

AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 2007, by and between the COUNTY OF SAN MATEO, a political subdivision of the State of California, hereinafter called “County” and RATHGAR COURT, LLC, hereinafter called “Developer.”

W I T N E S S E T H:

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

RATHGAR ESTATES – REDWOOD CITY

1718 EDGEWOOD ROAD, APN 051-040-140

PLN 2000-00823

subject to Developer meeting all the conditions of Development as approved by the Board of Supervisors for the Subdivision on February 11, 2003, including the construction of certain onsite improvements which will benefit the public; and

WHEREAS, Developer has had plans and specifications for said improvements prepared and said plans and specifications are entitled “Improvement Plans, Rathgar Estates,” prepared by Louis Attilio Arata, Civil Engineer and Surveyor, and approved by the Director of Public Works on December 5, 2006, and hereinafter referred to as “Plans”; and

WHEREAS, Section 7033 of the 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, IN CONSIDERATION OF THE COUNTY'S
APPROVALS AND THE PUBLIC BENEFITS THAT WILL RESULT, THE
PARTIES AGREE 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 a good workmanlike and substantial manner, and to the satisfaction of the Director of Public Works, all work as shown on the Plans, which Plans are incorporated by reference herein as part of this agreement. Said work shall be completed on or before April 30, 2008, at an estimated cost to the Developer of **Four Hundred Forty Thousand Dollars (\$440,000)**, which estimated total includes the costs of engineering and contingencies.

2. In addition, Developer, at his own 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. In addition, Developer shall pay the County the cost of inspecting the improvements as required in Section 7035.2 of the Subdivision Regulations.

4. In addition, Developer shall furnish to the County, in accordance with

Chapter 5 of the Subdivision Map Act, the following security to guarantee compliance with the terms of conditional approval set by the San Mateo County Board of Supervisors on February 11, 2003. All such security shall be in a form that is acceptable to the Director of Public Works, and shall include and meet the conditions specified below. Said security shall, in accordance with the Subdivision Regulations, be filed prior to final map approval:

A. Performance Security: Performance of the required work shall be secured by a “Faithful Performance” Security in the sum of one hundred percent (100%) of the total estimated cost of the improvements, including engineering and contingencies, said sum being in the amount of **Four Hundred Forty Thousand Dollars (\$440,000)**. County shall release said security 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 **Two Hundred Twenty Thousand Dollars (\$220,000)**. 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.”

After passage of the time within which claims of lien are required to be recorded pursuant to the applicable provisions of the California Civil Code (§§ 3114 *et seq.*) and, after acceptance of the work, payment security shall 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 **Two Hundred Twenty Thousand Dollars (\$220,000)**. 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 ensure that survey monuments shown on the Tentative Map interior to the subdivision are placed prior to recording of the final map or, if the engineer or surveyor has certified on the map that interior monuments shall be set on or before a specified later date, shall provide security in an amount determined by the Director of Public Works to be sufficient to guarantee the setting of the monuments or reimbursement to the County

for the cost of setting the monuments if the Developer should fail to perform.

7. The Developer shall defend, save harmless and indemnify the County, its officers, agents, employees, invitees, and contractors, and each of them, from and against any and all losses 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. This duty to defend, hold harmless and indemnify shall apply to any and all demands, claims for injuries or damage to persons and/or property, legal or administrative proceedings, losses, costs, penalties, fines, liens, judgments, damages and liabilities of any kind, or any other loss or cost, including but not limited to, the concurrent active or passive negligence of County, its officers, agents, employees, or servants resulting from the performance of any work required of Contractor or payments made pursuant to this Agreement, provided that this shall not apply to injuries or damage for which the County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or will misconduct.

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.

8. 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.

9. 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.

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

11. The Developer shall cause this Agreement to be recorded in the Office of the County Recorder at Developer's expense, which 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. The Developer shall provide a copy of the recorded Agreement to the County prior to final map approval.

12. 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.

13. 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.

14. 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 2006, 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.

15. Merger Clause: This Agreement, including the Exhibit(s) 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.

16. 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, and any and all claims or lawsuits related to this agreement or the work performed hereunder shall be venued in the Superior Court of the County of San Mateo .

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

Rose Jacobs Gibson, President
Board of Supervisors
County of San Mateo, State of California

ATTEST:

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

“Developer”

Rathgar Court, LLC, a California Limited Liability Company

Patrick J. Fellowes
President

Mark Vincent Schoenstein
Senior Vice President