

AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 2005, by and between the COUNTY OF SAN MATEO, a political subdivision of the State of California, hereinafter called "County" and A/CF REDWOOD 1, LLC, hereinafter called "Developer."

WITNESSETH:

WHEREAS, Developer has applied for and received approval of a Subdivision known as

**PALOMAR OAKS – REDWOOD CITY
1520 EDGEWOOD ROAD, APN 051-040-100**

PLN 2000-00746

subject to Developer meeting all the conditions of Development as approved by the Board of Supervisors for the Subdivision on February 4, 2003, including the construction of certain off site improvements; and

WHEREAS, Developer has had plans and specifications for said offsite improvements prepared and said plans and specifications are entitled "Off-Site Improvement Plans, Edgewood Road Widening," prepared by BKF Engineers and approved by the Director of Public Works on August 29, 2005, and hereinafter referred to as "Plans;" and

WHEREAS, Developer now wishes to construct said offsite improvements subject to all the terms and conditions of said subdivision approval; and

WHEREAS, Section 7033 of the County of San Mateo Subdivision Regulations requires that a written agreement be entered into by the Developer with the County and that said

agreement shall specify the terms and conditions in conformance with Section 7033 of the Subdivision Regulations.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

A. Developer Agrees

1. Developer, at his own proper cost and expense, shall do all the work and furnish all the labor, materials, equipment and utilities necessary to perform and complete in good workmanlike and substantial manner, and to the satisfaction of the Director of Public Works, all work as shown on the Plans, on or before March 31, 2006, at an estimated cost of **Two Hundred Forty-Six Thousand Dollars (\$246,000)** including engineering and contingencies.
2. Developer, at his own proper cost and expense, shall maintain the improvements in good condition and repair, and guarantee the same against any defects in material and workmanship for a warranty period of one year from the date of final acceptance by the County.
3. Developer shall pay the County the cost of inspecting the improvements as required in Section 7035.2 of the County of San Mateo Subdivision Regulations ("Subdivision Regulations").
4. The Developer shall furnish to the County, in accordance with Chapter 5 of the Subdivision Map Act, security acceptable to the Director of Public Works to guarantee compliance with the terms of conditional approval set by the San Mateo County Board of Supervisors on February 4, 2003, in the amounts stipulated below. Said security shall, in accordance with the Subdivision Regulations, be filed prior to commencing improvement construction or prior to final map approval, whichever occurs first:

a. Performance Security: Security to guarantee performance of the required work ("Performance Security") shall be secured by a "Faithful Performance" Security in the sum of one hundred percent (100%) of the estimated total cost of the improvements, including engineering and contingencies, said sum being in the amount of **Two Hundred Forty-Six Thousand Dollars (\$246,000)**. Said security shall be released upon the performance of the act or final completion and acceptance of the required work by the County

b. Payment Security: Security to guarantee payment to the contractor, his or her subcontractors and to persons furnishing labor, materials or equipment to them for the improvements or performance of work required ("Payment Security") shall be made in the sum of fifty percent (50%) of the estimated cost of the improvements, said sum being in the amount of **One Hundred Twenty-Three Thousand Dollars (\$123,000)**. The following paragraphs are to be included in the "Payment" Security:

"Now, therefore, if the above bonded Principal, contractor, person, company or corporation, or his or its subcontractor, fails to pay any claimant named in Section 3181 of the Civil Code of the State of California, or amounts due under the Unemployment Insurance Code, with respect to work or labor performed by any such claimant, that the Surety on this bond will pay the same, in an amount not exceeding the aggregate sum specified in this bond, and also, in case suit is brought upon this bond, a reasonable attorney's fee, which shall be awarded by the court to the prevailing party in said suit, and attorney's fees to be taxed as costs in said suit.

This bond shall inure to the benefit of any person named in Section 3181 of the Civil Code of the State of California so as to give a right of action to them or their assigns in any suit brought upon this bond.

This bond is executed and filed to comply with the provisions of the act of Legislature of the State of California as designated in the Civil Code, Sections 3247-3252 inclusive, and all amendments thereto."

Payment security shall, after passage of the time within which claims of lien are required to be recorded pursuant to Article 3 (commencing with Section 3114) of Chapter 2 of Title 15 of Part 4 of Division 3 of the Civil Code and, after acceptance of the work, be reduced to

an amount not less than the total claimed by all claimants for whom claims of lien have been recorded and notice thereof given in writing to the legislative body and, if no claims have been recorded, the security shall be released in full.

c. **Warranty Security:** Security for the guarantee and warranty of the work ("Warranty Security") shall be made for a period of one year following the completion and acceptance thereof against any defective work or labor done, or defective materials, and shall be furnished in the sum of fifty percent (50%) of said total estimated cost of the improvements, said sum being in the amount of **One Hundred Twenty-Three Thousand Dollars (\$123,000)**.

Warranty Security will be provided by the Developer upon final acceptance of said work by the County and prior to release of the Performance and Payment Securities

5. The Developer shall ensure that construction will not adversely affect adjacent properties.

6. The Developer shall defend, save harmless and indemnify the County, its officers and employees from any and all claims for injuries or damage to persons and/or property and any other liability incurred in connection with any improvements constructed on-site or off-site of the subdivision and any other terms, conditions or improvements required as part of the subdivision approval and which result from the acts or omissions of the Developer, its officers, employees, agents and/or subcontractors. The duty of the Developer to indemnify and save harmless, as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

Additionally, the provisions contained in Section 7-1.12, "Indemnification and Insurance," of the Standard Specifications of the State of California, Department of Transportation, shall be applicable with the understanding that where said provisions specifically refer to the State of California, a department or division of the State or an official, officer or

employee of the State, said provision shall be interpreted to refer to the County of San Mateo, and all officers and employees thereof connected with the work, including but not limited to the Director of Public Works, their duly authorized representatives, other appropriate department, division, official, officer or employee of the County of San Mateo.

7. The County will retain the right to modify the plans and specifications when necessary to protect the public health and safety, and the right to require the Developer to pay for such modifications.

8. Upon any failure by Developer to complete or maintain the improvements or to correct any defects, the County may perform any necessary construction, maintenance or corrective work and recover the full cost and expense from the Developer, including interest from the date of notice of the cost and expense until paid.

9. The County shall promptly notify Developer of any claim, action or proceeding arising out of the subdivision and will cooperate fully in the defense.

10. This Agreement shall be recorded in the Office of the County Recorder at Developer's expense and shall constitute notice to all successors and assigns of the title to the real property of the obligation set forth, and also shall constitute a lien in an amount to fully reimburse the County, including interest as above, subject to foreclosure in event of default in payment.

11. In the event of litigation occasioned by any default of the Developer, Developer agrees to pay all costs involved, including reasonable attorney's fees, and that the same will become a part of the lien against the real property.

12. The terms "Developer," "Subdivider," and "Owner" shall include not only the Developer, subdivider and the present owner(s) of the real property, but also heirs, successors, executors, administrators and assigns, it being the intent of the parties that the obligations

undertaken shall run with the real property and constitute a lien against it.

13. This Agreement, together with the Plans, Specifications, Conditions of Approval and the Payment and Performance Bonds form the Agreement, and said documents by this reference become as fully a part of the Agreement as if hereto attached or herein set forth in full. The Standard Specifications of the County of San Mateo, State of California, which, except as specifically noted in the County Agreement documents and specifications, are identical with the Standard Specifications of the State of California, Department of Transportation, dated July 2002, and are on file with the County Manager/Clerk of the Board of Supervisors, County of San Mateo, are incorporated herein by reference as a part of the Agreement documents and shall apply to this project except where the terms of this Agreement or other Agreement documents are inconsistent therewith, in which case the provisions of this Agreement shall prevail.

14. No Waiver. Nothing herein contained shall be construed as limiting in anyway the extent to which the Developer may be held responsible for payments of damages resulting from his operation.

15. Insurance: The Developer shall not commence work under this Agreement until he has obtained all insurance required under this paragraph and such insurance has been approved by the County, nor shall the Developer allow any subcontractor to commence work on his subcontract until all similar insurance required of the subcontractor has been so obtained.

The Developer shall furnish County with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending the Developer's coverage to include the contractual liability assumed by the Developer pursuant to this Agreement. Certificates of Insurance shall be filed with the County within **TEN (10) WORKING DAYS** after Developer's execution of this Agreement. These certificates shall specify or be endorsed to provide that **THIRTY (30) CALENDAR DAYS'** notice must be

given, in writing, to County of any pending change in the limits of liability or of any cancellation or modifications of the policy.

A. Worker's Compensation and Employer's Liability Insurance

The Developer shall have in effect during the entire life of this Agreement, Worker's Compensation and Employer's Liability Insurance providing full statutory coverage; and in case any work is sublet, the Developer shall require all subcontractors similarly to provide Worker's Compensation and Employer's Liability Insurance to full statutory limits. In signing this Agreement, the Developer makes the following certifications, required by Section 1861 of the Labor Code:

"I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the code, and I will comply with such provisions before commencing the performance of the work of this Agreement."

B. Liability Insurance

The Developer shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall comply with Section 7-1.12 of the Standard Specifications and protect him/her and any subcontractor performing work covered by this Agreement, from claims for damages for bodily injury, including accidental death, as well as from claims for property damage including third party property damage, to include coverage on property in the care, custody and control of the Developer, and also including coverage for what are commonly known as the "X, C and U" exclusions (having to do with blasting, collapse and underground property damage), which may arise from the Developer's operations under this Agreement, whether such operations be by himself/herself or by any subcontractor or by anyone directly or indirectly employed by either of them and the

amounts of such insurance shall be **ONE MILLION DOLLARS (\$1,000,000)** combined single bodily injury and property damage for each occurrence. The County, its officers, agents, servants and employees, shall be named as additional insureds on any such policies of insurance, which shall also contain a provision stating that the insurance afforded thereby to the County, its officers, agents, servants and employees, shall be primary insurance to the full limits of liability of the policy, and that if the County, or its officers and employees, have other insurance against a loss covered by such policy, such other insurance shall be excess insurance only.

Such statements, mentioned above, shall be included on a separate endorsement to be submitted to the County with the Certificate of Insurance.

C. In case of the breach of any provision of this Article, the County, at its option, may take out and maintain at the expense of the Developer, or subcontractor, such insurance as the County may deem proper and may deduct the cost of taking out and maintaining such insurance from any sums which may be due, or become due, to the Developer, under this Agreement.

D. Hold Harmless

The Developer's attention is directed to Section 7-1.12, "Indemnification and Insurance," of the Standard Specifications.

~~The provisions contained in Section 7-1.12, "Indemnification and Insurance," of~~
the Standard Specifications of the State of California, Department of Transportation, shall be applicable with the understanding that where said provisions specifically refer to the State of California, a department or division of the State or an official, officer or employee of the State, said provision shall be interpreted to refer to the County of San Mateo, and all officers and employees thereof connected with the work, including but not limited to the Director of Public Works, their duly authorized representatives, other appropriate department, division, official,

officer or employee of the County of San Mateo.

E. Compensation

All insurance required by the paragraphs of this section shall be obtained and maintained by the Developer at Developer's own expense and County shall not compensate Developer for said insurance.

F. Nothing herein contained shall be construed as limiting in anyway the extent to which the Developer may be held responsible for payments of damages resulting from his operation.

16. Merger Clause: This Agreement, including the Exhibits attached hereto and incorporated herein by reference, constitutes the sole Agreement of the parties hereto and correctly states the rights, duties, and obligations of each party as of this document's date. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the parties.

17. Controlling Law: The validity of this Agreement and of its terms or provisions, as well as the rights and duties of the parties hereunder, the interpretation, and performance of this Agreement shall be governed by the laws of the State of California.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by his
duly authorized representatives on day and year first above written.

"County"

COUNTY OF SAN MATEO

BY

Richard S. Gordon, President
Board of Supervisors
County of San Mateo, State of California

ATTEST:

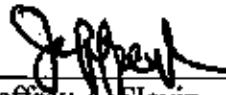
John L. Maltbie,
Clerk of said Board / County Manager

"Developer"

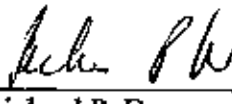
A/CF REDWOOD I, LLC

By: AEGIS/CF, LLC
Managing Member

By: Cinnamon Forest LLC
Managing Member


Jeffrey A. Slavin
Managing Member

By: Aegis Land & Investment Company LLC
Managing Member


Richard P. Denman
Managing Member