.5.1 Institution of Legal Actions. In addition to any other rights or remedies and subject to the limitation of damages in Section 12.7, a Party may institute legal action to cure, correct or remedy any Default, to enforce any covenants or agreements herein, to enjoin any threatened or attempted violation thereof, or to obtain any other remedies consistent with the purpose of this Agreement. Any such legal action shall be brought in the Superior Court for Contra Costa County, California, except for actions that include claims in which the Federal District Court for the Northern District of the State of California has original jurisdiction, in which case the Northern District of the State of California shall be the proper venue.

12.5.2 Governing State Law. This Agreement shall be construed in accordance with the laws of the State of California, without reference to its choice of law provisions.

12.5.3 Acceptance of Service of Process. In the event that any legal action is commenced by Developer against City, service of process on City shall be made by personal service upon the City Clerk of City or in such other manner as may be provided by law. In the event that any legal action is commenced by City against Developer, service of process on Developer shall be made by personal service upon _____, Developer's registered agent for service of process, or in such other manner as may be provided by law.

12.6 Rights and Remedies Are Cumulative. The rights and remedies of the Parties are cumulative, and the exercise by a Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same Default or any other Default by the other Party, except as otherwise expressly provided herein.

12.7 No Damages. In no event shall a Party, or its boards, commissions, officers, agents or employees, or any City Parties, be liable in damages, including without limitation, actual, consequential or punitive damages, for any Default under this Agreement. It is expressly understood and agreed that the sole legal remedy available to a Party for a breach or violation of this Agreement by the other Party shall be an action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Agreement by the other Party, or to terminate this Agreement. This limitation on damages shall not preclude actions by a Party to enforce payments of monies or the performance of obligations requiring an obligation of money from the other Party under the terms of this Agreement including, but not limited to, obligations to pay attorneys' fees and obligations to advance monies or reimburse monies. In connection with the foregoing provisions, each Party acknowledges, warrants and represents that it has been fully informed with respect to, and represented by counsel of such Party's choice in connection with, the rights and remedies of such Party hereunder and the waivers herein contained, and after such advice and consultation has presently and actually intended, with full knowledge of such Party's rights and remedies otherwise available at law or in equity, to waive and relinquish such rights and remedies to the extent specified herein, and to rely to the extent herein specified solely on the remedies provided for herein with respect to any Default of this Agreement by the other Party. By waiving and relinquishing rights and remedies hereunder regarding Claims both known and unknown, Developer expressly waives on behalf of itself and its successors and assigns any rights under California Civil Code Section 1542, which provides:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

Developer Initials

12.8 Surviving Provisions. In the event this Agreement is terminated, the obligations of Developer set forth in Article ARTICLE 12 shall survive.

**ARTICLE 13
GENERAL PROVISIONS**

13.1 Covenants Binding on Successors and Assigns and Run with Land. Except as otherwise more specifically provided in this Agreement, this Agreement and all of its provisions, rights, powers, standards, terms, covenants and obligations, shall be binding upon the Parties and their respective successors (by merger, consolidation, or otherwise) and assigns, and all other persons or entities acquiring the Property, or any interest therein, and shall inure to the benefit of the Parties and their respective successors and assigns, as provided in Government Code section 65868.5.

13.2 Notice. Any notice, demand or request which may be permitted, required or desired to be given in connection herewith shall be given in writing and directed to the City and Developer as follows:

If to the City: City Clerk
 City of Concord
 1950 Parkside Drive
 Concord, CA 94519
 Telephone: (925) 671-3390

with a copy to: City Attorney
 City of Concord
 1950 Parkside Drive, M/S 08
 Concord, CA 94519
 Telephone: (925) 671-3160

If to Developer: Swift Realty Partners
 One Concord Center
 2300 Clayton Road, Suite 110
 Concord, CA 94520
 Attn: Willard M. Lund
 Telephone: (925) 969-1000

with a copy to: [insert developer counsel contact info]

Notices are deemed effective if delivered by certified mail, return receipt requested, or commercial courier, with delivery to be effective upon verification of receipt. Any Party may change its respective address for notices by providing written notice of such change to the other Parties.

13.3 Permitted Delays. Performance by either Party of an obligation hereunder shall be excused during any period of “**Permitted Delay.**” Permitted Delay shall mean delay beyond the reasonable control of a Party caused by: (a) calamities, including without limitation earthquakes, floods, and fire; (b) civil commotion; (c) riots or terrorist acts; (d) strikes or other forms of material labor disputes; (e) shortages of materials or supplies; or (f) vandalism. A Party’s financial inability to perform or obtain financing or adverse economic conditions generally shall not be grounds for claiming a Permitted Delay. The Party claiming a Permitted Delay shall

notify the other Party of its intent to claim a Permitted Delay, the specific grounds of the same and the anticipated period of the Permitted Delay within 30 business days after the occurrence of the conditions which establish the grounds for the claim. If notice by the Party claiming such extension is sent to the other Party more than 30 days after the commencement of the cause, the period shall commence to run only 30 days prior to the giving of such notice. The period of Permitted Delay shall last no longer than the conditions preventing performance. In no event shall any Permitted Delay extend the Term of this Agreement.

13.4 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

13.5 Waivers. Notwithstanding any other provision in this Agreement, any failures or delays by any Party in asserting any of its rights and remedies under this Agreement shall not operate as a waiver of any such rights or remedies, or deprive any such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies. A Party may specifically and expressly waive in writing any condition or breach of this Agreement by the other Party, but no such waiver shall constitute a further or continuing waiver of any preceding or succeeding breach of the same or any other provision. Consent by one Party to any act by the other Party shall not be deemed to imply consent or waiver of the necessity of obtaining such consent for the same or similar acts in the future.

13.6 Construction of Agreement. 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; (e) "includes" and "including" are not limiting; and (f) "days" means calendar days unless specifically provided otherwise.

13.7 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.

13.8 Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a specific situation, is found to be invalid, or unenforceable, in whole or in part for any reason, the remaining terms and provisions of this Agreement shall continue in full force and effect unless an essential purpose of this Agreement would be defeated by loss of the invalid or unenforceable provisions, in which case any Party may terminate this Agreement by providing written notice thereof to the other Party.

13.9 Time is of the Essence. Time is of the essence of this Agreement.

13.10 Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of and bind the respective legal entities of Developer and City with their signatures.

13.11 Entire Agreement. This Agreement (including all exhibits attached hereto, each of which is fully incorporated herein by reference), integrates all of the terms and conditions mentioned herein or incidental hereto, and constitutes the entire understanding of the Parties with respect to the subject matter hereof, and all prior or contemporaneous oral agreements, understandings, representations and statements, and all prior written agreements, understandings, representations, and statements are terminated and superseded by this Agreement.

13.12 Estoppel Certificate. Developer or its lender may, at any time, and from time to time, deliver written notice to the City requesting the City to certify in writing that: (a) this Agreement is in full force and effect; (b) this Agreement has not been amended or modified or, if so amended or modified, identifying the amendments or modifications; and (c) Developer is not in Default of the performance of its obligations, or if in Default, to describe therein the nature and extent of any such Defaults. Developer shall pay, within 30 calendar days following the date of City's invoice, the actual costs incurred, expended, or otherwise borne by City in connection with its review of the proposed estoppel certificate, including the actual costs incurred, expended, or otherwise borne by the City Attorney's Office in connection therewith. The City Manager shall be authorized to execute any certificate requested by Developer hereunder. The form of estoppel certificate shall be in a form reasonably acceptable to the City Attorney. The City Manager shall endeavor to execute and return such certificate within 30 days or as soon as reasonable practicable following Developer's request therefor. Developer and City acknowledge that a certificate hereunder may be relied upon by tenants, transferees, investors, partners, bond counsel, underwriters, bond holders and Mortgagees. Notwithstanding anything in any estoppel certificate to the contrary no estoppel certificate shall waive or amend, and no estoppel certificate shall be deemed to waive or amend, any of the provisions of this Agreement, it being understood and agreed that all of the rights of the Parties under this Agreement are hereby expressly reserved and it being further understood that this Agreement will control in the event of any conflict between this Agreement and any estoppel certificate.

13.13 Recordation of Termination. Upon completion of performance of the Parties or termination of this Agreement, a written statement acknowledging such completion or termination shall be recorded by City in the Official Records of Contra Costa County.

13.14 City Approvals and Actions. Whenever a reference is made herein to an action or approval to be undertaken by City, the City Manager or his or her designee is authorized to act on behalf of City, unless specifically provided otherwise or the context requires otherwise.

13.15 Negation of Partnership. The Parties specifically acknowledge that the Project is a private development, that no Party to this Agreement is acting as the agent of any other in any respect hereunder, and that each Party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the Parties in the businesses of Developer, the affairs of the City, or otherwise, or cause them to be considered joint venturers or members of any joint enterprise.

13.16 No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the signatory Parties and their successors and assigns, including Mortgagees. No other person shall have any right of action based upon any provision in this Agreement.

13.17 Exhibits. The following exhibits are attached to this Agreement and are hereby incorporated herein by this reference for all purposes as if set forth herein in full:

Exhibit A: Property Description

Exhibit B: Site Map

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

CITY:

CITY OF CONCORD, a municipal corporation

By: _____
Valerie J. Barone, City Manager
[Signature must be notarized]

ATTEST:

By: _____
Joelle Fockler, CMC, City Clerk

APPROVED AS TO FORM:

By: _____
Brian Libow, Interim City Attorney

DEVELOPER:

SWIFT REALTY PARTNERS, LLC, a Delaware limited liability corporation

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

[Signatures must be notarized]

Exhibit A

Property Description

APN: 126-103-017
SITE ADDRESS: 1672 GRANT ST
SITE CITY STATE ZIP: CONCORD, CA 94520-

APN: 126-103-016
SITE ADDRESS: 1654 GRANT ST
SITE CITY STATE ZIP: CONCORD, CA 94520

APN: 126-103-015
SITE ADDRESS: 1638 GRANT ST
SITE CITY STATE ZIP: CONCORD, CA 94520

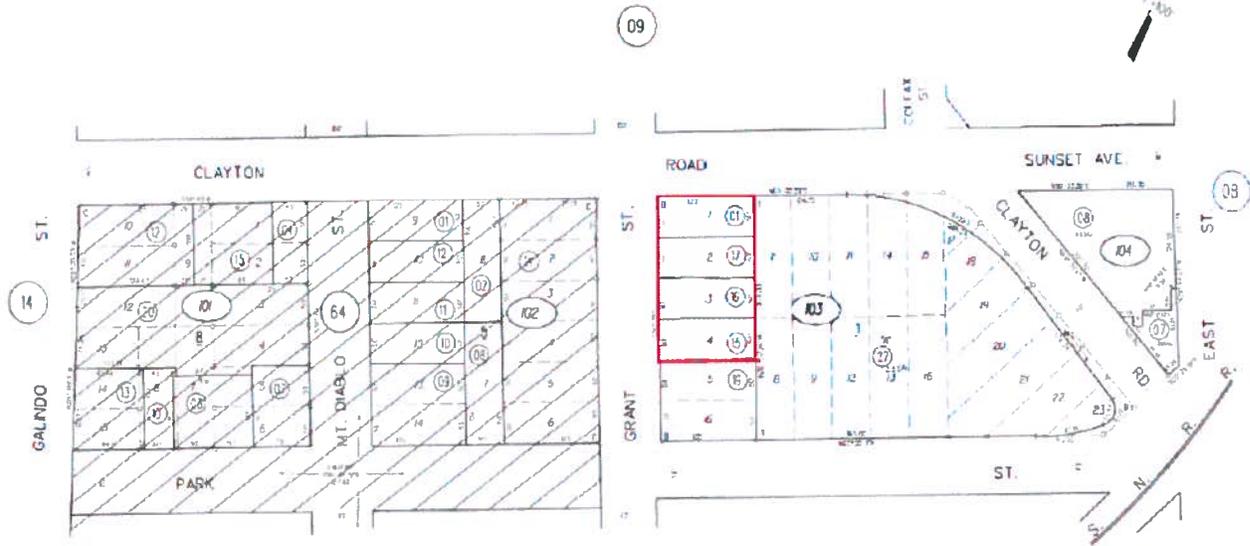
APN: 126-103-001
SITE ADDRESS: 1680 GRANT ST
SITE CITY STATE ZIP: CONCORD, CA 94520

Exhibit B

EXHIBIT B

- ESTATE OF FRANCISCO GALINDO NO. 9 55
- FOSKETT ADDITION NO. 2 23
- FOSKETT SECOND ADDITION NO. 3 12
- † 123P.M. 27&28 3-4-88

H-15



NOTE: THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSES ONLY AND IS NOT GUARANTEED FOR THE ACCURACY OF THE INFORMATION CONTAINED HEREIN. ASSESSOR'S OFFICE AND COUNTY ADMINISTRATOR DO NOT WARRANT THE ACCURACY OF THIS INFORMATION.

- 101
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4 2 88
ASSESSOR'S MAP
BOOK 128 PAGE 10
CONTRA COSTA COUNTY, CALIF.

