

**SUBDIVISION IMPROVEMENTS AND
BOND PROCEEDS DISBURSEMENT AGREEMENT
BETWEEN THE CITY OF SANTA ROSA
AND
SECTARIAN PROPERTIES, INC.
A DELAWARE CORPORATION**

RE: VILLAGE GARDENS – A PLANNED UNIT DEVELOPMENT

THIS AGREEMENT is made and entered into as of the ____ day of _____, 2018 (“**Effective Date**”), by and between THE CITY OF SANTA ROSA, a municipal corporation (“**City**”), and SECTARIAN PROPERTIES, INC., a Delaware corporation (“**Sectarian**”).

BACKGROUND

A. The final map for Lots 1 through 110 and the Common Area of Village Gardens – A Planned Unit Development (the “**Development**”), entitled “Final Map of Village Gardens,” was filed on August 30, 2005 in the Official Records of Sonoma County, California in Book 680 of Maps at Pages 19-26, inclusive, (the “**Final Map**”).

B. The City and Village Gardens Investors, L.P. (also known as Christopherson Homes, Inc.) (the “**Original Owner**”) entered into a Subdivision Improvements Agreement, dated July 26, 2005 (the “**SIA**”), pursuant to which Original Owner agreed to complete, install and guarantee for a limited time certain public improvements as shown on the plans on file with and approved by the City for the Development, and in order to secure the obligations set forth in the SIA, the Original Owner deposited with the City bonds issued by Insurance Company of the West (“**ICW**”).

C. The Original Owner subsequently became insolvent and failed to complete the required public improvements and the City, as entitled in the SIA, pursued its rights and remedies against ICW as the surety.

D. In October of 2011, as an effort to settle pending litigation by City against ICW, ICW and City entered into an agreement (the “**Takeover Agreement**”) wherein ICW agreed to complete, install and guarantee for a limited time certain improvements as identified therein in accordance with City’s Standards and approved plans and specifications for City File No. 2005-081 (the “**Original Improvements**”).

E. On and around March 12, 2012, FEDCO Construction, Inc., an ICW contractor, in performing work pursuant to the Takeover Agreement, excavated, removed, and transported onto the Development site approximately 2,000 cubic yards of soils which was found to contain unacceptable levels of TPH-mo (commonly known as “motor oil”) (the “**Stockpile**”).

F. On January 6, 2015, Blue Mountain Homes, LLC purchased the Development from the bankruptcy estate of Christopherson Homes, Inc. and thereafter conveyed its interest in the Development to Sectarian.

G. On or about April 28, 2015, ICW and City entered into an amendment of the Takeover Agreement wherein ICW and City agreed to amend the scope of work to be completed by ICW (the “**Amended Takeover Agreement**”), including agreement by ICW to remove all Stockpile from the Development and to complete certain other public and private improvements with respect to the Development in exchange for deferral and/or waiver of certain improvement items contained in the Takeover Agreement (the “**Revised Improvements**”).

H. On or about June 2, 2016, ICW determined that it would not proceed with the work under the Amended Takeover Agreement and tendered to City the amount of \$1,186,340.96 in accordance with California Civil Code section 2839 in order to cover the cost of completing the Revised Improvements.

I. City has an interest in Sectarian completing the Development as City lacks readily available resources, such as labor and materials, to complete the Improvements (for purposes of this Agreement, the “**Improvements**” shall mean and include the Original Improvements plus the reconstruction of Boyd Street, to its full width, along the entire project boundary from Sebastopol Road, south to approximately the Earl Street intersection and removal of the Stockpile) in an expeditious manner to allow the Development to move forward.

J. Sectarian has an interest in assuming the obligation to complete the Improvements, as Sectarian cannot build and complete the Development until the Improvements are completed.

K. This Agreement sets forth the terms and conditions by which Sectarian will complete the Improvements and provide surety acceptable to the City to guarantee faithful performance of its obligations under this Agreement.

AGREEMENT

Now therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Sectarian agree as follows:

1. **Construction of Improvements; Title to Improvements.** Sectarian hereby agrees to complete and install the Improvements as defined above. All of the Improvements, except for areas identified as common areas within the Development, shall become the sole and exclusive property of the City upon final acceptance of the Improvements by the City.

2. **Time of Completion.** Subject to the provisions of Section 1 above, all Improvements shall be completed within eighteen (18) months from the date of execution of this Agreement, provided, however, that Sectarian shall have the right to request extensions of time for completion of the Improvements, which shall be reasonably granted by City in a manner consistent with City’s practice pertaining to subdivision improvement agreements generally, provided that in no event shall the Improvements be completed more than thirty (30) months from the execution of this Agreement.

Notwithstanding the foregoing, City recognizes that time is of the essence with respect to the work to be performed under this Agreement and shall not intentionally delay completion or acceptance of the Improvements beyond thirty (30) months.

3. **Inspections; Manner of Completion.** The Improvements shall be constructed under the inspection of and subject to the approval of the City Engineer – Director of Public Works. The Improvements shall not be deemed completed until accepted by the City Engineer – Director of Public Works and shall be free and clear of all monetary liens and encumbrances.

4. **Release and Indemnity.** Sectarian does hereby release and discharge City, its officers and employees from any and all liability, claims or demands arising out of Sectarian's construction of the Development, including, but not limited to, the design, construction and maintenance by Sectarian of the Improvements, and any claim of negligent review, approval or inspection by City. Should City be joined or named as a party in any legal proceeding or other action to which the foregoing sentence applies, Sectarian shall indemnify, defend and hold harmless City against such claim except to the extent any damages are determined by the trier of fact to have been caused by the negligent acts or willful misconduct of City.

5. **Insurance.** Sectarian shall maintain liability insurance in an amount not less than Three Hundred Thousand Dollars (\$300,000) per person and One Million Dollars (\$1,000,000) per incident and liability insurance for property in an amount not less than Five Hundred Thousand Dollars (\$500,000). Such policies shall name City, its officers, agents and employees as additional insureds. Upon written request, a current certificate of insurance will be furnished to City evidencing the existence of the required insurance coverage. The contractors constructing the Improvements shall be responsible for the workers' compensation insurance and all employee taxes and employee benefits required by law.

6. **Security.** Prior to issuance of any building permits for the residences to be constructed within the Development, Sectarian shall deposit an amount equal to Three Million Thirty One Thousand Eight Hundred Ninety Dollars and Seventy-Seven Cents (\$3,031,890.77) (the "Security Deposit") with a bank mutually acceptable to the parties ("Escrow Agent") for the purpose of providing security in favor of the City for Sectarian's obligations to complete the Improvements as set forth in this Agreement. The Security Deposit shall be held by Escrow Agent for the benefit of the City, and any release of funds shall require the prior written approval of the Director of Planning and Economic Development, or his designee. The Security Deposit shall be security for Sectarian's full and faithful performance for construction of the Improvements to the satisfaction and acceptance of the City. The Security Deposit may be subject to the terms and conditions of an escrow holder's agreement as approved by the parties to the extent reasonably required by Escrow Agent. Sectarian shall be entitled to the release of forty two percent (42%) of the Security Deposit upon the successful completion and acceptance of the Improvements by the City hereunder, and sixty (60) days following the filing of the Notice of

Completion for the Improvements once accepted by the City, then Sectarian shall be entitled to the remaining amount of the Security Deposit less Five Hundred and Five Thousand Three Hundred Fifteen Dollars and Thirteen Cents (\$505,315.13) which shall remain with the Escrow Agent to secure Sectarian's warranty to the City for the Improvements for a period of one year from the date of final acceptance of the Improvements by the City. The City agrees that upon final acceptance of the Improvements, and again upon sixty (60) days from the filing of the Notice of Completion for the Improvements once accepted by the City, the City will provide a letter for release of the Security Deposit amount to the Escrow Agent as set forth herein. The City agrees that upon expiration of the one-year warranty period, the City will release the remainder of the Security Deposit, less any amounts necessary to perform Sectarian's obligations with respect to the Improvements hereunder.

In the event that Sectarian fails to progress with construction of the Improvements as required hereunder, and following thirty (30) days' written notice by the City documenting such failure, the City may proceed against the Security Deposit without the need to first pursue formal legal remedies. The parties hereto acknowledge that the Security Deposit is being provided by Sectarian in lieu of bonds that would have otherwise been required by the City as security for Sectarian's performance hereunder. In the event that Sectarian and City are unable to locate a bank to act as the Escrow Agent hereunder, then Sectarian shall have the option of providing bonds as security for Sectarian's performance under this Agreement, provided the bonds are consistent with City's standards for provision of subdivision improvement bonds.

7. **Bond Proceeds.** The City hereby agrees that it shall pay the amount that the City received from ICW, minus Fifty Thousand Dollars (\$50,000) to cover the City's costs associated with the recovery of said proceeds and the negotiation and approval of this Agreement, in the full amount equal to \$1,136,340.96 to Sectarian upon (1) the final approval of this Agreement by the Santa Rosa City Council, (2) full execution of this Agreement by all parties, and (3) deposit of the Security Deposit in favor of the City as set forth above, provided, however, that this amount shall be deposited by the City with the Escrow Agent to be used as some of the Security Deposit in accordance with Section 6 above. In the event that Sectarian elects to provide bonds instead of the cash Security Deposit as described above, then the Parties will negotiate in good faith regarding the timing of the release of funds to assure the full completion of the Improvements.

8. **No Agency Created.** Sectarian is an independent contractor and is not an agent of the City. No party to this Agreement may in any way contract on behalf of, or in the name of, the other party to the Agreement. Any attempted violation of the provisions of this Section shall confer no rights, and shall be void.

9. **No Third-Party Beneficiaries.** It is the intention of the parties hereto that no person or entity shall be deemed a third-party beneficiary of this Agreement.

10. **Miscellaneous Provisions**

10.1 **Further Assurances.** Each of the Parties hereto shall, and shall cause their respective agents and affiliates to, execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the conduct and transactions contemplated hereby.

10.2 **No Waiver.** The waiver by any party of any breach or violation of any term, covenant or condition of this Agreement or of any provision, ordinance or law shall not be deemed to be a waiver of such term, covenant, condition, ordinance or law or of any subsequent breach or violation of the same or of any other terms, covenant, condition, ordinance or law, and shall be in a writing executed by the waiving party.

10.3 **Severability.** The provisions of this Agreement are severable. Invalidation of any provision by law, judgment or court order shall not affect the validity of any other provision. If any part of this Agreement is determined to be unenforceable, the remainder thereof shall be enforced in such a manner so as to achieve the intent of the Agreement.

10.4 **Notices.** Formal notices, demands, and communications between the City and Sectarian shall be sufficiently given if, and shall not be given unless, dispatched by certified mail, postage prepaid, return receipt requested, or sent by express delivery service or overnight courier service, to the City and Sectarian as follows, or at such other address as the parties may designate in writing from time to time:

City: City of Santa Rosa,
69 Stony Circle
Santa Rosa, CA 95401
Engineering Development Services
Attn: Director of Public Works

With Copy to: City of Santa Rosa
City Hall, Room #8
100 Santa Rosa Avenue
Santa Rosa, California 95404
Attn: City Attorney

Sectarian: Sectarian Properties, Inc.
707 Aldridge Road
Vacaville, CA 95688
Attn: Brock Rose

With a copy to: Blue Mountain Homes, LLC
707 Aldridge Road, Suite B
Vacaville, CA 95688
Attn: Legal Department

10.5 **Amendments.** This Agreement may not be amended, changed, modified, altered or terminated except as permitted in this Agreement. This Agreement shall be amended only by a written instrument executed by the parties hereto.

10.6 **Force Majeure.** If Sectarian is delayed or prevented from the performance of any act required under this Agreement, by reason of natural disasters, strikes, lockouts, labor troubles, inability to procure materials, restrictive governmental laws or regulations or other cause without fault and beyond the control of Sectarian (financial inability excepted), performance of the act shall be excused for the period of the delay and the period for the performance of the act shall be extended for a period equivalent to the period of the delay.

10.7 **Two Corporate Signatures.** Due to recent interpretations of California Corporations Code section 313, this Agreement must be **signed by two (2) corporate officers** of Sectarian. One signature must be from the “operational” category of officers: chairman, president, or vice-president and one signature must be from the “financial” category of officers: secretary, assistant secretary, chief financial officer or assistant treasurer. The title of the officer must be listed under his or her signature.

10.8 **Attorneys’ Fees.** Each party shall bear its own attorneys’ fees with respect to the drafting of this Agreement. Should suit or action be instituted to enforce any provision of this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorneys’ fees, including expert witness fees, in connection with such enforcement proceedings.

10.9 **Governing Law/Venue.** The law of the State of California governs this Agreement, its interpretation and enforcement. The parties agree to the exclusive jurisdiction and venue in any dispute in the Sonoma County Superior Court.

[Signatures on Next Page]

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed and sealed by their respective, duly authorized representatives, as of the day and year written below.

CITY OF SANTA ROSA

Dated: _____, 2018

By: CHRIS COURSEY
Its: Mayor

**SECTARIAN PROPERTIES, INC.,
a Delaware corporation**

Dated: _____, 2018

By: Steve Brown
Its: President

Dated: _____, 2018

By: Sandra Grouf
Its: Treasurer

APPROVED AS TO FORM:

By: _____
City Attorney

State of California)
County of Sonoma)

On _____ before me, _____

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

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

WITNESS my hand and official seal,

Signature _____ (Seal)

State of California)
County of Sonoma)

On _____ before me, _____

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

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

WITNESS my hand and official seal,

Signature _____ (Seal)

State of California)
County of Sonoma)

On _____ before me, _____

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

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

WITNESS my hand and official seal,

Signature _____ (Seal)