

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

PRE-ANNEXATION AGREEMENT REGARDING ANNEXATION AND
RESTRICTIVE COVENANTS

5400 Old Redwood Highway, APNs 047-213-017 and 137-011-048

This Agreement is entered into by and between South Petaluma Partners LLC (hereinafter "Developer") and the City of Petaluma (hereinafter "City") on _____, 2024 . .

RECITALS:

1. Developer is the owner of that certain property located at 5400 Old Redwood Highway; Petaluma, CA (hereinafter "Property"). The Property currently consists of two distinct parcels (APNs 047-213-017 and 137-011-048) and is located in the unincorporated area of Sonoma County (hereafter "County").
2. Therefore, 'Developer is proposing annexation of the property to the City, APNs 047-213-017 and 137-011-048, as shown on Exhibit 1 hereto).
3. The property is the subject of a Zoning Map Amendment ("Prezone") by Developer to Prezone a 12.9-acre Site Located at 5400 Old Redwood Highway to Business Park (BP), Open Space and Park (OSP), and Floodplain Combining District (FP-C) Zoning Districts Prior to Annexation Proceedings to Be Conducted by the Sonoma Local Area Formation Commission (Sonoma LAFCO).
4. On January 23, 2024, the Planning Commission voted unanimously 6-0 to approve the resolution recommending the City Council adopt an ordinance for the Zoning Map Amendment for the Property. The Planning Commission also voted unanimously 6- 0 to approve the resolution recommending the City Council adopt a resolution supporting a LAFCO application for annexation proceedings for the Property.

5. On October 21, 2024, City Council approved City Resolution No. 2024-___NCS, Resolution of Application for Reorganization (Annexation) of Properties located at 5400 Old Redwood Hwy, which authorizes City support of annexation of the Property.

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. 047-213-017 and 137-011-048], (the "Cornerstone Property" as per Exhibit A 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. Compliance with City's Laws. Property will comply with the City's laws, including but not limited to the Petaluma Municipal Code and Petaluma Implementing Zoning Ordinance (IZO), as they may be amended. Specifically, IZO Section 24.050.B, which requires Administrative Site Plan and Architectural Review for all minor additions or modifications to industrial, commercial or office buildings, or may refer such development proposals to the Planning Commission.

3. Payment of Costs. Developer will pay all fees, costs and charges for the processing of the annexation of the Property contemplated herein, including but not limited to environmental review and staff-time as required by City procedure and/or State law at the time of annexation.

4. Zero Net Fill. Upon annexation into the City, the Property is subject to the City's adopted Zero Net Fill policy, as defined by IZO Section 6.030.CC, as that section may be amended from time to time, which applies to surrounding properties along Willow Brook Creek within the City's jurisdiction per IZO Section 6.070.

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 Property 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.

CORNERSTONE PROPERTIES

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By:

Title:

City Attorney, City of Petaluma