



THE VARSITY OF ANN ARBOR DEVELOPMENT AGREEMENT

THIS AGREEMENT, made this 10th day of November, 2011, by and between the City of Ann Arbor, a Michigan Municipal Corporation, with principal address at 301 East Huron Street, Ann Arbor, Michigan 48107, hereinafter called the CITY; and CS Potomac Michigan Limited Liability Corporation, a Delaware Limited Liability Corporation, with principal address at 7508 Wisconsin Avenue, Second Floor, Bethesda, MD 20814, hereinafter called the PROPRIETOR, witnesses that:

WHEREAS, the PROPRIETOR owns certain land in the City of Ann Arbor, described below and site planned as The Varsity Ann Arbor, and

WHEREAS, the PROPRIETOR has caused certain land in the City of Ann Arbor, described below to be surveyed, mapped and site planned as The Varsity Ann Arbor, and desires planned project site plan and development agreement approval thereof, and

WHEREAS, the PROPRIETOR desires to build or use certain improvements with and without the necessity of special assessments by the CITY, and

WHEREAS, the CITY desires to insure that all of the improvements required by pertinent CITY ordinances and regulations be properly made, and that the PROPRIETOR will install these improvements prior to any permits being issued.

THE PROPRIETOR(S) HEREBY AGREE(S):

(P-1) To prepare and submit to the CITY for approval plans and specifications ("the Plans") prepared by a registered professional engineer for construction of public water mains, public and private storm water management systems, sidewalks and streetlights ("the Improvements") provided that no work on said Improvements shall be commenced until the Plans have been approved by the City Administrator or designee, and until such other relevant information to CITY service areas as shall be reasonably required has been provided.

(P-2) To construct all Improvements set forth in Paragraph P-1 of this Agreement in accordance with the approved Plans and to repair all defects in the improvements that occur within one year from the date of acceptance of the Improvements by the CITY, commencing on the latest date of the acceptance of any Improvements by the CITY. If the PROPRIETOR fails to construct the improvements, the CITY may send notice via first class mail to the

PROPRIETOR at the address listed above requiring it to commence and complete the improvements in the notice within the time set forth in the notice. The CITY may cause the work to be completed at the expense of the PROPRIETOR, only if the PROPRIETOR does not complete the work within the time set forth in the notice.

(P-3) To furnish, within 30 days of completion, an engineer's certificate that the construction of the public improvements set forth in Paragraph P-1 above have been completed in accordance with the specifications of the CITY in accordance with the approved plans. The engineer's certificate will cover only those items the PROPRIETOR'S engineer inspects.

(P-4) To install all water mains, storm sewers, and sanitary sewers pursuant to CITY approved plans and specifications necessary to connect the site with existing CITY systems adjacent to the site prior to the issuance of any building permits.

(P-5) To be included in a future special assessment district, along with other benefiting property if any, for the construction of additional improvements to East Huron Street and East Washington Street, such as street widening, storm sewers, curb and gutter, sidewalks, bike paths, street lights, and the planting of trees along said frontages when such improvements are determined by the CITY to be necessary.

(P-6) To indemnify, defend, and hold the CITY harmless from any claims, losses, liabilities, damages or expenses (including reasonable attorney fees) suffered or incurred by the CITY based upon or resulting from any acts or omissions of the PROPRIETOR, its employees, agents, subcontractors, invitees, or licensees in the design, construction, maintenance or repair of any of the Improvements required under this Agreement and the approved site plan.

(P-7) To cause to be maintained General Liability Insurance and Property Damage Insurance in the minimum amount of \$1,000,000 per occurrence and naming the CITY as additional insured to protect and indemnify the CITY against any claims for damage due to public use of the public improvement(s) in the development prior to final written acceptance of the public improvement(s) by the CITY. Evidence of such insurance shall be produced prior to any construction of improvement and a copy filed with the City Clerk's Office and shall remain in full force and effect during construction of the public improvement(s) and until notice of acceptance by the CITY of the Improvements.

(P-8) For the benefit of the residents of the PROPRIETOR'S development, in lieu of a contribution of \$112,000 to the CITY Parks and Recreation Services Unit and as a requirement of the planned project modifications, to construct and maintain as an integral part of the development the proposed amenities in the north and south plazas and the walkway along the east side of the site as generally illustrated and described in the exhibits to this Agreement prior to request for and issuance of the first certificate of occupancy.

(P-9) To construct, repair and/or adequately maintain a private on-site storm water management system. If the PROPRIETOR fails to construct, repair and/or maintain the private storm water management system, the CITY may send notice via first class mail to the PROPRIETOR at the address listed above, requiring it to commence and complete the items stated in the notice within the time set forth in the notice. The CITY may cause the work to be completed at the expense of the PROPRIETOR only if the PROPRIETOR does not complete the work within the time set forth in the notice.

(P-10) After construction of the private on-site storm water management system, to commission an annual inspection of the system by a registered professional engineer evaluating its operation and stating required maintenance or repairs, and to provide a written copy of this evaluation to the CITY Public Services Area. The CITY shall provide PROPRIETOR, each year, with a written request for said evaluation and PROPRIETOR shall be relieved of any obligation to provide the same until said written request is transmitted by the CITY to PROPRIETOR.

(P-11) Prior to issuance of building permits, to provide a management plan that indicates how the two car-sharing service parking spaces proposed as part of the development and contributing to the off-street parking requirements will be reserved, signed and enforced. Prior to request for or issuance of any certificate of occupancy, and consistent with Chapter 59, Section 5:167 of Ann Arbor City Code, to provide a recorded, off-site permanent parking easement for the two car-sharing spaces.. Proprietor shall provide the CITY with proof of the availability to residents of the car-sharing service within 15 days of request. Proprietor agrees and acknowledges that failure to maintain the car-sharing service will be a violation of the zoning ordinance regarding the minimum required number of parking spaces, consistent with Chapter 59, Section 5:167 of Ann Arbor City Code. In the event that PROPRIETOR is unable to contract with a vendor to provide such car sharing services, or the full number of cars required herein, then PROPRIETOR shall provide the minimum number of parking spaces on or off-site as required by City Code.

(P-12) As part of the application for the first building permit, to provide documentation from an independent, qualified professional that verifies that a minimum of two points shall be achieved under the U.S. Green Building Council Leadership in Energy and Environmental Design (LEED) Energy & Atmosphere Credit No. 1, the most recent version in effect at the date of this agreement, using an industry standard software energy modeling tool (EQUEST or equivalent). Further documentation or verification from an independent, qualified professional that the building achieves the two points shall be provided by the PROPRIETOR prior to any request for or issuance of a first certificate of occupancy.

(P-13) To include the elevation drawings, as submitted to City Council, as part of the approved site plan and to construct all buildings consistent with said elevation drawings. If the PROPRIETOR proposes any material changes to the approved building elevations, setbacks, aesthetics, or materials, as determined by the Planning and Development Services Manager or designee, that those changes be brought back to the City Council for consideration. Nonmaterial changes to the approved building elevations, setbacks, aesthetics, or materials may be approved by the Planning and Development Services Manager or designee. The PROPRIETOR is required to submit signed and sealed drawings to staff reflecting the elevations, setbacks, aesthetics, materials and site plan approved by City Council.

(P-14) To remove all discarded building materials and rubbish from the development at least once each month during construction of the development improvements, and within one month after completion or abandonment of construction.

(P-15) Prior to application for and issuance of certificates of occupancy, to disconnect 41 footing drains from the sanitary sewer system in accordance with the *Guidelines for Completion of Footing Drain Disconnections, City of Ann Arbor - Development Offset-Mitigation Program* (November 2005 edition, as amended). These disconnections are to be performed within the High Level Interceptor sewershed, upstream of where the development flows connect to this trunkline (intersection of Washington Street and First Street; MH ID 71-70473). The PROPRIETOR, however, may be allowed to obtain partial certificates of occupancy for the

development prior to the completion of all of the required footing drain disconnects on a prorated basis, at the discretion of the CITY Public Services Area. CITY agrees to provide PROPRIETOR with a certificate of completion upon PROPRIETOR'S submittal of approved and final closed-out permits to the CITY Public Services Area.

(P-16) To grant the CITY a public access easement for pedestrian access and use of the walkway which is identified on the approved site plan, which shall provide a pedestrian connection between Huron Street and Washington Street along the east side of the site and shall be continuously open to the public 364 days per year. The public access easement shall be submitted to the City for acceptance by City Council prior to the PROPRIETOR's request for or issuance of the first certificate of occupancy. The public access easement shall have terms that prohibit the posting of any sign or placing of any impediment in or near the walkway that serves to limit public access, except for gates which may only be closed for one day per year.

(P-17) PROPRIETOR is the sole title holder in fee simple of the land described below except for any mortgage, easements and deed restrictions of record and that the person(s) signing below on behalf of PROPRIETOR has (have) legal authority and capacity to enter into this agreement for PROPRIETOR.

(P-18) Failure to construct, repair and/or maintain the site pursuant to the approved site plan and/or failure to comply with any of this approved development agreement's terms and conditions shall constitute a material breach of the Agreement and the CITY shall have all remedies in law and/or in equity necessary to ensure that the PROPRIETOR complies with the approved site plan and/or the terms and conditions of the approved development agreement. The PROPRIETOR shall be responsible for all costs and expenses including reasonable attorney fees incurred by the CITY in enforcing the terms and conditions of the approved site plan and/or development agreement.

(P-19) In addition to any other remedy set forth in this Agreement or in law or equity, if PROPRIETOR fails to make a timely or full payments to the CITY as set forth elsewhere in the Agreement to the CITY in the agreed upon manner, any unpaid amount(s) shall become a lien, as provided under Ann Arbor City Code and recorded with the Washtenaw County Register of Deeds, against the land described below and may be placed on the CITY tax roll as a single lot assessment, or if the development is converted to condominium ownership, every owner of a portion of the property shall pay a pro-rata share of the amount of the payments attributable to each condominium unit. If the unpaid amount(s), in whole or in part, has been recorded as a lien on the CITY'S tax roll and with the Washtenaw County Register of Deeds, upon payment of the amount in full along with any penalties and interest, the CITY, upon request, will execute an instrument in recordable form acknowledging full satisfaction of this condition.

(P-20) To pay for the cost of recording this Agreement with the Washtenaw County Register of Deeds, and to pay for the cost of recording all documents granting easements to the CITY.

THE CITY HEREBY AGREES:

(C-1) In consideration of the above undertakings, to approve The Varsity Ann Arbor Planned Project Site Plan.

(C-2) To provide timely and reasonable CITY inspections as may be required during construction.

(C-3) To record this agreement with the Washtenaw County Register of Deeds.

GENERAL TERMS

Both the PROPRIETOR and the CITY agree as follows:

(T-1) This agreement is not intended to create a contractual right for third parties.

(T-2) This Agreement and any of its terms, conditions, or provisions cannot be modified, amended, or waived unless in writing and unless executed by both parties to this Agreement. Any representations or statements, whether oral or in writing, not contained in this Agreement shall not be binding on either party.

(T-3) This Agreement and any of its terms or conditions shall not be assigned or transferred to any other individual or entity unless prior approval of the City Administrator is received. Such approval shall not be withheld unreasonably.

(T-4) The obligations and conditions on the PROPRIETOR, as set forth above in this Agreement and in the approved site plan, shall be binding on any successors and assigns in ownership of the following described parcel:

Lots 3, 4, 15 and 16 of Assessor's Plat No. 28, according to the recorded plat thereof as recorded in Liber 9 of Plats, page 19, Washtenaw County records.

(T-5) In addition to any other remedy in law or in equity failure to comply with all of the above paragraphs on the part of the PROPRIETOR, or any part of the approved site plan, in part or in whole, shall give the CITY adequate basis and cause to issue a stop work order for any previously-issued building permits and shall be an adequate basis and cause for the CITY to deny the issuance of any building permits, certificates of occupancy, or any other permits unless and until the CITY has notified the PROPRIETOR in writing that the PROPRIETOR has satisfactorily corrected the item(s) the PROPRIETOR has failed to perform.

(T-6) This agreement shall be interpreted, enforced and governed under the laws of the State of Michigan and Ann Arbor City Code.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day first above written.

Witnesses:

ROSE-MARIE E. GALE
ROSE-MARIE E. GALE

Alexis DiLeo
Alexis DiLeo

CITY OF ANN ARBOR, MICHIGAN
301 East Huron Street
Ann Arbor, Michigan 48107

By: John Hieftje
John Hieftje, Mayor

By: Jacqueline Beaudry
Jacqueline Beaudry, City Clerk

Approved as to Substance:

Steven D. Powers
Steven D. Powers, City Administrator

Approved as to Form:

Stephen K. Postema
Stephen K. Postema, City Attorney

CS Potomac Michigan, LLC
7508 Wisconsin Avenue, Second Floor
Bethesda, MD 20814

Witnesses:

D. Zelaya
D. Zelaya

By: Donnie Gross
Donnie Gross, Manager

STATE OF MICHIGAN)
) ss:
County of Washtenaw)

On this 10th day of January, 2012, before me personally appeared John Hieftje, Mayor, and Jacqueline Beaudry, Clerk of the City of Ann Arbor, a Michigan Municipal Corporation, to me known to be the persons who executed this foregoing instrument, and to me known to be such Mayor and Clerk of said Corporation, and acknowledged that they executed the foregoing instrument as such officers as the free act and deed of said Corporation by its authority.

Rose-Marie E. Gale
ROSE-MARIE E. GALE
NOTARY PUBLIC
County of Washtenaw, State of Michigan
My Commission Expires: Oct. 19, 2017
Acting in the County of Washtenaw

Maryland
STATE OF MICHIGAN)
) ss:
Montgomery
County of Washtenaw)

MANAGER
CS POTOMAC
MICHIGAN
LLC

On this 12th day of December, 2011, before me personally appeared Donnie Gross, to me known to be the person who executed the foregoing instrument, and acknowledged that he executed the foregoing instrument as his free act and deed.

Donnie Gross

NOTARY PUBLIC
County of Montgomery Washtenaw, State of Michigan Maryland
My Commission Expires:
Acting in the Montgomery County of Washtenaw Montgomery
OSCAR E. ZELAYA
NOTARY PUBLIC
ZELAYA
STATE OF MARYLAND
FREDERICK COUNTY
MY COMMISSION EXPIRES
OCTOBER 1, 2012

DRAFTED BY AND AFTER RECORDING RETURN TO:
Wendy L. Rampson, Planning Manager
Ann Arbor Planning & Development Services
Post Office Box 8647
Ann Arbor, Michigan 48107
(734) 794-6265



Exhibit 1: The Varsity Ann Arbor Development Agreement

ADDITIONAL DETAIL REGARDING SITE AMENITIES

September 14, 2011

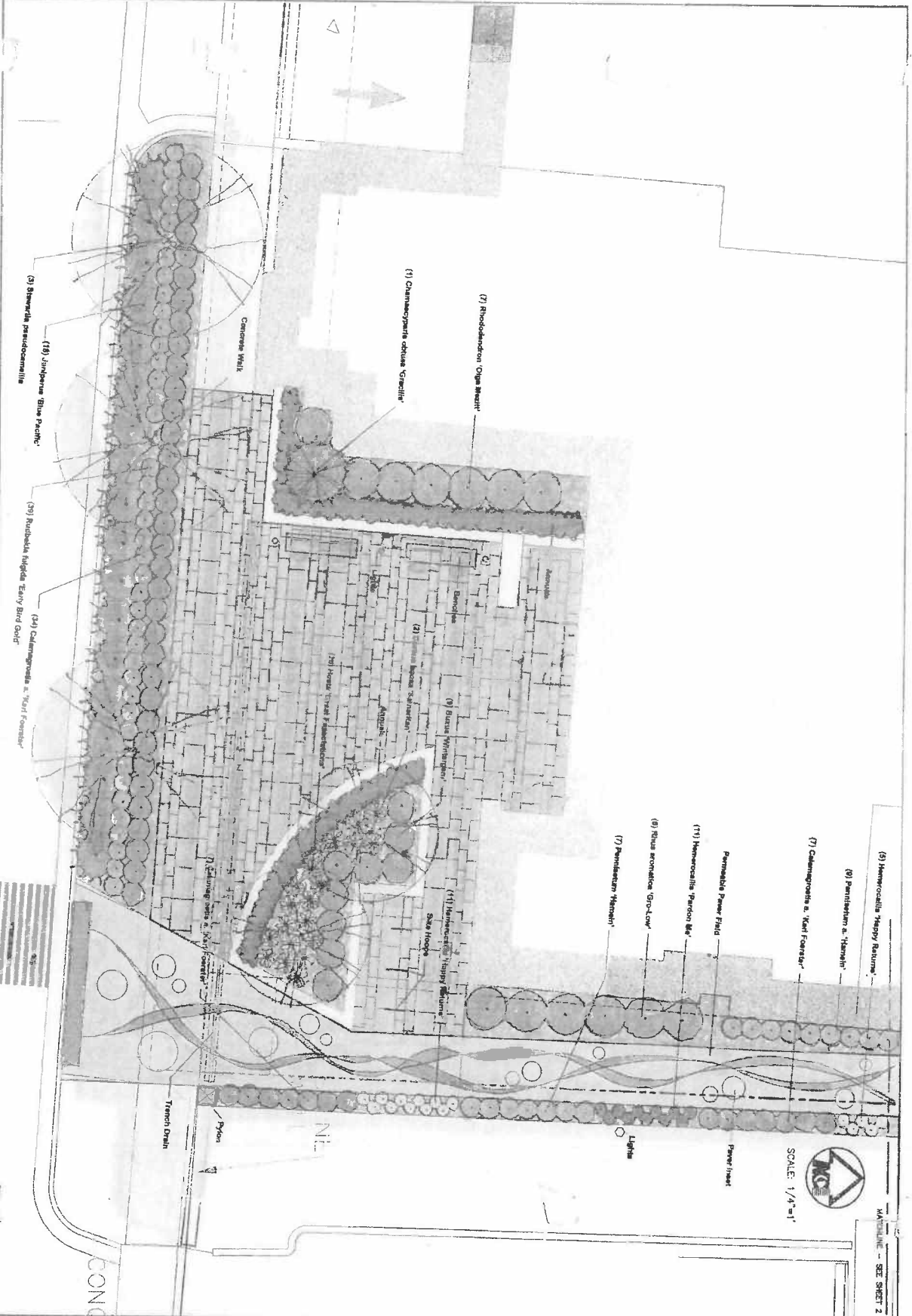
Site amenities will be fully designed and detailed in the construction plan phase of the project. At this point, the owner has agreed to provide on-site amenities as described below. We have added more detail below to reflect current progress toward a detailed construction plan.

Attached is a site concept plan that includes these elements:

1. E. Washington entry:
 - a. Special paving in the entry plaza and the public sidewalk: larger scale concrete pavers in a mix of colors that compliment the proposed building masonry: Hanover Architectural concrete pavers (or approved equal), a mix of courses of 2' x 3' and 1' x 2' units, in bands of running bond.
 - b. Benches along the west edge of the plaza: Landscape Forms Metro 40 Collection— 'Rest'-7' aluminum w/ back (or approved equal).
 - c. Seat height planters with decorative facing on the planter walls such as a mosaic, a sculptural relief, or other ornamentation. The current concept is to make the face of the planters similar to the paving pattern in the mews. The larger planter abuts the mews and the paving pattern there will actually run up onto the face of the planter. The face of the planter on the west side of the plaza will have a similar pattern. That will tie these elements together literally and figuratively.
 - d. Pedestrian lighting: 3 lighted bollards adjacent to benches Hess America Sierra, SE 4000G illuminating column, 13' height, 70 Watt Metal Halide (or approved equal). (As shown on the perspective drawing.)
 - e. Six class C bike parking spaces: Landscape Forms Metro 40 – 'Ride'-aluminum (or approved equal).
 - f. Detailed landscaping of the "lawn extension" area between the public sidewalk and the curb including shrubs, perennials, street trees and street lights. Street lights are to be as required by DTE and will likely match those in front of the adjacent 411 E. Washington apartments.
2. Varsity Mews:
 - a. Special paving: Hanover Permeable Paver field, nominal 4" x 8" units in running bond with water jet cut design insets similar in motif to that of the gates, planter facades and pylons. The inset pattern is not permeable. The background paver field is permeable.
 - b. Ornamental gates: custom designed and fabricated iron gates similar to the elements in the paving pattern in the mews and on the face of the planters. Fencing: similar to the existing fencing at the adjacent church, Ameristar Montage Plus 'Majestic' (or approved equal), black. This fencing follows the slope without requiring stepping of adjacent straight sections.
 - c. Decorative pylons at the north and south end of the mews. These may be sculptural elements that identify the mews and provide artistic accents.

The design will be similar to the elements used in the paving pattern of the mews and on the face of the planters.

- d. Green Screen (or approved equal) and plantings: Climbing Hydrangea and Virginia Creeper underplanted with hostas ('Wide Brim' and 'Northern Exposure') along the interior parking levels of the proposed building add color and detail to the mews.
 - e. Detailed landscaping on both sides of the sidewalk includes flowering perennials (Hemerocallis 'Happy Returns' and 'Pardon Me') and ornamental grasses (Calamagrostis 'Karl Foerster' and others).
 - f. Pedestrian lighting is provided between the fence and the sidewalk: Hess America Agena 720 pole mounted luminaire, 13' height pole, 150 Watt Metal Halide (or approved equal). (As shown on the perspective drawings.)
3. E. Huron entry:
- a. Special paving: Hanover concrete pavers, a mix of 2' x 3' and 1' x 2' units, in bands of running bond pattern.
 - b. Bench: Landscape Forms Metro 40 – 'Rest'-7' aluminum w/ back (or approved equal).
 - c. Six class C bike parking spaces: Landscape Forms Metro 40 – 'Ride'-aluminum (or approved equal).
 - d. Detailed landscaping adjacent to the building and in the "lawn extension" area between the public sidewalk and the curb including shrubs, perennials, and a street tree.



JOB No.	11054
REVISIONS	
REV.	DATE

DATE	7/22/11
SHEET	1 of 1
DESIGNER	

VARSITY ANN ARBOR
 SITE PLAN
 PAVER PLAN

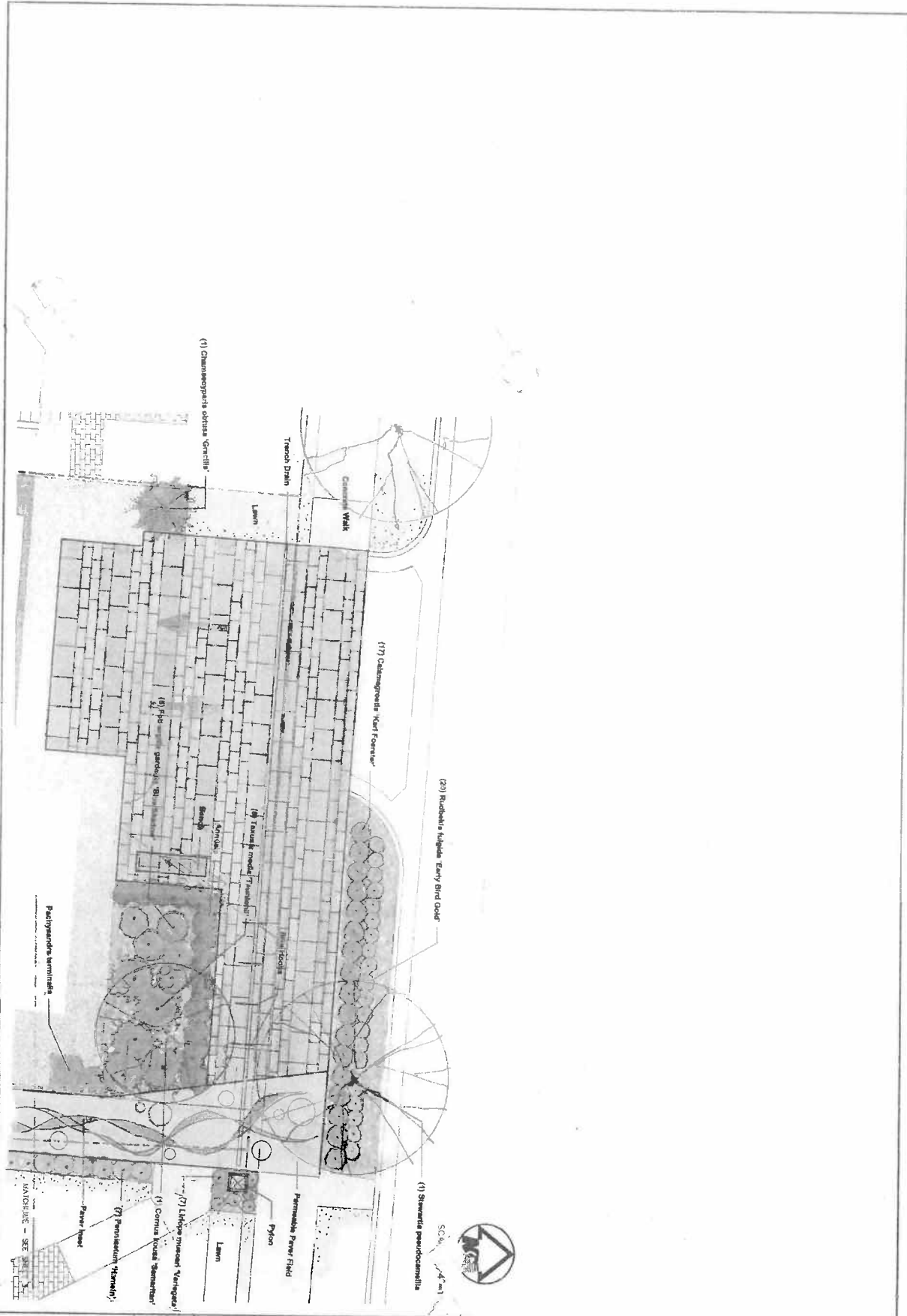
CLIENT
 MKC ARCHITECTURE
 1635 CONNECTICUT AVE., NW, SUITE 300
 WASHINGTON, DC 20036
 BOB KANE
 PH: (202) 857-8100

MIDWESTERN CONSULTING

2015 Plaza Drive
 Ann Arbor, Michigan 48108
 Phone: 734.995.0200
 Fax: 734.995.0999

Civil, Environmental and
 Transportation Engineers
 Planners, Surveyors
 Landscape Architects

SCALE: 1/4"=1'
 MATCHLINE - SEE SHEET 2



JOB No:	11054	DATE:	7/28/11
REV. DATE:		SHEET:	3 OF 3
DESIGNER:		CHECKED:	

3

VARSITY ANN ARBOR
SITE PLAN
PAVER PLAN

CLIENT
WDC ARCHITECTURE
1025 CONNECTICUT AVE., NW, SUITE 300
WASHINGTON, DC 20036
BOB KEANE
PH: (202) 857-8300

MIDWESTERN CONSULTING



Civil, Environmental and Transportation Engineers
Planners, Surveyors
Landscape Architects

3815 Plaza Drive
Ann Arbor, Michigan 48106
Phone: 734.965.0200
Fax: 734.965.0969