

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

**City of Santa Rosa
Director of Recreation & Parks
415 Steele Lane
Santa Rosa, California 95403**

**AMENDMENT TO AGREEMENT FOR CONSTRUCTION
OF PARK IMPROVEMENTS AND PLAYFIELD RENOVATION
AND ESTABLISHING PARK FEE CREDITS FOR DEDICATION OF
PARKLAND AND CONSTRUCTION OF IMPROVEMENT**

NORTH VILLAGE PROJECTS

This Amendment, ("this Amendment"), to the Agreement for Construction of Park Improvements and Playfield Renovation and Establishing Park Fee Credits for Dedication of Parkland and Construction of Improvement, North Village Projects, ("the Agreement"), is made and entered into as of April 24, 2007 between Fulton Road Investors LLC ("Subdivider") and the City of Santa Rosa ("City"), the parties to the Agreement.

RECITALS

A. The Agreement was entered into based on the premise and the parties intent and assumption that all park acquisition and development fees that would otherwise be paid directly to City by the developers of the North Village I and II, Woodbridge, and Montage I and II subdivisions, ("the developers"), would instead be paid or credited, (through private arrangements to which the City was not a party), by the developers to Subdivider, which payments or credits Subdivider would use to fund its obligations to

City under the Agreement. Under the Agreement, the City would grant or issue park fee credits for the park acquisition and development fees otherwise due City from these subdivisions upon their development to the extent of the estimated final cost of Subdivider's obligations to City under the Agreement. This premise was based on calculations that the total park acquisition and development fees that would be owed to City by the developers would exceed the final, total approved costs of Subdivider's obligations under the Agreement. In actuality, park acquisition and development fees were paid by some of the developers to City as follows:

(1) Through April 11, 2007, the developer of the Woodbridge subdivision has paid to the City the total amount of \$689,250 in park acquisition and development fees with building permits issued to that development; and

(2) Through April 11, 2007, the developer of the Montage I subdivision has paid \$351,644 in park acquisition and development fees with building permits issued to that development.

B. Through April 11, 2007, under the Agreement, the City has issued park acquisition and development fee credits to Subdivider in the amount of \$213,358 against such fees that would otherwise be paid to City with the issuance of building permits for development within the North Village 1 subdivision.

C. The park property dedicated to City by Subdivider under the Agreement has a final fixed value of \$1,147,410 for purposes of the Agreement due to 2.09 acres, rather than 2.17 acres, being dedicated to City by Subdivider.

D. The parties wish to amend the Agreement to conform to the original premise and intent of the parties, (i.e., the City would grant park fee credits, rather than receiving park fee payments from the developers to the extent of the total amount of the costs which have been, and will be, incurred by Subdivider in fulfilling its obligations under the Agreement), and to accomplish this, in part, by City paying Subdivider an amount (or amounts) equal to the park acquisition and development fees paid to City by the developers and to fix the final value of the park dedication by Subdivider.

A M E N D M E N T

Based upon the Recitals, which the parties agree are correct, the parties further agree as follows:

1. City shall pay to Subdivider, (Fulton Road Investors, LLC), against costs incurred, and to be incurred by Subdivider in fulfilling its obligations under the Agreement, the sum of \$1,040,894 from funds within City's Park Acquisition and Development Fund - Zone 1 (No. 0246), or an equivalent fund, calculated as follows: \$689,250 which is an amount equal to the park acquisition and development fees paid to City by the developer of the Woodbridge subdivision, as set forth in Recital A(1), plus \$351,644 which is amount equal to the park acquisition and development fees paid to City by the developer(s) of the Montage I subdivision as set forth in Recital A(2). City shall also pay to Subdivider from the referenced fund such further amounts as are equal

to the amounts of park acquisition and development fees which may be paid to City after April 11, 2007 by the developers of Woodbridge and Montage I prior to these developments first being issued park fee credits by City against such park fees under this Amendment.

2. (a) City shall make available for the development of the North Village I, North Village II, Woodbridge, Montage I, and Montage II, subdivisions, a park fee credit against park acquisition and development fees these projects would otherwise be required to pay to City in the initial amount of \$1,545,748. The park fee credits will be issued for the development of these subdivision chronologically, based on the date building permit applications are filed, until the park fee credit amount is exhausted. The initial total park fee credit amount of \$1,545,748 may be raised or lowered by City, as follows:

The total costs to be incurred by Subdivider in fulfilling its obligations under the Agreement are presently estimated to be \$2,800,000. This estimate includes the final cost of the park property dedicated to City by Subdivider, as set forth in Recital C. Subdivider has received park fee credits from City in the amount of \$213,358 through April 11, 2007 (Recital B). The initial park fee credit amount made available by City to developers under this Amendment is based on the estimated costs to be incurred by Subdivider, less the amount of \$1,040,894 to be paid to Subdivider by City under this Amendment, less the amount of park fee credits already issued and granted by City to Subdivider. The park fee credit amount shall be decreased by the amount of any further payment(s) made by City to Subdivider under this Amendment and by the amount of any estimated, or actual, decrease in the above estimate of the costs to be incurred by

Subdivider in fulfilling its obligations under the Agreement. The park fee credit amount shall be increased by any increase in the above estimate, or in the approved amount of the costs to be incurred or actually incurred by Subdivider in fulfilling its obligations under the Agreement. The City's Director of Recreation and Parks, or designee, shall make the calculations should any such changes occur and shall provide written direction to the Department of Community Development to increase or decrease the then available (remaining) park fee credit amount accordingly.

(b) Upon the determination of Subdivider's final approved costs under this Agreement, should the total amount of all park fee credits issued by City to the developers under this Amendment and the Agreement when added to the total of all payments made to Subdivider under this Amendment be in excess of the total of such approved costs incurred by Subdivider, City shall cease issuing such park fee credits, and Subdivider shall pay the excess amount within 30 days of City's written notification to Subdivider of the amount of such excess. Should the total amount of all park fee credits issued by City under this Amendment and the Agreement when added to the total of all payments made by City to Subdivider under this Amendment be less than the total of Subdivider's final approved costs, City shall then, in its discretion, either make park fee credits available to the developers equal to the amount of the difference, or pay Subdivider the difference and cease issuing park fee credits to the developers.

3. (a) Except for the area of park land dedication required of Subdivider, Subdivider's obligations as set forth in section 1 of the Agreement shall remain in effect and unchanged by this Amendment.

(b) Section 2-b of the Agreement is amended to insert the area and

dollar amount set forth in Recital C of this Amendment in place of the area and dollar amount shown in Section 2-b.

(c) Section 2-e of the Agreement is deleted and shall be without further effect, provided, however, that the amount of park fee credits actually issued by City to Subdivider under Section 2-e shall continue to be recognized and utilized in all applicable calculations made, and to be made under this Amendment and the Agreement.

(d) Section 3 of the Agreement shall remain in effect without change.

4. Should any conflict be found to exist between the provisions of this Amendment and the Agreement, the provisions of this Amendment shall govern.

5. This Amendment and the Agreement may only be further amended by written agreement between the parties.

The parties have executed this Amendment effective as of the date set forth in the first paragraph of this Amendment.

FULTON ROAD INVESTORS LLC,
a California limited liability company

By: _____

Title: Manager

THE CITY OF SANTA ROSA,
a municipal corporation

By: _____

Title: Assistant City Manager/
Director of Recreation and
Parks

Approved as to form:

City Attorney

(Attach acknowledgment for each signature)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

State of California

County of Sonoma

On 4-24-07 before me, Melisa M. Brown, Notary Public
Name and Title of Officer (e.g., "Jane Dee, Notary Public")

personally appeared Hugh Futsell
Name(s) of Signer(s)

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



WITNESS my hand and official seal.

Melisa M. Brown
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Amend to Agmt for Const... Dedication of Parkland

Document Date: no date Number of Pages: 6

Signer(s) Other Than Named Above: _____

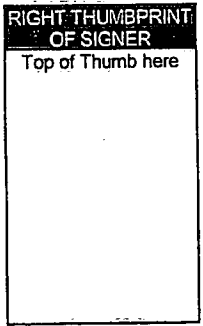
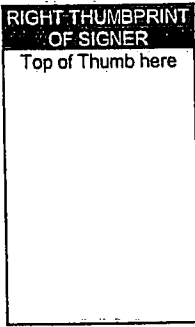
Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

Signer's Name: _____

- Individual
- Corporate Officer
- Title(s): _____
- Partner - Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

- Individual
- Corporate Officer
- Title(s): _____
- Partner - Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer Is Representing: _____

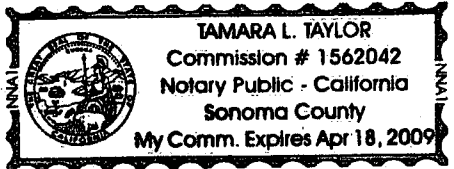
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
 County of Sonoma } ss.

On 24 April, 2007 before me, Tamara L Taylor
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Marc Richardson
Name(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence



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

WITNESS my hand and official seal.
Tamara L Taylor, Notary Public
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Amend to agreement for Const Dedication of Parkland
 Document Date: April 24, 2007 Number of Pages: 6

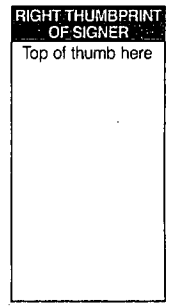
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: _____



RECEIVED

JUN 08 2007

**CITY OF SANTA ROSA
CITY CLERK**

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City Clerk
City of Santa Rosa
101 Santa Rosa Avneue
P.O. Box 1678
Santa Rosa, CA 95402



2007061481

OFFICIAL RECORDS OF
SONOMA COUNTY
JANICE ATKINSON

SANTA ROSA CY
05/30/2007 11:01 AGM
RECORDING FEE: 0.00
PAID

12 PGS



Document title:

AGREEMENT FOR CONSTRUCTION OF PARK IMPROVEMENTS AND
PLAYFIELD RENOVATION AND ESTABLISHING PARK FEE CREDITS FOR
DEDICATION OF PARKLAND AND CONSTRUCTION OF IMPROVEMENTS

NORTH VILLAGE PROJECTS

**AGREEMENT FOR CONSTRUCTION OF PARK IMPROVEMENTS AND
PLAYFIELD RENOVATION AND ESTABLISHING PARK FEE CREDITS FOR
DEDICATION OF PARKLAND AND CONSTRUCTION OF IMPROVEMENTS**

NORTH VILLAGE PROJECTS

This Agreement is made and entered into this 12th day of September 2006, by
Fulton Road Investors LLC ("Subdivider") and the City of Santa Rosa ("City").

RECITALS

A. Subdivider is the subdivider and developer of certain real property in the City of Santa Rosa known as the North Village I Subdivision ("North Village I"). On June 24, 2004, a tentative map for 99 lots, known as North Village I was approved by the City, a copy of which is attached hereto as Exhibit "A." This tentative map provides for (i) 45 lots containing 45 Single Family Detached units; (ii) 46 lots containing 46 Single Family Attached units; (iii) 8 lots containing 8 duplexes with 16 lower-income Duplex units; and (iv) up to 6 Second Dwelling units.

B. Subdivider is also developer of certain real property in the City of Santa Rosa known as North Village II ("North Village II"). On June 24, 2004, a development plan known as North Village II was approved by the City, a copy of which is attached hereto as Exhibit B. This development plan allows up to 120 Multifamily units.

C. Adjacent to Subdivider's property is certain real property owned by Woodbridge Northwest LLC ("WN"). The managing member of WN is an affiliate of Rivendale Homes ("Rivendale"). This project is known as Woodbridge ("Woodbridge"). On June 24, 2004, a tentative map for 153 lots was approved by the City for Woodbridge, a copy of which is attached hereto as Exhibit C. This tentative map provides for (i) 84 lots containing 84 Single Family Detached units, and (ii) 62 lots containing 62 Single Family Attached units. Rivendale is also the member manager of Montage Homes, LLC, owner of real property containing the project known as Montage I ("Montage I"), and is an affiliate of BHI-PHI, a California General Partnership (also referred to as "Rivendale" for the purposes of this agreement), which is the developer of the project known as Montage II ("Montage II"). Montage I and Montage II are each located on the north side of San Miguel Road, Santa Rosa, and tentative maps for Montage I and Montage II were

approved by the City of Santa Rosa on June 10, 2004 and July 22, 2004 respectively, copies of which are attached as Exhibit D-1 and D-2. The Montage I tentative map provides for (i) 28 lots containing 28 Single Family Detached units, and (ii) 22 Second units. The Montage II tentative map provides for 51 lots containing 51 Single Family Detached units and 51 lots containing 51 Multifamily units.

D. Parcel "A" on the final map for North Village I, together with an adjoining portion of North Village II as generally depicted on Exhibit B, owned by Subdivider, are to be dedicated to City with recordation of the final map for North Village I. A copy of a supplemental information map which is attached hereto as Exhibit E further describes Parcel A and the adjoining parcel (together, the "Park Property").

E. The conditions of approval of the tentative map for North Village I provided that the Subdivider was required to pay City's dedication and park development fees prior to the issuance of building permits for the residential lots within the subdivision, less a credit for the dedication of the Park Property. Subdivider and City also contemplated that if an agreement was reached with the City whereby Subdivider would provide park improvements within the Park Property, the City would grant additional park credits to Subdivider.

F. Subdivider wishes to provide park improvements within the Park Property. Subdivider will prepare and submit for City approval a Master Plan as well as construction plans and specifications for the Park Property and install all the improvements shown on City approved plans and specifications. City wishes to include within said Master Plan renovation of the playfields ("Playfields Project") located on the adjacent Jack London school site, generally depicted on Exhibit B.

G. City is willing to give Subdivider a credit against park fees due for North Village I for dedication of the Park Property and for design services and the installation of approved improvements on the Park Property and Playfields Project. The City is also willing, as more fully set out herein, to allow the excess credit due the Subdivider pursuant to this Agreement to be credited to the park fees obligation of the North Village II project, or, as Subdivider may by written notice to the City so authorize, to the park fees obligation of Woodbridge, Montage I and Montage II projects.

AGREEMENT

Based upon the Recitals the parties agree as follows:

1. **Subdivider's Obligations.**
 - a. Prior to or at the recordation of the final map for North Village I, Subdivider shall dedicate the Park Property to the City of Santa Rosa.
 - b. Subdivider shall design and construct a neighborhood park on the Park Property to the City's satisfaction and in accordance with all applicable

city, state and federal requirements and standards including, but not limited to, ADA Requirements, Consumer Products Safety Commission and ASTM (collectively termed "applicable laws"). Such improvements ("Improvements") shall include: grading, drainage, irrigation, pavement, play equipment, landscaping, utility connections and fees, park furniture, sports facilities, and all other improvements shown in the Master Plan as approved by the City. Any cost of mitigation measures for purposes of mitigating for endangered species or wetlands for work proposed on dedicated park property shall be paid for by the Subdivider without credit from park fees. The City anticipates that the park improvements will be of low-maintenance character. "Low Maintenance" for this purpose shall be as determined by the City.

- c. Subdivider shall also design and construct the Playfields Project in accordance with the Master Plan as approved by the City. The Playfields Project shall include field renovation, including artificial turf, artificial lighting and other components as provided in the approved Master Plan.
- d. Subdivider intends to engage Quadriga to prepare the Master Plan for the neighborhood park to be constructed on the Park Property and for the Playfields Project. Subdivider shall provide City with a copy of the contract with Quadriga which contract shall provide indemnification satisfactory to the City and shall assign to City the right to use such plan to complete the improvements should the Subdivider not complete the improvements per the agreement. Subdivider shall have the responsibility to obtain City's approval of the Master Plan including the approval of the Board of Community Services and City Council. It is understood that such Master Plan also will be submitted for review at community meetings. The Master Plan will be submitted to the City no later than November 30, 2006. Subdivider shall diligently pursue City's approval by submitting all necessary or convenient information and responding promptly to all inquiries and attending City meetings as requested by Staff. The City shall have the responsibility for obtaining agreement from Piner Olivet School District regarding the Playfields Project incorporated in the Master Plan. The Master Plan shall provide for two phases of work: the first phase shall be the Playfields Project and the second phase shall be the Park project.
- e. Following obtaining approval of the Master Plan, Subdivider shall prepare or cause to be prepared improvements plans and specifications for each phase of work in conformance with the Master Plan and all applicable laws. Subdivider shall also prepare or cause to be prepared for each phase of work a detailed item by item cost estimate sufficient to enable the City to modify the scope of the proposed improvements for said phase to stay within City-determined budget limitations. The plans and specifications together with the cost estimate for the first phase of work shall be

submitted to the City for its approval within 120 days following City approval of the Master Plan. The plans and specifications together with the cost estimate for the second phase of work shall be submitted to the City for its approval within one year following City approval of the Master Plan. Prior to its approval, the City shall have the right to modify and/or eliminate amenities to modify the ultimate cost of either phase of work. Upon approval of the construction plans and specifications for each phase of work, Subdivider shall submit to City one complete set of plan mylars, one compact disc of the project in AutoCad and two sets of approved plans.

- f. It shall be the obligation to complete the improvements of each phase of work in accordance with the approved plans and specifications. Provided the City has approved the cost estimate for a phase of work within thirty days following submission to City by Subdivider, it shall be the obligation of the Subdivider to complete the improvements of each phase of work at the approved cost estimate for that phase, Subdivider shall be solely responsible for all costs in excess of the approved cost estimate and shall not be entitled to credit under Paragraph 2 for amounts above the approved cost estimate. Should the City fail to approve the cost estimate within the time set forth in this section, Subdivider may revise the cost estimate and re-submit for City review and approval.
- g. Weather and site conditions permitting, Subdivider shall commence construction of a phase of improvements within ninety (90) calendar days following City approval of the plans and specifications and cost estimate for that phase, and shall complete construction of said phase within one hundred and eighty (180) calendar days after commencement.
- h. Subdivider acknowledges that the Park Property will be dedicated to and accepted by the City and will become City property. Subdivider further acknowledges that the Playfields Project is located on property owned by the Piner Olivet School District and that Subdivider shall assume responsibility for obtaining right of entry to said property and constructing the Playfields Project in accordance with such procedures as the school district may require. Subdivider shall submit a copy of the form of its proposed construction contracts for each Approved Project to the City for approval prior to the Subdivider commencing the bidding process. The construction contract shall include, among other things, standard City indemnification and insurance provisions and shall require unconditionally guarantees of the materials and installation for the scope of work for a period of (1) year from the date of acceptance by the City and shall cover all costs of labor, materials, equipment and incidentals. Subdivider shall separately provide standard City indemnification and insurance certificates and shall also provide performance and labor and material bonds in the amount of the contract price and shall require a maintenance bond

unconditionally guaranting the materials and installation for a period of (1) year from the date of acceptance by the City which shall cover all costs of labor, materials, equipment and incidentals. Should the school district as an independent obligee also require performance and labor and material bonds for work on the school district property, Subdivider shall provide such bonds prior to commencing work on the Playfields project. No construction contract shall be awarded or entered into by Subdivider until the City has reviewed the bids and concurred in the determination of the most responsible bidder(s). No construction contract shall be effective until the City has approved the insurance or bonds provided by the Subdivider and contractor(s).

- i. All construction work shall be done in a workmanlike and professional manner and in conformance with the approved plan and specifications. Subdivider reserves the right to modify the approved plans and specifications as construction progresses should unforeseen conditions occur, provided, however, that the written consent of the City is first obtained which consent will not be unreasonably withheld. City also reserves the right to require reasonable modifications necessary for the public health and safety. The cost of extra work beyond that approved by the City in writing shall be paid by Subdivider and shall be subject to reimbursement from the City.
- j. Prior to the commencement of construction for each phase, City and Subdivider shall establish a written schedule showing construction milestones for that phase for inspection purposes. Subdivider shall allow City's authorized representative reasonable access to the site at all reasonable times and furnish City with information necessary for City to ascertain that methods, materials and workmanship comply with the requirements of this Agreement and the Master Plan. The City may reject defective work and require the Subdivider to repair, replace or remove the same at no cost to City. The City's acceptance of the completed improvements shall not waive or otherwise compromise any of the remedies and/or claims that may exist.
- k. Subdivider agrees to pay all claims promptly and to indemnify and defend, and hold the City and School District harmless from any and all claims, demands, liability in relation thereto, except those derived from the sole negligence or intention act of City and/or School District. Duty of defense and indemnification shall continue through completion of the phase of work and terminate as to that phase at acceptance of the phase by the City or School District as applicable. Public use of an Approved Project shall not commence until acceptance of work for that phase by the City. Subdivider shall maintain for three years after acceptance of a phase or termination of legal procedures whichever is later all records,

correspondence, invoices and accounts created or received in relationship to this project. Should City and/or School District be joined or named as a party in any legal proceeding(s) or other action(s) to which the foregoing indemnity and hold harmless agreement applies, Subdivider shall indemnify, hold harmless and defend or settle any and all claims, damages, judgments, or other liability legally imposed upon City arising out of any such proceeding and shall pay all costs and expenses, including attorney fees and reasonable defense costs incurred in connection therewith.

1. As set forth in this agreement each phase of work shall be completed in accordance with the plans and specifications approved by the City. The City's Director of Recreation & Parks will be represented by the Parks Project Superintendent. Prior to acceptance of a phase of work, Subdivider shall warranty that the phase are is and clear of all liens and encumbrances of any kind. All improvements shall become the sole property of the City or, as applicable, Piner Olivet School District, upon the written authorization by City. Notwithstanding the foregoing, Subdivider shall maintain the Park Property for a period of one year after acceptance; upon the completion of the one year maintenance period provided by the Subdivider, the City shall maintain the park.

- m. During the conduct of any work by Subdivider under this Agreement, Subdivider 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 in an amount not less than five hundred thousand dollars (\$500,000). Such policies, by endorsement thereon, shall name City School District and their officers, agents and employees as additional insureds. Prior to the start of any work, a current certificate of insurance, properly executed, shall be furnished to City evidencing the existence of the required insurance coverages and providing for thirty (30) days advance written notice to City by the insurance company prior to its cancellation or any change in policy terms or conditions. Subdivider, or the general contractor retained by Subdivider, shall be responsible for the Worker's Compensation Insurance and all employee taxes and employee benefits required by law. A certificate shall be submitted to City by Subdivider evidencing the existence of this insurance, at the same time the certificate(s) of liability insurance referred to above are submitted.

- n. Subdivider shall ensure that prevailing wages shall be paid to any laborer, mechanic or other employee who is performing work on the Park Project or Playfields Project which is covered by Labor Code 1720 et seq. A copy of the Director of Industrial Relations' current schedule of prevailing wages is attached to this Agreement. This information may be obtained at www.dir.ca.gov. Subdivider shall ensure that all required certified payroll

information is maintained and that there is compliance with the requirements of Labor Code sections 1770 et seq. Any discrepancy in the attached schedule or on the referenced website or any error on the part of the City does not relieve the obligation for payment of the prevailing wage rate and penalties under Labor Code sections 1770-1775.

2. Park Fee Obligations

- a. The total obligation of the North Village I, North Village II, Woodbridge, Montage I and Montage II projects in connection with park dedication and development fee requirements shall be determined as set forth by Chapter 19-70 of the Santa Rosa City Code and implementing resolutions, as may be adjusted from time to time in accordance with the City Code. This total figure is termed "Subdivider's Fee Obligation" for the purposes of this agreement.
- b. The Park Property to be dedicated to the City in accordance with Section 1 of this Agreement consists of 2.17 acres. Subdivider shall be given credit for such dedication in the amount of \$549,000 per acre for a total of \$1,191,330 ("Park Dedication Credit"). Park dedication credit is hereby fixed at said amount and shall not be adjusted upward or downward in the future. This amount shall be offset against Subdivider's Fee Obligation.
- c. In addition to the fee credits described at 2(b) above, and provided Subdivider has provided City with the bonds for the Park Project as described at paragraph 1(h) above, City shall provide Subdivider with credit against Subdivider's Fee Obligation in an amount to compensate Subdivider for its cost to design and construct the Park Property Project. Such costs shall include architectural, engineering and other design and consulting fees; utility hookup and other public fees; all grading, soils import or export, electrical services, concrete, lighting, planting, inspections, irrigation, signage, structures, fences, drainage, utilities, access roads and all other construction components required by to complete the Park Project; contractor or subcontractor's profit and overhead; supervision, insurance, bonding, legal, accounting and maintenance costs; and Subdivider's profit and overhead. Subdivider and City shall work together to limit the total cost of the design and construction of the Park Project to \$681,740. Subdivider and City acknowledge that the costs for the Playfields Project are unknown at the time of this agreement.
- d. In addition to the fee credits described at 2(b) and 2(c) above, and provided Subdivider has provided City with the bonds for the Playfields Project as described at paragraph 1(h) above, it is further agreed that City shall also provide Subdivider with a credit against Subdivider's Fee Obligation in an amount to compensate Subdivider for its cost to design

and construct the Playfields Project. Such costs shall include architectural, engineering and other design and consulting fees; utility hookup and other public fees; all grading, soils import or export, electrical services, concrete, lighting, planting, inspections, irrigation, signage, structures, fences, drainage, utilities, access roads and all other construction components required to complete the Playfields Project; contractor or subcontractor's profit and overhead; supervision, insurance, bonding, legal, accounting and maintenance costs; and Subdivider's profit and overhead. The amount of this credit shall be equal to the approved cost estimate for said phase as set forth at 1(e) above.

- e. After applying all fee credits due Subdivider under this agreement to the park fees otherwise payable in connection with building permits issued for North Village I, any excess credit due the Subdivider ("Remainder Credits") shall be credited toward the total park dedication and development fee obligation of Subdivider for its North Village II Project, and, upon written notice by Subdivider to City, toward the total park dedication and development fee obligation of the Woodbridge, Montage I and Montage II projects. The Remainder Credit shall be available to Subdivider to be used at the time of request for individual building permits for the North Village II Project (but after the application of any credit against fees for private open space in accordance with Santa Rosa City Code Section 19-70.120), and, as authorized by Subdivider, for individual building permits for the Woodbridge, Montage I and Montage II projects. Should there be no approved cost estimate for a phase of work at the time building permits are ready to be issued for North Village II, Subdivider shall provisionally receive a tentative fee credit in the amount of the cost estimate submitted to City by Subdivider, and the Remainder Credit under this agreement shall reflect said amount. In the event of a tentative credit being applied, upon approval by the City of the cost estimate the Remainder Credit shall be adjusted up or down by the difference between the approved and tentative fee credits. Should Subdivider ever receive credits against North Village II building permits, at time of building permit approval, in excess of the Remainder Credit the difference shall be paid by Subdivider to the City within thirty (30) calendar days of notice by City.

3. General Provisions.

- a. **Notice.** Any notice, demand, or delivery by either party to the other may be given by personal delivery in writing or by first class mail, postage prepaid, and shall be deemed delivered (i) in the case of personal delivery, upon receipt, (ii) in the case of first class mail, seventy-two (72) hours following deposit in the United States mail. Notices shall be addressed as set forth below, but each party may change its address by written notice in accordance with this paragraph.

To Subdivider:

Fulton Road Investors LLC
Attn: Hugh Futrell
200 Fourth Street, Suite 250
Santa Rosa, California 95401

To City:

City of Santa Rosa
Attn: Director of Recreation and Parks
415 Steele Lane
Santa Rosa, California 95403

- b. **Integration.** This Agreement contains all agreements of the parties with respect to the Playfields Project and Park Property. No prior agreement or understanding pertaining to any such matter shall be effective. This Agreement may be modified in writing only, signed by the parties.
- c. **Governing Law.** This Agreement shall be governed by the laws of the State of California.
- d. **Binding on Successors.** This Agreement is binding on the heirs, successors and assigns of the parties.
- e. **Recordation.** Upon the execution of this Agreement, City may record this Agreement in the Office of the Sonoma County Recorder.

FULTON ROAD INVESTORS LLC

By: Hugh Futrell

Title: Man.

By: _____

Title: _____

CITY OF SANTA ROSA, a municipal corporation,

By: Jane Bender

Title: Mayor

Approved as to form:

Cecilia J. Furbush
City Attorney

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

State of California

County of Sonoma

On 10-6-06 before me, Melisa M. Brown, Notary Public
Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Hugh Futrell
Name(s) of Signer(s)

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



WITNESS my hand and official seal.

Melisa M. Brown
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

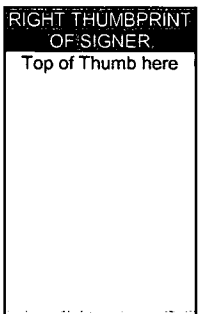
Title or Type of Document: Agmt for Const of Park Improvements... Dedication of Land
Document Date: NO date Number of Pages: 9

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

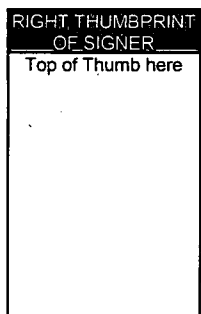
- Individual
- Corporate Officer
- Title(s): _____
- Partner - Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer
- Title(s): _____
- Partner - Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____




Signer Is Representing: _____

LETTER OF AUTHORIZATION

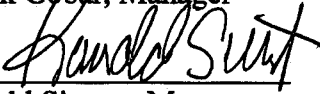
This confirms that Hugh Futrell, principal manager of Fulton Road Investors, LLC ("the company") is authorized to execute on his sole signature and to bind the company to any and all agreements with the City of Santa Rosa, including but not limited to agreements for parkland dedication and the design/build of parkland improvements.

Dated: October 11, 2006

Fulton Road Investors, LLC

By: 
Hugh Futrell, Manager

By: 
Frank Gobar, Manager

By: 
Ronald Sievert, Manager