RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:

City of Santa Rosa Recreation and Parks Department 55 Stony Point Road Santa Rosa, CA 95401

AGREEMENT TO ALLOW USE OF YOUTH PARK FOR EMERGENCY VEHICLE ACCESS TO FOX HOLLOW SUBDIVISION

(EMERGENCY VEHICLE ACCESS)

THIS AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 2017 by City Ventures Homebuilding, LLC, a Delaware limited liability company, ("Subdivider"), and the City of Santa Rosa, a municipal corporation, on the other ("City").

RECITALS:

- A. Subdivider is the current owner of that certain real property in the City of Santa Rosa, commonly known as the Fox Hollow Project, located at 1615 Fulton Road, Sonoma County APN 157-020-009 and more particularly described on Exhibit A attached hereto and incorporated by reference ("Project").
- B. On December 20, 2008, a tentative subdivision map creating 178 parcels was approved by the City ("2008 approval"). The 2008 approval authorized 178 residential homes with vehicle ingress, egress, and access at Jenes Lane and Alegra Place. Subdivider has subsequently submitted an application with the City to modify the 2008 approval to reduce the residential parcels/lots to 143 parcels/lots with vehicular ingress, egress, and access to Jenes Lane and Alegra Place. Santa Rosa Fire Code vehicular access requirements have changed since the 2008 approval and as a result of such changes, the Jenes Lane and Alegra Place access points are not considered by the City to be adequate vehicular egress points for the Project in the case of an emergency, and as such the subsequent approval of the Project by the City on August 27, 2015 required an emergency vehicle access through Youth Community Park.

- C. Subdivider has prepared conceptual plans for an emergency vehicle access through Youth Community Park to satisfy the Santa Rosa Fire Code emergency vehicular access requirement for the Project.
- D. The emergency vehicle access through Youth Community Park is generally depicted on Exhibit B.
- E. Santa Rosa Fire Department has reviewed and approved the proposal for emergency vehicular access for the Project, including the emergency vehicle egress through Youth Community Park.
- F. The emergency vehicle access (EVA) point is temporary in nature due to the planned and approved extension of Country Manor Drive to the south, which is part of the approved County Manor Subdivision. Subdivider does not own or control the Country Manor Subdivision and has no control over the timing of its completion. Once Country Manor is extended south, the (EVA) for the Project will no longer be required by the City or the Santa Rosa Fire Department.
- G. The City agrees to allow an EVA through Youth Community Park for the benefit of the residents of the Fox Hollow Subdivision Project shown in the location depicted on Exhibit B, on the terms and conditions set forth in this Agreement.
- H. In accordance with this Agreement, Subdivider agrees to comply with all obligations applicable to the improvements referenced herein to Youth Community Park, including all required improvements shown in Exhibit C in order to receive a final building permit if required, and written approval from the Director of Recreation and Parks for the Project. Any ancillary improvements that are required to secure building permits for the improvements described on Exhibit C shall also be the responsibility of the Subdivider. The anticipated improvements to Youth Community Park are described on Exhibit C (collectively "Park Improvements").

AGREEMENT

Based upon the Recitals noted above, which are incorporated into this Agreement by this reference, and for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Subdivider Obligations for Park Improvements.

- a. Pursuant to this Agreement and upon recording of the Final Map for the Project, the Subdivider shall be obligated to complete the Park Improvements described and depicted on Exhibit C attached hereto or pay the "Park Improvement Payment" described below.
- b. Prior to issuance of any building permit by the City for the Project, Subdivider shall prepare construction plans and specifications (collectively the "Plans and Specifications") for the Park Improvements in substantial conformance with City requirements

and the satisfaction of the Director of Recreation and Parks. The Subdivider may satisfy this requirement in part to the extent that some of the Park Improvements are included in the public improvement plans for the Project as approved by the City, provided that Subdivider must still provide additional proposed plans and specifications for any components of the Park Improvements not contained in said public improvement plans.

- c. Upon completion of the Park Improvements in accordance with the Plans and Specifications, the City shall accept the Park Improvements and all maintenance obligations of such Park Improvements (as such obligations may be assigned by the City to the City's Recreation and Parks Department).
- d. Subdivider shall use best efforts to complete the Park Improvements as shown in Exhibits B and C prior to issuance of the fiftieth final inspection for a residence to be constructed on the Project. If, however, the Subdivider decides not to complete certain of the minor Park Improvement (which does not include those improvements identified below), or if the minor Park Improvements are not complete prior to issuance of fiftieth final inspection for a residence, Subdivider agrees to pay One Hundred Thousand dollars (\$100,000) ("Park Improvement Payment") to the City of Santa Rosa Recreation and Parks Department. Upon receipt of the Park Improvement Payment by the City or its Recreation and Parks Department, the Subdivider's obligation to complete the minor Park Improvements shall be deemed satisfied in full and Subdivider will have no further obligations under this Agreement. The foregoing does not alleviate Subdivider's obligation to construct the emergency vehicle access route, pedestrian pathway connections from the subdivision to the park, split rail fencing and the park monument sign as shown on the Improvement Plans, all of which shall not be construed as minor and must be completed to the satisfaction of the Parks and Recreation Department prior to the fiftieth final building inspection for any residence within the Project.
- 2. <u>Location of EVA</u>. The City does hereby agree, for the benefit of the Project and to all future owners of property within the Project, to allow and maintain portions of the Youth Community Park described and depicted on <u>Exhibit D</u> (Location of Emergency Vehicular Access) attached hereto and incorporated herein by reference for EVA as provided herein until such time as an alternative is accepted by the City Fire Department.

3. Indemnity/Insurance.

a. Subdivider shall indemnify, defend and hold City and its elected and appointed representatives, officers, agents and employees harmless from and against any and all liability of the City including but not limited to costs and reasonable attorney's fees for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses, costs, interest, defense costs, and expert witness fees related to the Park Improvements constructed by Subdivider or any of its agents, contractors or representatives (collectively, "Claims"), except to the extent the Claims arise out of or are related to the sole active negligence or willful misconduct of the City, its officers, agents, employees or contractors.

- Subdivider shall, prior to Subdivider starting the Park Improvements. b. provide to the City evidence of, and maintain in full force and effect at all times during construction of the Park Improvements by Subdivider, the insurance coverage described in, and in accordance with, Exhibit E, "Insurance Requirements" (attached hereto and hereby incorporated and made part of the Agreement by this reference). Such insurance may be provided through blanket policies of insurance that cover the Project and other projects and activities of Subdivider. Failure by Subdivider to (i) maintain or renew coverage, (ii) provide the City notice of any changes, modifications, or reductions in coverage, or (iii) provide evidence of renewal, may be treated by the City as a material breach of this Agreement by Subdivider, whereas the City shall be entitled to all rights and remedies at law or in equity. Notwithstanding the foregoing, any failure by Subdivider to maintain required insurance coverage shall not excuse or alleviate Subdivider from any of its other duties or obligations under this Agreement. In the event Subdivider retains or utilizes any contractors or consultants in the design and construction of the Park Improvements under this Agreement, Subdivider shall assure that any such subcontractor shall maintain all of the insurance coverage requirements set forth in the Insurance Requirements on Exhibit "E" or such subcontractor may be named as an additional insured under the insurance coverage maintained by the Subdivider.
- 4. <u>Status of Subdivider</u>. The parties intend that Subdivider, in performing the Park Improvements, shall act as an independent contractor and shall have the control of the work and the manner in which it is performed. Subdivider is not considered an agent or employee of City and is not entitled to participate in any pension plan, insurance, bonus, or similar benefits City provides to its employees.
- 5. Compliance with Laws. Subdivider shall perform, or assure performance of, all the work described herein is in substantial compliance with applicable federal, state (CBC 2013) and local laws, rules, regulations, and ordinances, including but not limited to, the 2010 version of the, Americans With Disabilities Act (ADA) Standards for Accessible Design including regulations and guidelines issued pursuant to the ADA. Subdivider is subject to the California Labor Code Section, including California Prevailing Wage Law and all contractors, subcontractors and workers employed must be registered with the state Department of Industrial Relations (DIR) and the Subdivider must also be registered with the DIR within five days of awarding the construction contract, by completing the PWC-100 form per Labor Code section 1773.3.

6. General Provisions.

a. <u>Notice</u>. Any notice, demand, or delivery by either party to the other may be given by personal delivery in writing, by first class mail, postage prepaid, or by a nationally recognized overnight delivery service, such as Federal Express, UPS or USPS Priority Mail. Said notices, demands or deliveries and shall be deemed delivered (i) in the case of personal delivery, (ii) in the case of first class mail, seventy-two (72) hours following deposit in the United States mail and in the case of overnight delivery, twenty-four (24) hours following deposit with a nationally recognized overnight service. Notices shall be addressed as set forth below, but each party may change is address by written notice in accordance with this paragraph.

To Subdivider: City Ventures Homebuilding, LLC

Attn: Charity Wagner, Development Director

444 Spear Street, Suite 200 San Francisco, CA 94105

To City: City of Santa Rosa

Department of Recreation & Parks

Attn: Director of Recreation & Parks

55 Stony Point Road

Santa Rosa, California 95401

With Copy To: Santa Rosa City Attorney's Office

100 Santa Rosa Ave, Room 8 Santa Rosa, California 95404

- b. <u>Integration</u>. This Agreement contains all agreements of the parties with respect to as to the matters contemplated herein. No prior agreement or understanding pertaining to any such matters shall be effective. This Agreement may be modified in writing only, signed by the parties.
- c. <u>Governing Law</u>. This Agreement has been executed and delivered in, and is to be construed, enforced, and governed according to and by the laws of the State of California.
- d. <u>Binding on Successors/Assignment</u>. This Agreement is binding on the heirs, successors and assigns of the parties. Subdivider may assign Subdivider's rights and obligation under this Agreement with the prior written consent of the City. Upon such assignment, Subdivider shall be released from and have no further obligations under this Agreement only if assignee is acceptable to City and has executed an assumption of all obligations hereunder.
- e. <u>Counterparts</u>. This Agreement may be signed by the parties in different counterparts and the signature pages combined shall create a document binding on all parties.
- f. <u>Headings</u>. Any headings or captions used herein are inserted only as a matter of convenience and for reference only and in no way define, limit or describe the scope of this Agreement nor the intent of any of the provisions hereof.
- g. Waiver. A waiver by one party of the performance of any covenant, condition or promise of the other party shall not invalidate this Agreement, nor shall it be considered to be a

waiver by such party of any other covenant, condition or promise contained herein. The waiver of either or both parties of the time for performing any act shall not be construed as a waiver of any other act required to be performed at a later date.

- h. Recording. This Agreement shall be recorded in the Official Records of Sonoma County, California. The parties hereto agree that at such time as the EVA is no longer required by the City due to alternate access point being provided, that both parties shall execute a termination and release of this Agreement in a form that can be recorded so as to eliminate the Agreement from the public records going forward.
- i. Authority; Signatures Required for Corporations. Subdivider hereby represents and warrants to City that all entities comprising Subdivider are (a) duly organized and validly existing, and in good standing under the laws of the state of formation, (b) have the power and authority and the legal right to conduct the business in which it is currently engaged within the State of California, and (c) have all requisite power and authority and the legal right to consummate the transactions contemplated in this Agreement. Subdivider hereby further represents and warrants that this Agreement has been duly authorized, and when executed by the signatory or signatories listed below, shall constitute a valid agreement binding on all parties comprising Subdivider in accordance with the terms hereof.

If this Agreement is entered into by a corporation, unless otherwise authorized by an adopted resolution of said corporation, it shall be signed by two corporate officers, one from each of the following two groups: a) the chairman of the board, president or any vice-president; b) the secretary, any assistant secretary, chief financial officer, or any assistant treasurer. The title of the corporate officer shall be listed under the signature.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

SUBDIVIDER:	CITY OF SANTA ROSA, a California charter city
City Ventures Homebuilding, LLC By: Title: Phil Kerr, CED- Homebuilding	By:
By: Title:_ Goot Homan, CFO	ATTEST: APPROVED AS TO FORM: Santa Rosa City Attorney

ATTACHMENTS:

Notary acknowledgments

Attachment 1 – Insurance Requirements

Exhibit A – Fox Hollow Description

Exhibit B – Emergency Vehicle Access

Exhibit C -- Park Improvements

Exhibit D – Location of Emergency Vehicular Access

ACKNOWLEDGMENT

	=
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.	
State of California	
County of Ovange ss.	
On $1/11/17$ before me, $M(M)$	relle Bohannon, a enva Scott Hornar
Notary Public, personally appeared Phille	en a Scott Homan
who proved to me on the basis of satisfactory evidename(s) is/are subscribed to the within instrument he/she/they executed the same in his/her/their authoris/her/their signature(s) on the instrument the persowhich the person(s) acted, executed the instrument.	and acknowledged to me that orized capacity(ies), and that by
I certify under PENALTY OF PERJURY under the laws	s of the State of California that the
foregoing paragraph is true and correct.	MICHELL E DOMANION
WITNERS my hand and official spal.	MICHELLE BOHANNON Commission # 2059807 Notary Public - California Orange County My Comm. Expires Mar 26, 2018
oignature V	(Seal)

ATTACHMENT ONE INSURANCE REQUIREMENTS FOR GENERAL SERVICES AGREEMENTS

A. Insurance Policies: Contractor shall, at all times during the term of this Agreement, maintain and keep in full force and effect, the following policies of insurance with minimum coverage as indicated below and issued by insurers with AM Best ratings of no less than A-:VI or otherwise acceptable to the City.

	Insurance	Minimum Coverage Limits	Additional Coverage Requirements
1.	Commercial general liability	\$ 1 million per occurrence \$ 2 million aggregate	Coverage must be at least as broad as ISO CG 00 01 and must include completed operations coverage. If insurance applies separately to a project/location, aggregate may be equal to per occurrence amount. Coverage may be met by a combination of primary and umbrella or excess insurance but umbrella and excess shall provide coverage at least as broad as specified for underlying coverage. Coverage shall not exclude subsidence.
2.	Business auto coverage	\$ 1 million	ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, then hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$ 1 million per accident for bodily injury and property damage.
3.	Workers' compensation and employer's liability	\$ 1 million	As required by the State of California, with Statutory Limits and Employer's Liability Insurance with limit of no less than \$ 1 million per accident for bodily injury or disease. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.
4.	Pollution Liability	(contact Risk Mgmt for limits and whether pollution insurance required – if not required, remove this requirement)	If the work involves lead-based paint or asbestos identification/remediation, the policy must not contain lead-based paint or asbestos exclusions. If the work involves mold identification, the policy must not contain mold exclusion and the definition of "Pollution" in the policy must include microbial matter, including mold.

B. Endorsements:

- 1. All policies shall provide or be endorsed to provide that coverage shall not be canceled by either party, except after prior written notice has been provided to the entity in accordance with the policy provisions.
- 2. Liability, umbrella and excess policies shall provide or be endorsed to provide the following:
 - a. For any claims related to this project, Contractor's insurance coverage shall be primary and any insurance or self-insurance maintained by City shall be excess of the Contractor's insurance and shall not contribute with it; and,
 - b. The City of Santa Rosa, its officers, agents, employees and volunteers are to be covered as additional insureds on the CGL policy. General liability coverage can be provided in the form of an endorsement to Contractor's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used.
- C. Verification of Coverage and Certificates of Insurance: Contractor shall furnish City with original certificates and endorsements effecting coverage required above. Certificates and endorsements shall make reference to policy numbers. All certificates and endorsements are to be received and approved by the City before work commences and must be in effect for the duration of the Agreement. The City reserves the right to require complete copies of all required policies and endorsements.

D. Other Insurance Provisions:

- 1. No policy required by this Agreement shall prohibit Contractor from waiving any right of recovery prior to loss. Contractor hereby waives such right with regard to the indemnitees.
- 2. All insurance coverage amounts provided by Contractor and available or applicable to this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement limits the application of such insurance coverage. Defense costs must be paid in addition to coverage amounts.
- 3. Policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either Contractor or City. Self-insured retentions above \$10,000 must be approved by City. At City's option, Contractor may be required to provide financial guarantees.
- 4. Sole Proprietors must provide a representation of their Workers' Compensation Insurance exempt status.
- 5. City reserves the right to modify these insurance requirements while this Agreement is in effect, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

EXHIBIT "A"

Real property in the City of Santa Rosa, County of Sonoma, State of California, described as follows:

PARCEL ONE:

THE NORTH HALF OF THE NORTH HALF OF THE NORTHWEST QUARTER OF SECTION 17, TOWNSHIP 7 NORTH, RANGE 8 WEST, MOUNT DIABLO BASE & MERIDIAN.

EXCEPTING THEREFROM ALL THAT PORTION DESCRIBED IN THE DEED TO THE SONOMA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, DATED JANUARY 13, 1964 AND RECORDED MARCH 9, 1964 IN BOOK 2027 OF SONOMA COUNTY OFFICIAL RECORDS, PAGE 839, AS SERIAL NO. H-80209.

ALSO EXCEPTING THEREFROM ALL THAT PORTION DESCRIBED IN THE DEED TO THE COUNTY OF SONOMA, DATED MARCH 7, 1966 AND RECORDED MARCH 25, 1966 IN BOOK 2196 OF SONOMA COUNTY OFFICIAL RECORDS, PAGE 956, AS SERIAL NO. 3-89708.

ALSO EXCEPTING THEREFROM ALL THAT PORTION DESCRIBED IN THE DEED TO THE CITY OF SANTA ROSA, RECORDED FEBRUARY 11, 1980 AS DOCUMENT NO. 80-7957 OF OFFICIAL RECORDS OF SONOMA COUNTY.

FURTHER EXCEPTING THEREFROM THAT PORTION LYING WESTERLY OF THE WESTERLY LINE OF THE SONOMA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, DESCRIBED IN THE DEED DATED JANUARY 13, 1964 AND RECORDED MARCH 9, 1964 IN BOOK 2027 OF SONOMA COUNTY OFFICIAL RECORDS, PAGE 839, AS SERIAL NO. H-80209.

APN: 157-020-009-000

EXHIBIT "B"

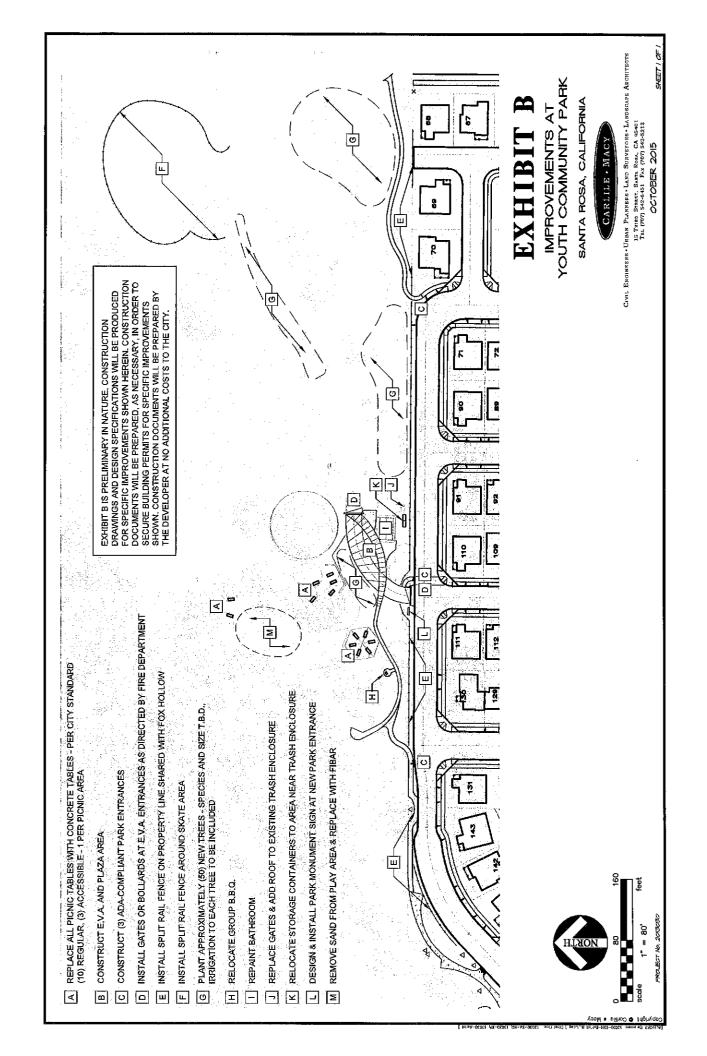


EXHIBIT "C"

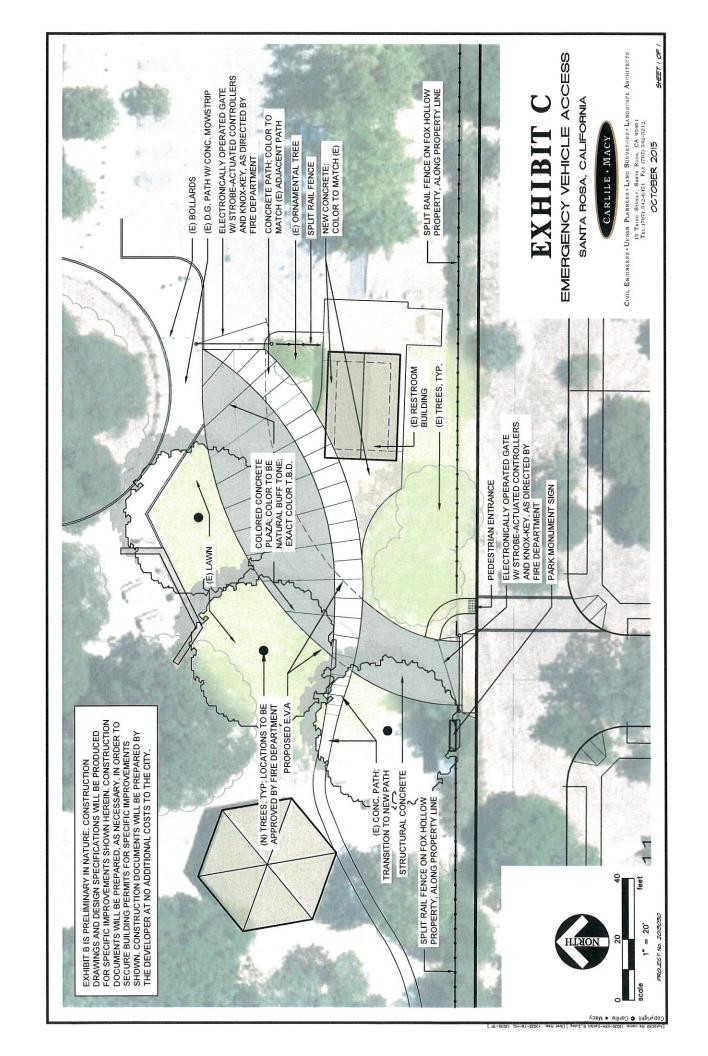


EXHIBIT "D"

LOCATION OF EMERGENCY VEHICLE ACCESS

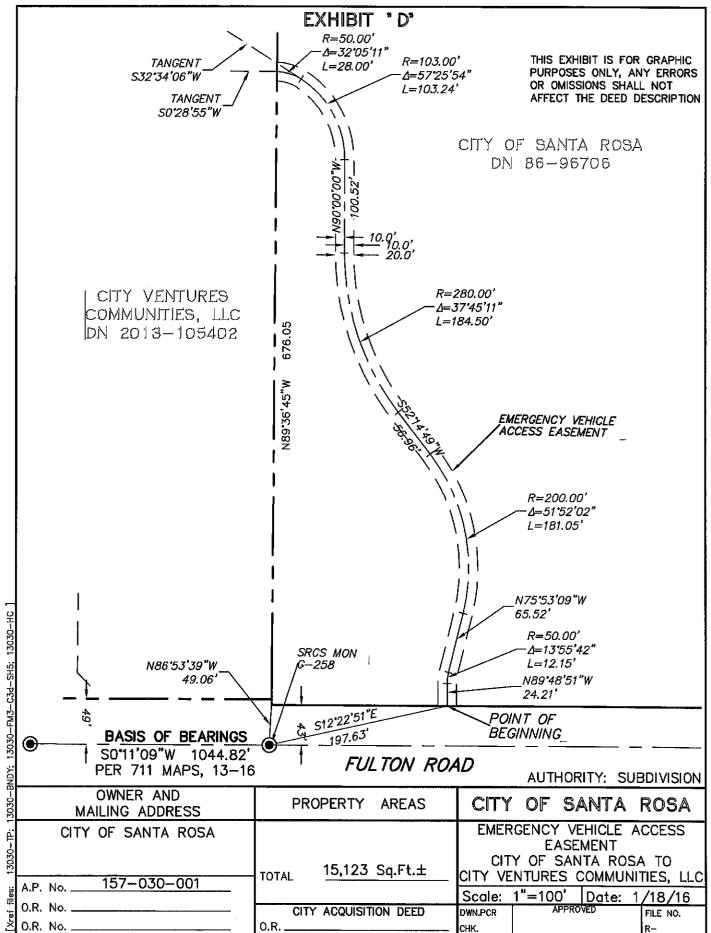
Lying within the City of Santa Rosa, County of Sonoma, State of California, and being a portion of the lands of the City of Santa Rosa as described by deed filed under document number 86-096706, Sonoma County Records and more particularly described as follows:

Beginning at a point on the westerly Right of Way line of said Fulton Road from which City of Santa Rosa monument "G-258" marking the centerline of Fulton Road bears South 12°22'51" East, 197.63 feet, said monument being shown on that map of Courtney Estates Subdivision recorded in Book 711 of Maps, pages 13-16, Sonoma County Records; thence leaving said westerly Right of Way, North 89°48'51" West, 24.21 feet; thence along a curve to the right, concave northerly, having a radius of 50.00', through a central angle of 13°55'42", an arc distance of 12.15 feet; thence North 75°53'09" West, 65.52 feet; thence along a curve to the right, concave southerly, having a radius of 200.00 feet; through a central angle of 51°52'02", an arc distance of 181.05 feet; thence South 52°14'49" West, 56.96 feet; thence along a curve to the right, concave northwesterly, having a radius of 280.00 feet, through a central angle of 37°45'11", an arc distance of 184.50 feet; thence North 90°00'00" West, 100.52 feet; thence along curve to the left, concave southeasterly, having a radius of 103.00 feet, through a central angle of 57°25'54", an arc distance of 103.24 feet to the beginning of a compound curve, concave southeasterly, having a radius of 50.00 feet, through a central angle of 32°05'11", an arc distance of 28.00 feet to the southerly line of said Lands of the City of Santa Rosa.

The sidelines of said strip shall lengthen or shorten as to intersect with the westerly Right of Way of Fulton Road and the southerly line of said lands of the City of Santa Rosa.

Containing 15,123 sq. ft. more or less.

Being a portion of APN 157-030-001.



7/20/2016 2:39:41 PM Pete Crudo Q:\2013\2013030\Drawings\Survey\Plats\13030—RSHT—EVA—1.dwg