



**Report to the City Council
Council Meeting of August 9, 2016**

Agenda Section: Consent

Subject: Consideration and proposed approval of a resolution approving the Final Map for Fulton Lane Parcel Map and authorizing the City Manager to execute the Subdivision Improvement Agreement

CEQA Status: Categorically Exempt, Section 15315, subdivision of four or fewer parcels; and Section 15303, construction or conversion of small structures including single-family residences, garages, pools, etc.

Prepared By: Steven Palmer, PE, Director of Public Works/City Engineer

Approved By: Jennifer Phillips, City Manager

BACKGROUND

On April 19, 2016, the Planning Commission approved the Amended Vesting Tentative Parcel Map and associated Conditions of Approval for the Fulton Lane Parcel Map located at 601 and 603 Fulton Lane.

This Project is located on the south side of Fulton Lane, approximately 0.37 miles east of Railroad Avenue. The Amended Vesting Tentative Parcel Map was approved for two (2) residential lots. This Final Map (Exhibit A to Attachment 1) has been examined and checked for compliance with Title 16 of the St Helena Municipal Code and the California Subdivision Map Act. The City Engineer has determined that the Final Map and the location and configuration of the lots created by this Final Map substantially comply with the previously approved Amended Vesting Tentative Map that was approved on April 19, 2016.

DISCUSSION

When the Final Map is submitted to the County of Napa, it will be reviewed by the Napa County Tax Collector for delinquent taxes against this property. The taxes for 2015-16 will need to be paid in full, and a tax bond posted for the 2016-17 taxes.

A Subdivision Improvement Agreement has been reviewed and approved by the City Attorney. Bonds have been posted to the City as security for the required improvements and insurance has been satisfactorily provided. A bond has been posted to the City as

security for the setting of all monuments shown on the final maps. All applicable Final Map conditions of approval have been satisfied.

FISCAL IMPACT

There are no fiscal impacts to the City at this time. Upon construction and acceptance of the frontage improvements on Fulton Lane, the City will be responsible for maintaining the new frontage improvements consisting of a widened pavement section and roadside drainage ditch.

RECOMMENDED ACTION

Approve the attached resolution approving the Final Map for the Fulton Lane Parcel Map and authorizing the City Manager to execute the Subdivision Improvement Agreement.

ATTACHMENTS

1. Resolution
 - a. Exhibit A: Final Map of Fulton Lane Parcel Map
2. Subdivision Improvement Agreement
3. Project Location Map

CITY OF ST. HELENA

RESOLUTION NO. 2016-

**APPROVING THE FINAL MAP FOR THE FULTON LANE PARCEL MAP AND
AUTHORIZING THE CITY MANAGER TO EXECUTE THE SUBDIVISION
IMPROVEMENT AGREEMENT**

RECITALS

- A. On April 19, 2016, the City of St Helena Planning Commission approved the Amended Vesting Tentative Parcel Map and Associated Conditions of Approval for the Fulton Lane Parcel Map; and
- B. Fulton Lane Estates, LLC submitted to the City for approval a Final Map for the Amended Vesting Tentative Parcel Map; and
- C. City staff has reviewed the proposed Final Map, attached hereto as Exhibit A, and finds it to be technically correct and that all applicable Final Map conditions of approval have been satisfied; and
- D. A Subdivision Improvement Agreement has been approved by the City Attorney and bonds have been posted to the City for the construction of the required improvements.

RESOLUTION

NOW, THEREFORE, the City Council of the City of St. Helena resolves as follows:

1. The location and configuration of lots to be created by the Final Parcel Map substantially comply with the previously approved Amended Vesting Tentative Parcel Map; and
2. The Final Parcel Map for the Fulton Lane Parcel Map located at 601 and 603 Fulton Lane, a copy of which is hereby attached as Exhibit A and made part of this Resolution, is hereby approved; and
3. The City Manager is directed to execute the Subdivision Improvement Agreement and the City Clerk is directed to transmit the Final Map to the County Recorder of the County of Napa for recording.

Approved at a Regular Meeting of the St. Helena City Council on August 9, 2016
by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

Alan Galbraith
Mayor

ATTEST:

Cindy Black
City Clerk

RECORDING REQUESTED BY)
AND WHEN RECORDED MAIL TO:)
)
City of St. Helena)
1480 Main Street)
St. Helena, CA 94574)
Attention: City Clerk)
)
)

(Space Above This Line for Recorder's Use Only)
Exempt from recording fee per Gov. Code § 27383.

SUBDIVISION IMPROVEMENT AGREEMENT
(Fulton Lane Public Infrastructure Improvements)

THIS SUBDIVISION IMPROVEMENT AGREEMENT (the “**Agreement**”) is made and entered into on this ___ day of July, 2016 (the “**Effective Date**”) by and between Fulton Lane Estates, LLC, a California limited liability corporation (“**Developer**”), and the City of St. Helena, a California municipal corporation (“**City**”).

RECITALS

- A. Developer is the owner of that certain real property of 14.13 acres located on Napa Assessors Parcel Number 009-500-050-001 in the City of St. Helena, commonly known as 601 Fulton Lane (the “**Property**”) described more particularly in Attachment 1.
- B. On November 25, 2014 the City approved Resolution No. 2014-97, which approved a vesting tentative parcel map subdividing the Property into two individual parcels of 13.63 acres and 0.5 acres (“**Tentative Parcel Map**”).
- C. In October, 2015, Developer requested approval of a modification and extension of the previously approved Tentative Parcel Map to change the dimensions of the 0.5 acre parcel to make it easier to develop (“**Project**”).
- D. On April 19, 2016, the Planning Commission adopted Resolution PL15-072, attached hereto as Attachment 2, granting the modification and extension of the Tentative Parcel Map subject to certain conditions of approval (the “**Conditions**”). The Conditions require that certain improvements be constructed prior to approval of the final map including, but not limited to grading hardscape, landscape, drainage and utility improvements.
- E. Developer has applied to City for final subdivision map approval (the “**Final Map**”) without having completed the required improvements, and therefore will enter into an agreement with the City providing for the future construction and installation of the improvements, as required by the Subdivision Map Act, Government Code Section 66410 *et seq.*, and St. Helena Municipal Code Section 16.32.290, as may be amended from time to time (the “**Subdivision Ordinance**”).

F. Developer has submitted plans, specifications and drawings for the Final Map infrastructure improvements shown in Vesting Tentative Parcel Map prepared by Delta Construction and Engineering and dated _____, 2016, (the "Improvement Plans") which have been reviewed by the City Engineer (the "Improvement Plans") and are on file with the City Engineer.

G. City and Developer desire to enter an agreement providing for the fulfillment of the Conditions in accordance with the Improvement Plans.

A G R E E M E N T

NOW, THEREFORE, in consideration of the faithful performance of the terms and conditions set forth in this Agreement, the parties hereto agree as follows:

1. Purpose. The purpose of this Agreement is to guarantee completion of certain public improvements as defined in Section 1.1, below, and in accordance with the Improvement Plans and ensure satisfactory performance by Developer of Developer's obligations to satisfy the following Conditions:

1.1 Complete all work of public infrastructure improvements required by the Conditions and as shown on the Improvement Plans (the "Improvements"). The Improvements include, but are not limited to, dedication of easements, extension of city sewer lines, demolition of existing properties, construction of a water lateral, laying of a new water main, construction of driveways, sidewalks, curbs, and gutters, as well as grading and drainage.

1.2 Guarantee installation of the Improvements as further defined in Section 2 of this Agreement;

1.3 Provide for the maintenance of the Improvements by the Developer as further described in Section 3 of this Agreement for the warranty period and until the maintenance obligations are transferred to the City;

1.4 Ensure satisfactory performance by the Developer of the Developer's obligations.

2. Duty to Install Improvements. Developer will construct, install and complete, or cause to be constructed, installed and completed, at the Developer's sole cost and expense, the Improvements in accordance with the Conditions, the Improvement Plans, all applicable federal, state and local laws and regulations, including without limitation State of California Division of Industrial Safety Construction Orders, and to the satisfaction of the City Engineer, in his or her reasonable discretion. Developer will also supply all labor and materials therefor, all in strict accordance with the terms and conditions of this Agreement. The construction, installation and completion of the Improvements and all labor and materials furnished in connection therewith are hereinafter referred to collectively as the "Work."

3. Duty to Maintain Improvements. City shall not be responsible or liable for the maintenance or care of the Improvements until City formally approves and accepts them in accordance with applicable adopted policies and procedures. City shall exercise no control over

the Improvements until approved and accepted. Any use by any person of the Improvements, or any portion thereof, shall be at the sole and exclusive risk of the Developer at all times prior to City's acceptance of the Improvements. Developer shall maintain all the Improvements in a state of good repair until they are completed by Developer and approved and accepted by City in accordance with the City's adopted standards. Maintenance shall include, but shall not be limited to, repair of pavement, curbs, gutters, sidewalks, signals, parkways, storm drainage facilities, in a manner reasonably acceptable to City; removal of debris from storm drains; and sweeping, repairing, and maintaining in good and safe condition all streets and street improvements.

3.1 It shall be Developer's responsibility to initiate all maintenance work set forth in Section 3, but if it shall fail to do so, it shall promptly perform such maintenance work when notified to do so by City in writing ("**Notice of Default**").

3.2 If Developer fails to properly prosecute its maintenance obligation under this Section 3, City shall mail Developer a written Notice of Default. In the event that Developer fails to perform all maintenance work required by Section 3, City may do all work necessary for such maintenance and the cost thereof shall be the responsibility of Developer and its surety under this Agreement. City shall not be responsible or liable for any damages or injury of any nature in any way related to or caused by the Improvements or their condition prior to acceptance.

4. Commencement and Completion Date. Developer will notify City in writing at least 24 hours prior to the commencement of the Work. Developer will complete the Work as shown on the Improvement Plans prior to the application of a permit or other grant of approval for the development of a lot within the subdivision.. All Work will be completed in a good and workmanlike manner in accordance with accepted design and construction practices. If the Work is not completed within the specified time period because of acts of God, the public enemy, or because of fire, flood, epidemic, quarantine restrictions, strikes or freight embargoes, the Developer shall be entitled to an extension beyond the specified time period for a period equal to the length of such delay within ten days from the beginning of such delay. The completion date may be extended by the City Engineer in consultation with the City Attorney in its sole and reasonable discretion at the request of Developer, which request shall be accompanied by a written assurance acceptable to the City Attorney that the securities required by Section 13 shall remain enforceable throughout the term of the extension.

5. Estimated Cost of Work. The estimated cost of the Work is **thirty-two thousand five hundred Dollars (\$32,500)**. Notwithstanding this estimate, Developer hereby acknowledges and agrees that (a) the actual costs to complete the Work may significantly exceed this estimate, (b) this estimate in no way limits Developer's financial obligation, and (c) that Developer is obligated to complete the Work at its own cost, expense, and liability.

6. Modifications to the Plans. Approval of this Agreement by City does not release Developer of its responsibility to correct mistakes, errors or omissions in the Improvement Plans. If, at any time, in the opinion of the City Engineer, in his or her reasonable discretion, the Improvement Plans are deemed inadequate in any respect Developer agrees to make such

modifications, changes or revisions as necessary in order to complete the Work in a good and workmanlike manner in accordance with this Agreement.

7. Repairs. Developer agrees to repair or have repaired in a timely manner at its sole cost and expense all public roads, streets, or other public or private property damaged as a result of or incidental to the Work or in connection with the development of the Property or to pay to the property owner of any damaged road, street or property the full cost of such repair. In addition, Developer shall obtain the written acceptance of such repair or payment from any owner whose private property was repaired by Developer or to whom Developer has paid the full cost of such repair in accordance with this Section 7. City shall be under no obligation whatsoever to accept the Work completed under this Agreement until such time as all repairs have been completed or have been paid for and required written acceptances have been provided to the City Engineer in accordance with the City's adopted standards.

8. Foreman or Superintendent. Developer shall give personal attention to the Work. A competent foreman or superintendent, with authority to act for and on behalf of Developer, shall be named in writing by Developer prior to commencement of the Work. The Developer also may designate an agent authorized to act on behalf of the foreman or superintendent, in the event the foreman or superintendent is unavailable. The foreman or superintendent, or designated alternate, shall be reasonably present on the Property during the performance of the Work and may not be changed without advance written notification to the City Engineer.

9. Examination of Work. All of the Work shall be performed to the satisfaction of the City Engineer, in his or her reasonable discretion. The City and its authorized agents shall, at all times during the performance of the Work, have free access to the Work and shall be allowed to examine the Work and all materials used and to be used in the Work. In the City Engineer's reasonable discretion, based on the complexity of the Work at issue or other circumstances which reasonably warrant having an inspector on site for portions of the Work, the City shall have an inspector present on-site to inspect the Work as it is being performed. The intent of this section is not to have an inspector on-site full time for the entirety of the Work or beyond that time which is reasonably required by the City Engineer, with reference to the standards set forth above. Developer agrees that the City Engineer shall have the right to reject Work that is performed under this Agreement if such Work does not conform with the Improvement Plans or the Conditions, until such time as Developer completes the Work in conformance with the Improvement Plans or the Conditions, as applicable, as determined by the City Engineer. All Work shall be performed during the City's standard construction hours and work days. If any Work is planned to be performed outside standard construction hours or work days, there must be a request made in writing to City at least 24 hours in advance. When an inspector conducts an inspection of the Work during non-standard construction hours or word days and such inspections are not otherwise included in the Estimated Cost defined in Section 10 below, Developer shall pay the actual costs for overtime work as provided in Section 10 below.

10. City's Inspection, Administration and Testing. Developer shall pay to City the encroachment permit fee to pay for the cost for all inspection, administration and testing services furnished by City in connection with this Agreement, including those performed by consultants under contract with the City (the "City Costs").

11. Compliance with Laws. Developer shall fully comply with all federal, state and local laws, ordinances and regulations, including the Subdivision Ordinance, in the performance of this Agreement. Developer shall, at its own cost and expense, obtain all necessary permits and licenses for the Work, give all necessary notices, pay all fees and taxes required by law and make any and all deposits legally required by those public utilities that will serve the development on the Property. Copies and/or proof of payment of said permits, licenses, notices, fee and tax payments and deposits shall be furnished to the City Engineer upon request.

12. Encroachment Permits. Developer shall obtain, at its sole cost and expense, any encroachment permits required by the City pursuant to applicable City ordinances or regulations in order to perform the Work.

13. Performance, Labor and Materials and Warranty Security. In accordance with the Subdivision Ordinance and the Subdivision Map Act, Developer will furnish and deliver to City, within the times set forth below, the following letters of credit, each of which must be issued by a surety company duly and regularly authorized to do general surety business in the State of California, or such other surety as may be acceptable to the City Attorney in accordance with the Subdivision Map Act and the Subdivision Ordinance.

13.1 Performance Security. Developer shall furnish and deliver a performance bond in the amount of **thirty-two thousand five hundred Dollars (\$32,500)**, concurrently with the execution of this Agreement, which performance bond must meet the requirements of the Subdivision Ordinance and Government Code Section 66499.1, as may be amended, and be acceptable to the City Attorney. The performance bond shall be conditioned upon the faithful performance of this Agreement with respect to the Work and shall be released by the City effective upon the date of recordation of the notice of acceptance of the Improvements and Developer's delivery of a Warranty Bond or other security, as described below, or as otherwise provided for under Government Code Section 66499.7. Proceeds resulting from a drawing of the performance bond shall be used for the purpose of completing the Work. Developer shall have the right from time to time to provide a replacement bond meeting the requirements of this Section 13.1 or other replacement security (such as a letter of credit guaranteeing performance) meeting the requirements of the Subdivision Map Act and approved by the City in its reasonable discretion.

13.2 Labor and Materials Security. Developer shall furnish and deliver a labor and materials bond in the amount of **thirty-two thousand five hundred Dollars (\$32,500)**, concurrently with the execution of this Agreement, which bond must meet the requirements of the Subdivision Ordinance and Government Code Section 66499.2, as may be amended, and be acceptable to the City Attorney. The materials bond shall secure payment to the contractor(s) and subcontractor(s) performing the Work and to all persons furnishing labor, materials or equipment to them. The City shall retain the materials bond until both (a) the City accepts the Work, and (b) the statute of limitations to record a claim of lien under Civil Code section 8410 *et seq.* has expired. After said date, the materials bond may be reduced by the City Engineer to an amount not less than the total amount claimed by all claimants for whom claims of lien have been recorded and notice given in writing to the City Council. The balance of the materials bond shall be retained until the final settlement of all such claims and obligations. Proceeds resulting from a drawing of the materials bond shall be used for the purpose of paying amounts due to

contractors, subcontractors, laborers, material suppliers, and other persons employed in the performance of the Work and referred to in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code, for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to this work or labor, and also in case suit is brought against the City, costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by City in connection therewith. Developer shall have the right from time to time to provide a replacement bond meeting the requirements of this Section 13.2 or other replacement security (such as a letter of credit guaranteeing payment) meeting the requirements of the Subdivision Map Act and approved by the City in its reasonable discretion.

14. Additional Security. If either upon execution of this Agreement or during the course of performance the City considers that it is necessary to have an updated engineer's estimate prepared, the City shall provide written notice to Developer. Developer shall provide such estimate within the timeframe set forth in the City's notice and shall make such modifications to the estimate as may be reasonably requested by City. Developer shall provide additional security as may be required by the updated engineer's estimate. If Developer is required to post additional security, the City may require either a cash deposit, letter of credit, or a surety bond guaranteeing performance in a form and signed by sureties satisfactory to City. The condition of the security shall be that if Developer fails to perform its obligations under this Agreement, the City may, as applicable, use the proceeds or require the sureties to perform Developer's obligations pursuant to this Agreement.

15. No Waiver by City. Inspecting of the work and/or materials, or approval of work and/or materials, or a statement by an officer, agent or employee of the City indicating the work complies with this Agreement, or acceptance of all or any portion of the work and/or materials, or payments thereof, or any combination of all of these acts shall not relieve Developer or its obligation to fulfill this Agreement; nor is the City by these acts prohibited from bringing an action for damages arising from the failure to comply with this Agreement.

16. Completion of Work. After Developer (a) completes the Work in accordance with the Improvement Plans and the terms and conditions of this Agreement, and (b) repairs any road, street, or private or public property damaged as a result of the Work, or pays the full cost of such repair to the owner whose property was damaged, and obtains the written acceptance of such repair or payment from any owner whose private property was repaired by Developer or to whom Developer paid the full cost of such repair in accordance with Section 7 above, Developer will provide City with a written notice of completion, together with copies of all written acceptances as described in Section 7. City, in its reasonable discretion, may accept the Work in phases and allow a partial release of the security (e.g., the letter of credit or portion of the security) provided under Sections 13 and 17 of this Agreement.

17. Final Acceptance.

17.1 Notice of Completion. Within 45 days of receipt of Developer's written notification pursuant to Section 16 above, City Engineer shall inspect the Work and repairs and review the written acceptances, if any, and send Developer a written notice stating whether the Work and repair are complete to the satisfaction of the City Engineer, in his reasonable discretion, and whether the written acceptances described in Section 7 have been provided. If

the Work and repair are, in the opinion of the City Engineer, not complete, not satisfactory, and/or written acceptances have not been provided, the City Engineer will list the deficiencies in writing that must be corrected to find the Work and repair complete and satisfactory. Upon satisfactory completion of the Work and repair and submittal of written acceptances, the City Engineer will send Developer a written notice of satisfactory completion. The requirement for written acceptances may be waived by the City Engineer, in his reasonable discretion, if Developer has made commercially reasonable efforts to obtain such acceptances. City Engineer's failure to respond to Developer's written notification within sixty (60) days will not be deemed a breach or default under this Agreement.

17.2 Acceptance of Improvements. After sending Developer a written notice of satisfactory completion pursuant to Section 17.1, the City Engineer will recommend acceptance of the Improvements to the City Council. The acceptance of the Improvements shall be by resolution. Upon adoption of such resolution, the City Engineer shall record a notice of acceptance, in a form to be approved by the City Attorney, in the Official Records of Napa County. Title to, and ownership of, all Improvements constructed by Developer under this Agreement shall vest in City upon City's acceptance of such Improvements. City shall release all payment security in accordance with the time frames and other applicable provisions set forth in Government Code Section 66499.7, as may be amended from time to time.

17.3 Acceptance of Dedications. In conjunction with the recommendation to accept the Improvements, the City Engineer will recommend the acceptance of any offers of dedication shown on the final map for, or separately recorded against, the Property ("**Dedicated Property**"). The Dedicated Property shall be conveyed free and clear of all liens, encumbrances, assessments and leases (recorded and unrecorded), except items approved by City in writing. City may require Developer to obtain and pay for title insurance in connection with any such approvals of title exceptions.

18. Warranty Period.

18.1 Warranty; Repair and Reconstruction. Without limiting the foregoing, Developer expressly warrants and guarantees all Work and all materials used in the Work for a period of one year after the date of recordation of the notice of acceptance of the Improvements in accordance with Section 17. If, within this one-year period, any Improvement or part of any Improvement installed or constructed, or caused to be installed or constructed by Developer, or any of the Work, fails to fulfill any of the requirements of the Improvement Plans or this Agreement, Developer shall, without delay and without cost to City, repair, replace or reconstruct any defective or otherwise unsatisfactory part or parts of the Work or Improvement to the satisfaction of the City Engineer. Should Developer fail to act promptly from receipt of a Notice of Default or a written notice set forth in Section 17, or should the exigencies of the situation require repairs, replacements or reconstruction to be made before Developer can be notified, City may, at its option, make the necessary repairs, replacements or perform the necessary reconstruction and Developer shall pay to the City upon demand the actual cost of such repairs, replacements or reconstruction plus 5 percent.

18.2 Warranty Bond. Developer shall furnish and deliver a warranty bond in the amount of ten percent of the value of the Improvements upon acceptance of the

Improvements and prior to release of the entirety of the Performance Bond. The bond shall be in a form acceptable to the City Attorney and shall guarantee and warranty the Work for a period of one year following the date of recordation of the notice of acceptance of the Improvements against any defective work or labor done, or defective materials furnished.

19. Developer Not Agent of City. Neither Developer nor Developer's contractors, subcontractors, agents, officers, or employees are agents, partners, joint venturers or employees of City and the Developer's relationship to the City, if any, arising herefrom is strictly that of an independent contractor. Developer's contractors and subcontractors are exclusively and solely under the control and dominion of Developer. Further, there are no intended third party beneficiaries of any right or obligation assumed by the Parties.

20. Indemnification. Developer agrees to indemnify, defend and hold the City, its elective and appointed boards, commissions, officers, agents, employees and consultants, harmless from and against any and all claims, liabilities, losses, damages, injuries, penalties, fines, judgments, awards, decrees, attorneys' fees and related costs or expenses of any kind or nature (collectively, "Claims") arising out of this Agreement, including without limitation Developer's, or Developer's contractors', subcontractors', agents' or employees' acts, omissions, or operations under this Agreement, and the performance of the Work, whether such acts, omissions, or operations are by Developer or any of Developer's contractors, subcontractors, agents or employees. The aforementioned indemnity shall apply regardless of whether or not City has prepared, supplied or approved plans and/or specifications for the Work or Improvements unless due to the willful misconduct or sole negligence of the City, and regardless of whether any insurance required under this Agreement is applicable to any Claims. The City does not and shall not waive any of its rights under this indemnity provision because of its acceptance of the bonds or insurance required under the provisions of this Agreement. Developer's obligation to indemnify City shall survive the expiration or termination of this Agreement.

21. Insurance. During the term of this Agreement, Developer shall maintain at its cost and expense the following insurance coverage against Claims, including Claims for injuries to persons or damages to property that may arise from or in connection with the performance of the Work and the results of that Work by the Developer, its contractors, agents, representatives, employees or subcontractors, with insurers with an A.M. Best's rating of no less than A:VII unless otherwise accepted by the City in writing:

21.1 Commercial General Liability (CGL). Developer shall provide or cause to be provided Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to the Project and Property or the general aggregate limit shall be twice the required occurrence limit.

21.2 Automobile Liability Insurance. Developer shall provide or cause to be provided ISO Form Number CA 00 01 covering any auto (Code 1), or if Developer has no owned autos, hired (Code 8), and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

21.3 Workers' Compensation Insurance. Developer shall provide, or cause to be provided, workers' compensation insurance as required by law, and shall cause its contractors and their subcontractors, agents and representatives to maintain workers' compensation insurance as required by the State of California, with statutory limits, and employer's liability insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease. For services deemed public works, by signing this agreement, Developer is certifying, pursuant to Section 1861 of the California Labor Code, that: "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this Agreement."

21.4 Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions:

21.4.1 Additional Insured Status. The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Developer including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Developer's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).

21.4.2 Primary Coverage. For any Claims related to this Agreement, the Developer's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and agents. Any insurance or self-insurance maintained by the City, its officers, officials, employees or agents shall be excess of the Developer's insurance and shall not contribute with it.

21.4.3 Notice of Cancellation. Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.

21.4.4 Waiver of Subrogation. Developer hereby grants to City a waiver of any right to subrogation which any insurer of said Developer may acquire against the City by virtue of the payment of any loss under such insurance unless such loss is due to the sole negligence of the City. Developer agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

21.4.5 Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions over Ten Thousand Dollars (\$10,000) must be declared to and approved by the City. The City may require the Developer to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

21.5 Certificate of Insurance and Endorsements. Developer shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy

language effecting coverage required by this Section. All certificates and endorsements are to be received and approved by the City before the Work commences. However, failure to obtain the required documents prior to the commencement of the Work shall not waive the Developer's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

21.6 Subcontractors. Developer shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated in this Agreement, including but not limited to naming additional insureds.

21.7 Higher Limits. If the Developer maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Developer. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

22. Payments. Developer agrees that it will pay, when due, all those furnishing labor or materials in connection with the Work. Developer further agrees that pursuant to Government Code section 66499.7, the Labor and Materials Bond provided by Developer in accordance with Section 13.2 of this Agreement shall not be released if any mechanics liens or stop notices are outstanding, unless said liens are released by bond in compliance with Civil Code section 3143.

23. Notice of Breach and Default. The occurrence of any of the following constitutes a breach and default of this Agreement (a "Default"):

- (1) Developer refuses or fails to complete the Work within the time set forth herein or abandons the Work within the time set forth in this Agreement, as may be extended as provided herein;
- (2) Developer is adjudged bankrupt or makes a general assignment for the benefit of creditors, or a receiver is appointed in the event of Developer's insolvency, unless such creditors or receiver assumes the obligations herein;
- (3) Developer or Developer's contractors, subcontractors, agents or employees, fail to comply with any terms or conditions of this Agreement, which failure prevents the completion of the Work or the payment to contractors and subcontractors and other parties involved in the Work, as cited in Section 13.2, and such failure has not been cured within thirty days after receipt of written notice from the City, or, if more than thirty days are reasonably required to effect such cure, Developer has not commenced curing the default; or
- (4) There is any delay in the construction of any portion of the Work or repairs, which in the reasonable opinion of the City Engineer, endangers public or private property.

In the event of a Default pursuant to this Section 23, The City shall serve written notice of Default upon Developer and the financial institution issuing the bond.

24. Breach of Agreement: Performance by City; Remedies. If the City gives Developer notice under Section 23 of Default of this Agreement, the City may pursue any and all remedies available, including but not limited to, bringing legal action to compel performance of the Work, holding the financial institution holding the bonds liable to complete the Work and/or pay for the cost of the Work, and/or proceeding to complete the Work by contract or other method the City considers advisable, at the sole expense of Developer. If City completes the Work, Developer, immediately upon demand, shall pay the costs and charges related to City's completion of the Work and any subsequent repairs. City, without liability for doing so, may take possession of and utilize in completing the Work and repairs, if any, such materials and other property belonging to Developer as may be on or about the Property and necessary for completion of the work. In the event of default of this Agreement, the City may draw upon the bonds up to their face amount, as specified in this Agreement, except to the extent that the City pursues another remedy for completion of the Work. As noted above, City may bring legal action to compel performance of this Agreement and recover the costs of completing the Work and/or repairs, if any, including City's administrative and legal costs. Developer agrees that if legal action is brought by City under this Section of the Agreement, Developer shall pay all of the costs of suit, reasonable attorney fees, arbitration costs and such other costs as may be determined by the court or arbitrator. No failure on the part of City to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that City may have hereunder, provided that City shall be entitled to draw from any bond provided by Section 13 above only for the completion of the Work and the costs of labor and materials as set forth in Section 13, and shall not be entitled to twice recover any of the costs of the Work, including such costs of the Work previously completed by the Developer.

25. Final Drawings. Upon completion of the Work and prior to final acceptance, Developer shall deliver to City a set of "as-built" drawings. These drawings shall be in a form acceptable to the City Engineer, shall be certified as being "as-built" and shall reflect the Work as actually constructed, with any and all changes incorporated therein. The drawings shall be signed and sealed as accurate by the engineer of record.

26. Attorneys' Fees. Should any legal action or arbitration be brought by either party because of breach of this Agreement or to enforce any provision of this Agreement, the prevailing party shall be entitled to all costs of suit, reasonable attorneys' fees, arbitration costs and such other costs as may be determined by the court or arbitrator.

27. Notices. Formal written notices, demands, correspondence and communications between City and Developer shall be sufficiently given if: (a) personally delivered; (b) dispatched by next day delivery by a reputable carrier such as Federal Express to the offices of City and Developer indicated below, provided that a receipt for delivery is provided; or (c) if dispatched by first class mail, postage prepaid, to the offices of City and Developer indicated below. Such written notices, demands, correspondence and communications may be sent in the same manner to such persons and addresses as either party may from time-to-time designate by next day delivery or by mail as provided in this Section.

City: City of St. Helena
1480 Main Street
St. Helena, CA 94574
Attention: City Manager

Developer: Fulton Lane Estates, LLC
251 Lafayette Circle, Suite 360
Lafayette, CA 94549
Attn: Trenor Askew, Manager

With Copy to: na

Notices delivered by deposit in the United States mail as provided above shall be deemed to have been served two (2) business days after the date of deposit if addressed to an address within the State of California, and three (3) business days if addressed to an address within the United States but outside the State of California.

28. Transfers; Assignments. Developer may assign its obligations under this Agreement to successor developer(s) or owner(s) of the Property with the prior reasonable written consent of the City. Any assignment or transfer without the City's prior written consent shall be void and of no force and effect and the original security provided by Developer shall remain in full force and effect, as evidenced on the security. In connection with any proposed assignment, Developer and its assignee shall execute and deliver to City a written assignment and assumption agreement in a form acceptable to the City Attorney.

29. Binding Upon Heirs, Successors and Assigns. The terms, covenants and conditions of this Agreement shall be binding upon all heirs, successors and assigns of the parties hereto; provided, however, that this Agreement shall not be binding upon a purchaser or transferee of any portion of the Property unless this Agreement has been assigned pursuant to Section 28. If this Agreement has not been assigned or if the assignment has not been consented to by City, it shall remain binding on Developer.

30. Headings. Section headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants or conditions contained in this Agreement.

31. Severability. If any provision of this Agreement is held, to any extent, invalid, the remainder of this Agreement shall not be affected, except as necessarily required by the invalid provision, and shall remain in full force and effect.

32. Entire Agreement. The terms and conditions of this Agreement constitute the entire agreement between City and Developer with respect to the matters addressed in this Agreement. This Agreement may not be altered, amended or modified without the written consent of both parties.

33. Governing Law; Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of California, without reference to choice of law provisions. Any legal actions under this Agreement shall be brought only in the Superior Court of the County of Napa, State of California.

34. Authority. Each party executing this Agreement on behalf of a party represents and warrants that such person is duly and validly authorized to do so on behalf of the entity it purports to bind and if such party is a partnership, corporation or trustee, that such partnership, corporation or trustee has full right and authority to enter into this Agreement and perform all of its obligations hereunder.

35. Time is of the Essence. Time is of the essence of this Agreement and of each and every term and condition hereof.

36. Runs with the Land; Recordation. This Agreement pertains to and shall run with the Property. Upon execution, this Agreement shall be recorded in the Official Records of Napa County.

[Signatures on Following Page]

IN WITNESS WHEREOF, City and Developer have executed this Agreement as of the Effective Date.

CITY

CITY OF ST. HELENA, a California
municipal corporation

By: _____
Jennifer Phillips, City Manager

ATTEST:

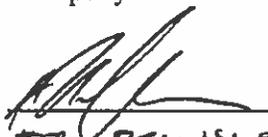
Cindy Black, City Clerk

APPROVED AS TO FORM:

Thomas B. Brown, City Attorney

DEVELOPER

Fulton Lane Estates, LLC, a California limited
liability company

By:  _____, Brad Owsen
Name: Fulton Lane Estates, LLC
Its: Manager

Attachment 1

Legal Description of the Property

[to be inserted]

Attachment

Attachment

BN 20264298v5
OAK #4816-4412-8053 v1

Attachment 2

Tentative Map Approval

[to be inserted]

Attachment

[Acknowledgements to be inserted]

Acknowledgement

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

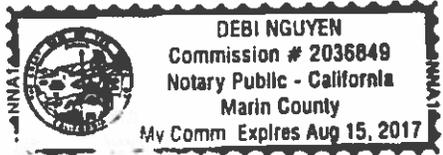
State of California)
County of Marin)

On July 28, 2016, before me, Debi Nguyen, notary public, personally appeared Brad Oldenbrook, who 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(ies) upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public Signature (Seal)



ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

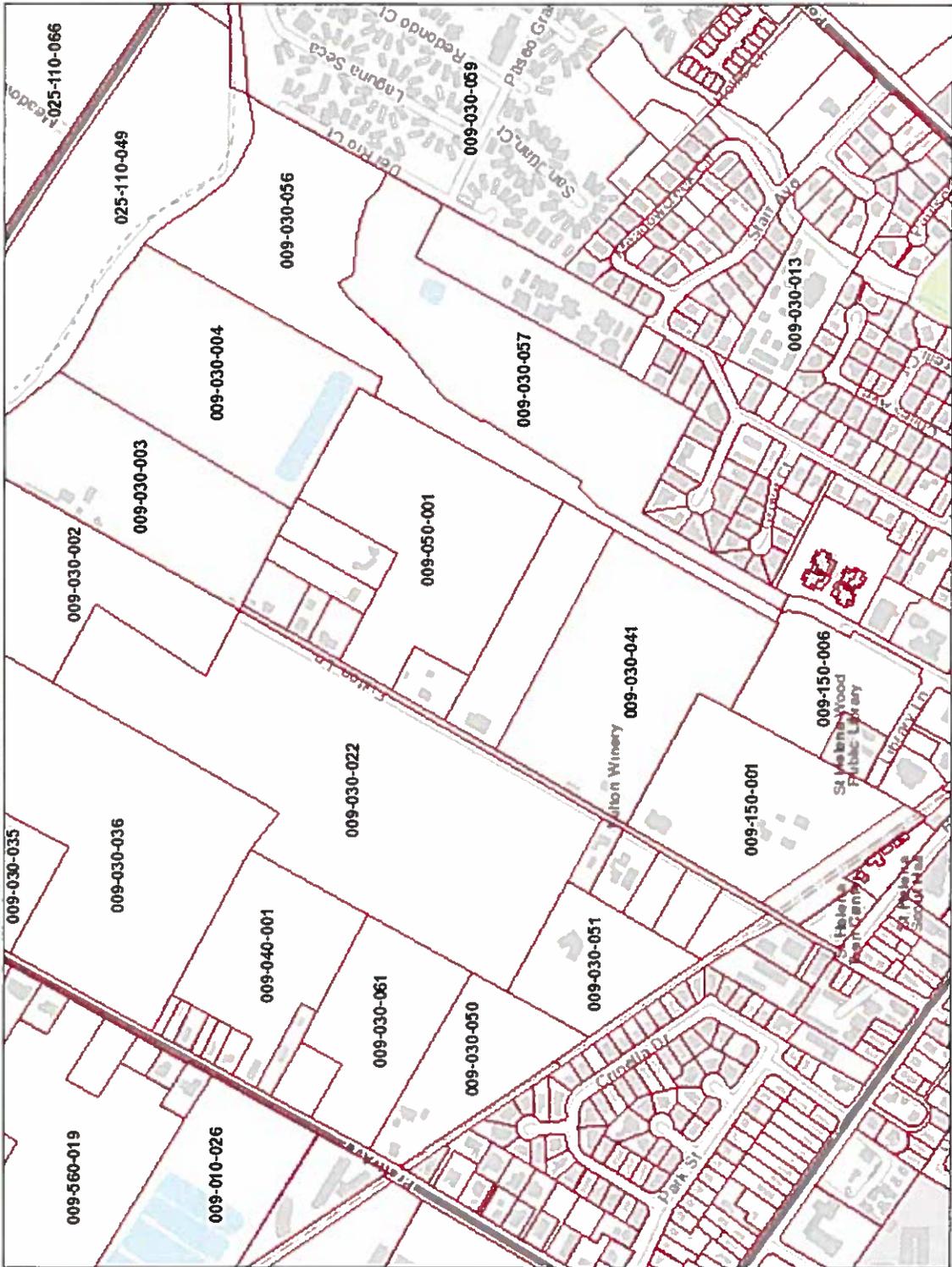
State of California)
County of)

On , before me, notary public, personally appeared , who 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(ies) upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Fulton Lane Parcel Map



Legend
 □ Parcels
 □ County Boundary

Notes

Disclaimer: This map was prepared for informational purposes only.
 No liability is assumed for the accuracy of the data delineated hereon.



This map was printed on 7/31/2016