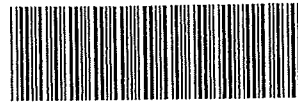


RECORDING REQUESTED BY:
and when recorded mail to.

City of Petaluma
11 English Street
Petaluma, CA 94952-2610
Attn: City Clerk

Exempt from Recording Fees:
Gov't Code §§6103, 27838



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OFFICIAL RECORDS OF
SONOMA COUNTY
EEVE T. LEWIS

GOVT AGENCY
08/08/2006 08:06 AM
RECORDING FEE: 0.00
PAID

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PRE-ANNEXATION AGREEMENT REGARDING TWO-PART ANNEXATION AND
RESTRICTIVE COVENANTS

1500 AND 1600 Petaluma Boulevard South, APNs 019-210-011, 019-220-012, 019-220-027,
019-210-010, 019-210-038, 109-210-039

This Agreement is entered into by and between **South Petaluma Partners LLC** (hereinafter
"Developer") and the **City of Petaluma** (hereinafter "City") on July 14, 2006

RECITALS:

1. Developer is the owner of that certain property located at 1500 and 1600 Petaluma Boulevard South, Petaluma, CA (hereinafter "Property"). The Property currently consists of several distinct parcels (APNs 019-210-011, 019-220-012, 019-220-027, 019-210-010, 019-210-038, 109-210-039) and is located in the unincorporated area of Sonoma County (hereafter "County").
2. The Property is the subject of a development proposal ("Development Proposal") by Developer involving a multi-unit subdivision which will require annexation to City. The City approved a tentative map for the Development Proposal on June 6, 2005.
3. The Property is the site of an operational rock quarry and is subject to a Reclamation Plan previously approved by the County. The County is designated the Lead Agency concerning the Reclamation Plan pursuant to the Surface Mining and Reclamation Act (SMARA). Public Resources Code Section 2110.
4. The County has procedures in place pursuant to its SMARA ordinance for the supervision and administration of the Reclamation Plan for the Property. City is not presently required to, and does not have such procedures in place pursuant to State law. City, County and Developer have agreed to enter into a Memorandum of Understanding ("MOU") which would retain County supervision of the Reclamation Plan to completion and closure in the event of annexation of a portion of the Property into the City. A true and correct copy of the MOU is attached hereto as Exhibit A hereto and incorporated herein.
5. County's consent to the MOU and County's jurisdiction under Public Resources Code Section 2771 to continue to act as Lead Agency over the Reclamation Plan require that a portion of the Property remain as County territory until closure pursuant to the Reclamation Plan.

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Therefore, Developer is proposing annexation of a portion of the Property to the City, APN 019-210-011, 019-220-012 and 019-220-027 (collectively, the "Southern Parcel", as shown on Exhibit B hereto).

6. Condition No. 64 of City Resolution No. 2005-086 NCS provides in part, "The City Manager has discretion regarding the timing of annexation relative to reclamation of site being completed. . ."

7. City Resolution No. 2005-087 NCS authorizes City to support annexation of the Property, and therefore of the Southern Parcel;

8. The City Manager has determined, in his sound discretion, that adequate legal and financial assurances are contained in the MOU to ensure Developer's completion of the Reclamation Plan; adequate legal assurances are contained in this Agreement to ensure Developer's obligation to apply for annexation of the remainder of the Property (APN 019-210-010, 019-210-038 and 019-210-039, collectively "the Northern Parcel) together with any other parcels deemed appropriate by City for inclusion in the second phase of annexation upon the closure of the Reclamation Plan; and proceeding with a two-part phased annexation will more expeditiously, and without additional cost to City, implement the benefit to City of the development proposals approved by City in its Resolutions 2005-086, 2005-087 and other discretionary actions taken on June 6, 2005;

NOW, THEREFORE, IT IS AGREED that:

1. Annexation by City. Developer will apply to the Local Area Formation Commission ("LAFCO") to process the first phase of the annexation of the Property to City [AP Nos. 019-210-011, 019-220-012 and 019-220-027], (the "Southern Parcel" as per Exhibit B attached hereto). As between City and Developer, the terms and conditions of such annexation and the land use designations for the annexed parcel shall be the exclusive jurisdiction of City.

2. Agreement to Complete Annexation. Within thirty (30) days of the date on which City receives notice of completion and closure of the Reclamation Plan by the County, Developer agrees to initiate processing of the annexation of such portions of the remaining parcels of the Property [APN 019-210-010, 019-210-039 and 019-210-038], and/or any one or more additional contiguous properties determined by City to be appropriate for inclusion in the second phase of this annexation as City may designate. For example, without limiting the foregoing, the City may direct that the second phase of annexation include any one or more contiguous properties and exclude part or all of the Northern Parcel. For purpose of this agreement, "contiguous properties" shall consist of the following properties: APN 019-210-005, 006, 007, 008, 009, 013, 014, 021, 022, 025, 029, 032, 033, 034, 035, and 036.

3. Payment of Costs. Developer will pay all fees, costs and charges for the processing of both phases of the annexation contemplated herein, including the Southern Parcel, the Northern Parcel and any contiguous parcels deemed by City to be appropriate for inclusion in the annexation, including but not limited to environmental review and staff time as required by City procedure and/or State law at the time of annexation.

As security for payment of these costs, Developer shall deposit with City cash in the

amount of \$250,000.00. Should the balance in said account at any time prior to conclusion of proceedings for both phases of the annexation contemplated herein be reduced to \$25,000 or less, Developer agrees within ten days of written notification by City to increase said deposit of funds by an amount sufficient to raise the balance held by City a minimum of \$100,000.00. Any unused portion of said deposit shall be refunded to Developer within thirty (30) days after completion of the annexation of the entire property.

4. MOU a Condition Precedent. Execution of the MOU attached as Exhibit A by City, County and Developer is a condition precedent to this Agreement taking effect.

5. LAFCO Approval. Developer acknowledges that it has satisfied itself regarding the legal requirements for annexation of the Property, including those relating to the formation of un-annexed "islands" of unincorporated property. Should LAFCO fail to approve the annexation of the Southern Parcel proposed herein for any reason, City retains all rights to give, withhold or condition, as appropriate in its sound discretion, City's consent to any future application(s) for annexation of the Property, or any portion of it.

6. Indemnification. Developer agrees to defend, indemnify, hold harmless, reimburse and release City, its agents, officers, attorneys, employees, boards and commissions from and against any and all actions, claims, damages, disabilities, liabilities, and expense, including but not limited to attorneys' fees and the cost of litigation incurred in the defense of claims, whether arising from personal injury, property damage or economic loss of any type, that may be asserted by any person or entity, including Developer, arising out of, related to, or in anyway connected with this Agreement and/or the annexations contemplated herein.

Developer's obligations hereunder include the obligation to defend, indemnify, hold harmless, reimburse and release the City, its agents, officers, attorneys, employees, boards and commissions from and against any and all claims or actions challenging the Developer's Development Proposal and any claims or actions challenging any action or decision by the City in reviewing or approving the Developer's Development Proposal.

Developer's obligations hereunder shall be applicable and enforceable, whether or not there is concurrent negligence on the part of the City, but, to the extent required by law, excluding liability due to the sole or active negligence or due to the willful misconduct of City. If there is a possible obligation to indemnify, Developer's duty to defend exists regardless of whether it is ultimately determined that there is not a duty to indemnify. City shall have the right to select its own legal counsel at the expense of the Developer, subject to Developer's approval, which approval shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages.

7. Obligations Restrictive Covenants. The terms of this Agreement benefit the Property in accordance with California Civil Code Section 1462. Developer agrees that in any transfer of ownership of part or all of the Property, the Developer will ensure that each obligation of the Developer pursuant to this Agreement to the fullest extent permitted by applicable law is made a restrictive covenant for the benefit of the Property running with the Property and binding successive owners of any portion of the Property in accordance with California Civil Code Section 1468.

8. Binding on Successors and Assigns. This agreement shall be binding upon, and shall inure to the benefit of the parties and their successors and assigns.

9. No Third Party Beneficiaries. Nothing in this agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this agreement on any persons other than the parties to it and their respective successors and assigns, nor is anything in this agreement intended to relieve or discharge the obligation or liability of any third persons to any party to this agreement.

10. Amendments or Modification of Agreement. This agreement may be amended only by a written instrument executed by all parties hereto.

11. Waiver. The failure of any party to insist on strict compliance with any of the terms, covenants, or conditions of this agreement by another party hereto shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.



12. Execution of Documents. Each party agrees to execute and deliver such additional documents and instruments and to perform such additional acts as may be necessary or appropriate to effectuate, carry out and perform all of the terms, provisions, and conditions of this agreement and the transactions contemplated hereby.

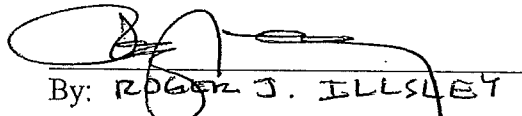
13. Authority to Sign. Each person executing this agreement on behalf of an entity represents that s/he has full power and authority to execute this document.

14. Recorded Release of Agreement. Upon completion of the annexation of the entire Property and expiration of all appeal periods related thereto, and satisfaction by Developer of all other terms of this agreement, City shall execute and record in the Sonoma County Records a Memorandum of Satisfaction of Pre-Annexation Agreement.

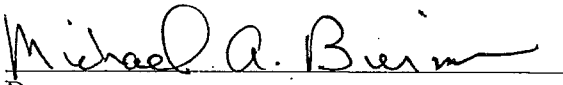
SOUTH PETALUMA PARTNERS LLC

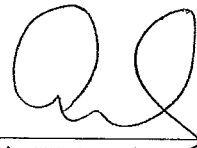
APPROVED AS TO FORM:


By: James D. Levine
Title: Manager

CITY OF PETALUMA


By: ROGER J. ILLSLEY
Attorney for South Petaluma Partners LLC

APPROVED AS TO FORM:


By: Michael A. Bierman
Title:


Eric W. Danly
City Attorney, City of Petaluma

MEMORANDUM OF UNDERSTANDING
REGARDING JURISDICTION OVER COMPLIANCE WITH
THE PETALUMA REVISED RECLAMATION PLAN

This Memorandum of Understanding is entered into this 27 day of June, 2006, by and between SOUTH PETALUMA PARTNERS, LLC (hereinafter "Developer"), the CITY OF PETALUMA (hereinafter "City") and the COUNTY OF SONOMA (hereinafter "County").

RECITALS:

1. Developer is the owner of a rock quarry located at 1500 and 1600 Petaluma Boulevard South, Petaluma, California (APN's 019-210-010, -011, -038, -039; 019-220-012, -027) (hereinafter "Property") which is located in the unincorporated area of the County. The rock quarry site is approximately 46.78 acres.
2. The Property is the subject of a development proposal ("Development Proposal") involving a multi-unit subdivision which will require annexation to the City. The City approved a tentative map for the project on June 6, 2005.
3. Pursuant to the Surface Mining and Reclamation Act of 1975 (Public Resources Code §2710 et seq.), the County has adopted the Sonoma County Surface Mining and Reclamation Ordinance (hereinafter "the Mining Ordinance") which sets forth procedures for reviewing, approving and/or permitting surface mining operations, reclamation plans, and financial assurances in the unincorporated areas of Sonoma County. (Sonoma County Code, Chapter 26A)
4. On or about May 7, 1981, pursuant to the County Mining Ordinance, the County provided the Developer with a vested rights determination in regard to its quarry operations. Records indicate that the rock quarry has been operating as far back as 1925.
5. On or about June 19, 1986, a Use Permit and Reclamation Plan were approved by the County to expand the quarry to adjacent parcels. Quarry operations on the Property ceased in 1993. Certain other related operations continued to operate within the quarry site, including an asphalt batch plant, a crushing plant that recycled concrete for base rock, and a sand receiving area that provides material to the asphalt plant.
6. As soon as reasonably practical after execution of this Memorandum of Understanding, Developer shall file an application with the Local Agency Formation Commission for Sonoma County for annexation of a portion of its Property to the City [AP Nos. 019-210-011; 019-220-012, -072], (the "Southern Parcel" as per Exhibit B attached hereto). The Southern Parcel is approximately 43.3 acres. A Mitigated Negative Declaration was prepared in October 2004 and it was certified by the City on or about February 15, 2005.

7. In June 2004, Developer submitted an application to the County for approval of a Revised Reclamation Plan. On or about April 7, 2005, the Sonoma County Planning Commission considered the Mitigated Negative Declaration, which was previously certified by the City, and approved the Revised Reclamation Plan. (A true and correct copy of the Revised Reclamation Plan is attached hereto as Exhibit A and incorporated herein by reference).

8. The City has not adopted a mining ordinance pursuant to SMARA. As a consequence, the Southern Parcel may not be annexed into the City until such time as the City adopts a mining ordinance and has its mining ordinance approved by the California Department of Conservation or unless an agreement is reached whereby the County would continue to retain jurisdiction over compliance with the Revised Reclamation Plan after annexation.

9. The parties desire to provide a mechanism whereby the City would annex the Southern Parcel prior to completion of reclamation pursuant to the Revised Reclamation Plan and the County would continue to retain jurisdiction over compliance with the Revised Reclamation Plan.

10. Condition No. 64 of City Resolution No. 2005-086 NCS adopted June 6, 2005 approving a vested tentative map for the Property, provides in part, "The City Manager has discretion regarding the timing of annexation relative to reclamation of site being completed;"

11. City Resolution No. 2005-087 NCS, adopted June 6, 2005, authorizes City to support annexation of the Property, and therefore of the Southern Parcel;

12. Proceeding with a two-part phased annexation as outlined in that certain Agreement Regarding Two-Part Annexation - Lomas Subdivision, entered into between Developer and City concurrently with and in reliance on this MOU, will more expeditiously, and without additional cost to City, implement the benefit to City of the development proposals approved by City in its Resolutions 2005-086, 2005-087 and other discretionary actions taken on June 6, 2005;

13. SMARA permits the County to retain jurisdiction over compliance with the Revised Reclamation Plan after the annexation of the Southern Parcel. (Public Resources Code Section 2771).

NOW, THEREFORE, IT IS AGREED that:

1. **APPROVAL OF ANNEXATION OF SOUTHERN PARCEL A CONDITION PRECEDENT.** Approval of the annexation of the Southern Parcel of the Property by all appropriate governmental authorities prior to completion of reclamation pursuant to the Revised Reclamation Plan is a condition precedent to this Agreement taking effect:

2. **CONTINUING ADMINISTRATION BY COUNTY.** Developer, the City and the County agree that the County will retain jurisdiction over compliance with the Revised Reclamation Plan for the Property through completion of the reclamation in accordance with California Public Resources Code Section 2771. Developer shall be subject to the County's

continued jurisdiction and shall be subject to the terms and conditions of the approved Revised Reclamation Plan in addition to all provisions contained in the County's Mining Ordinance.

3. AUTHORITY VESTED IN CITY. Once the Southern Parcel is annexed into the City, any development plans for the annexed property will be within the jurisdiction of the City and subject to its review and approval. The County will have no jurisdiction over the Development Proposals, nor shall the County have any responsibility or liability regarding the processing of the Development Proposals.

4. RESPONSIBILITY OF DEVELOPER. Developer shall remain financially responsible for all costs and fees incurred by the County and/or City in regard to this MOU, including without limitation all fees imposed pursuant to the County's Mining Ordinance.

5. SURETY BOND. Developer has posted (and shall continue in full force and effect) a bond from a surety satisfactory to the County to ensure faithful performance of all obligations of the Developer under the Revised Reclamation Plan. The surety bond shall be released by the County once (1) reclamation of the entire Property has been completed to the satisfaction of the County in accordance with all applicable SMARA requirements, (2) the County has determined to its satisfaction that there exist no health or safety hazards on any portion of the entire Property, and (3) the California Department of Conservation has inspected the site and has authorized removal of the mine identification number for the entire Property.

6. INDEMNIFICATION OF COUNTY. Developer agrees to defend, indemnify, hold harmless, reimburse and release the County, its agents, officers, attorneys, employees, boards and commissions from and against any and all actions, claims, damages, disabilities, liabilities, and expense, including but not limited to attorneys' fees and the cost of litigation incurred in the defense of claims, whether arising from personal injury, property damage or economic loss of any type, that may be asserted by any person or entity, including Developer, arising out of, related to, or in anyway connected with this Memorandum of Understanding.

Developer's obligations hereunder include the obligation to defend, indemnify, hold harmless, reimburse and release the County, its agents, officers, attorneys, employees, boards and commissions from and against any and all claims or actions challenging the Developer's Development Proposal and any claims or actions challenging any action or decision by the City in reviewing or approving the Developer's Development Proposal.

Developer's obligations hereunder shall be applicable and enforceable, whether or not there is concurrent negligence on the part of the County, but, to the extent required by law, excluding liability due to the sole or active negligence or due to the willful misconduct of County. If there is a possible obligation to indemnify, Developer's duty to defend exists regardless of whether it is ultimately determined that there is not a duty to indemnify. County shall have the right to select its own legal counsel at the expense of the Developer, subject to Developer's approval, which approval shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages.

7. INDEMNIFICATION OF CITY. Developer agrees to defend, indemnify, hold harmless, reimburse and release City, its agents, officers, attorneys, employees, boards and commissions from and against any and all actions, claims, damages, disabilities, liabilities, and

expense, including but not limited to attorneys' fees and the cost of litigation incurred in the defense of claims, whether arising from personal injury, property damage or economic loss of any type, that may be asserted by any person or entity, including Developer, arising out of, related to, or in anyway connected with this Agreement and/or the annexations contemplated herein.

Developer's obligations hereunder include the obligation to defend, indemnify, hold harmless, reimburse and release the City, its agents, officers, attorneys, employees, boards and commissions from and against any and all claims or actions challenging the Developer's Development Proposal and any claims or actions challenging any action or decision by the City in reviewing or approving the Developer's Development Proposal.

Developer's obligations hereunder shall be applicable and enforceable, whether or not there is concurrent negligence on the part of the City, but, to the extent required by law, excluding liability due to the sole or active negligence or due to the willful misconduct of City. If there is a possible obligation to indemnify, Developer's duty to defend exists regardless of whether it is ultimately determined that there is not a duty to indemnify. City shall have the right to select its own legal counsel at the expense of the Developer, subject to Developer's approval, which approval shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages.

8. NO ASSIGNMENT WITHOUT PRIOR WRITTEN APPROVAL. Neither party to this Agreement may assign any of its rights or delegate any of its duties under this Agreement without the prior written approval of the other party. Such approval shall not be unreasonably withheld.

9. BINDING ON SUCCESSORS AND ASSIGNS. This agreement shall be binding upon, and shall inure to the benefit of the parties and their successors and assigns.

10. NO THIRD PARTY BENEFICIARIES. Nothing in this agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this agreement on any persons other than the parties to it and their respective successors and assigns, nor is anything in this agreement intended to relieve or discharge the obligation or liability of any third persons to any party to this agreement.

11. AMENDMENTS OR MODIFICATION OF AGREEMENT. This agreement may be amended only by a written instrument executed by all parties hereto.

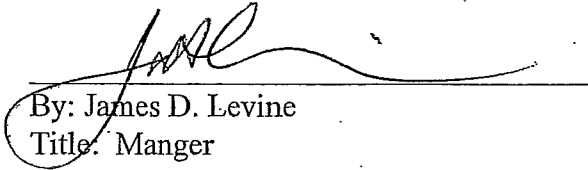
12. WAIVER. The failure of any party to insist on strict compliance with any of the terms, covenants, or conditions of this agreement by another party hereto shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.

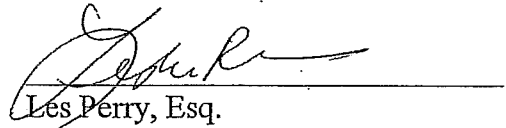
13. EXECUTION OF DOCUMENTS. Each party agrees to execute and deliver such additional documents and instruments and to perform such additional acts as may be necessary or appropriate to effectuate, carry out and perform all of the terms, provisions, and conditions of this agreement and the transactions contemplated hereby.

14. AUTHORITY TO SIGN. Each person executing this agreement on behalf of an entity represents that he has full power and authority to so execute this document.

SOUTH PETALUMA PARTNERS, LLC

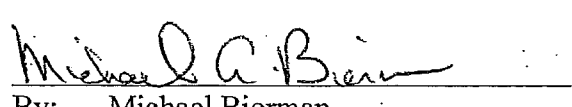
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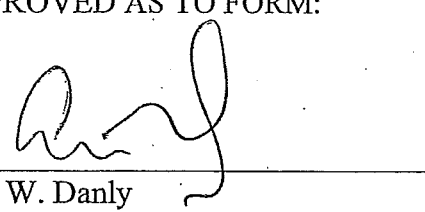

By: James D. Levine
Title: Manger


Les Perry, Esq.
Attorney for South Petaluma Partners, LLC

CITY OF PETALUMA

APPROVED AS TO FORM:

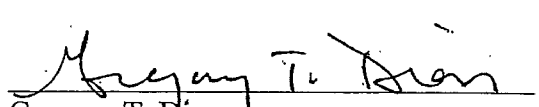

By: Michael Bierman
Title: City Manager


Eric W. Danly
City Attorney, City of Petaluma

COUNTY OF SONOMA

APPROVED AS TO FORM


By: Paul Kelley
Title: ~~Chair~~ Board of Supervisors


Gregory T. Dion
Deputy County Counsel, County of
Sonoma