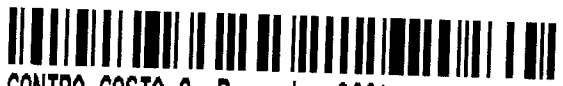


12



RECORDING REQUESTED BY  
AND WHEN RECORDED, RETURN TO:

City of Orinda  
P.O. Box 2000  
Orinda, California 94563  
Attention: City Manager

CONTRA COSTA Co Recorder Office  
STEPHEN L. WEIR, Clerk-Recorder  
**DOC- 2006-0343058-00**

Acct 12- Placer Title  
Thursday, OCT 26, 2006 08:00:00  
MIC \$1.00:MOD \$12.00:REC \$16.00  
TCF \$11.00:  
Ttl Pd \$40.00 Nbr-0003461480  
cgv/R2/1-12

015-9364

)  
This instrument filed for record by  
Placer Title Co. as an accommodation  
only. It has not been examined as to  
its execution or as to its effect upon  
the title.

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

**THIRD AMENDMENT TO THE  
DEVELOPMENT AND PRE-ANNEXATION AGREEMENT  
FOR  
GATEWAY VALLEY  
BETWEEN  
CITY OF ORINDA  
AND  
ORINDA GATEWAY, LLC**

**Approved: October 17, 2006**

THIRD AMENDMENT TO THE DEVELOPMENT  
AND PRE-ANNEXATION AGREEMENT FOR GATEWAY VALLEY BETWEEN  
CITY OF ORINDA AND ORINDA GATEWAY, LLC

THIS THIRD AMENDMENT TO THE DEVELOPMENT AND PRE-ANNEXATION AGREEMENT FOR GATEWAY VALLEY BETWEEN CITY OF ORINDA AND ORINDA GATEWAY, LLC ("Third Amendment") is entered into as of this 18th day of October, 2006 by and between the CITY OF ORINDA, a municipal corporation of the State of California ("City"), and ORINDA GATEWAY, LLC, a Delaware limited liability company ("OGLLC").

RECITALS:

This Third Amendment is entered into upon the basis of the following facts, understandings and intentions of the City and OGLLC (collectively "the parties"):

- A. The City Council of the City of Orinda, pursuant to Government Code Sections 65864 through 65869.5 and City Council Resolution No. 19-90, enacted Ordinance No. 05-02 at a duly noticed public hearing on March 15, 2005, effective April 16, 2005, approving the Second Amendment and Restatement of the Development and Preannexation Agreement for Gateway Valley between the City of Orinda and Orinda Gateway, LLC ("Development Agreement") and related Conditions of Approval ("March 2005 DA Conditions of Approval") for development of the Montanera Project in Gateway Valley.
- B. On November 29, 2005, consistent with the requirements of the Development Agreement, the Planning Commission approved Vesting Tentative Map No. 0000-05 ("VTM") and a Final Development Plan ("FDP") for the Project Site.
- C. In response to concerns raised by neighbors in the Sunrise Hill neighborhood regarding the location of the Emergency Vehicle Access Road near Brookside Road ("Brookside EVA") after project grading had commenced, OGLLC submitted permit applications to the City for this Third Amendment to amend several figures in the Conceptual Development Plan ("CDP"), along with consistency changes to the VTM and FDP and a Tree Removal Permit to remove 12 additional trees, to allow immediate changes in the grading plan to provide for the relocation of the EVA to a location farther to the south to address concerns raised by neighbors in the Sunrise Hill neighborhood.
- D. On October 10, 2005, after duly noticed public hearing, the Planning Commission considered the Second Supplemental Environmental Impact Report ("SSEIR"), an Addendum to the SSEIR ("First Addendum") and this Third Amendment. The Planning Commission adopted Resolution No.

06-02 recommending that the City Council certify the First Addendum and approve this Third Amendment by means of an urgency ordinance, finding that the relocation of the Brookside EVA is necessary for the immediate preservation of health and safety, pursuant to Government Code Section 36937(b) so that the realignment can be completed immediately to avoid grading during the winter rains and to allow areas of the site to be protected with stormwater best management practices.

- E. On October 17, 2006, the City of Orinda City Council approved the First Addendum in accordance with Section 15164 of the CEQA Guidelines and approved this Third Amendment by means of Urgency Ordinance No. 06-05, pursuant to Government Code Section 36937(b).

NOW THEREFORE, pursuant to Section 11.1 of the Development Agreement, the parties hereto agree to the following:

1. Realignment of the Brookside EVA

The following figures in the CDP and FDP and sheets of the VTM shall be revised to conform to the change depicted on Exhibit A related to the realignment of the Brookside EVA:

a. CDP Figures to be Revised

- i. A.1 Conceptual Land Use Plan
- ii. A.3 Recreational Access Plan
- iii. A.4 Project Street Context
- iv. A.5 Maintenance District Plan
- v. B.7 Conceptual Lotting Plan
- vi. B.14 Sensitive Tree Plan
- vii. D.6 Conceptual Domestic Water Plan
- viii. D.9 Conceptual Sanitary Sewer Plan
- ix. D.10 Conceptual Powerline Alignment
- x. D.11 Conceptual Stormwater Plan
- xi. D.12 Joint Trench Plan and Conceptual Lighting Locations

b. FDP Figures to be Revised

- i. 3-1 Circulation System
- ii. 4-2 Conceptual Landscape Framework

c. VTM Sheets to be Revised

- i. C4 Overall Site Plan
- ii. C5 Pedestrian Circulation Exhibit
- iii. C7 Sections and Details

- iv. C10 Lot Information
- v. C14 Grading Plan
- vi. C19 Fine Grading Exhibit
- vii. G1 Corrective Grading Plan
- viii. G3 Corrective Grading Plan
- ix. G6 Corrective Grading Plan
- x. A1 Existing Tree Impact Plan
- xi. A3 Existing Tree Impact Plan

The final, conformed figures of the CDP and FDP and sheets of the VTM listed herein shall be approved and signed by the Planning Director, consistent with Exhibit A, and shall be kept on file in the City Clerk's Office, City of Orinda, 14 Altarinda Road, Orinda, California 94563.

2. Interpretation.

(a) The Development Agreement shall be construed as having been modified by this Third Amendment. Except as expressly modified by this Third Amendment, the Development Agreement remains in full force and effect.

(b) Conflicts. In the case of conflict between the provisions hereof and the terms of the Development Agreement, the provisions hereof shall control. The Development Agreement, as modified by this Third Amendment, shall be construed in a manner that effectuates its purpose to provide for development of the Project in accordance with the CDP, as modified by the March 2005 Conditions of Approval, as modified by this Third Amendment, and the approvals that effectuate and implement them.

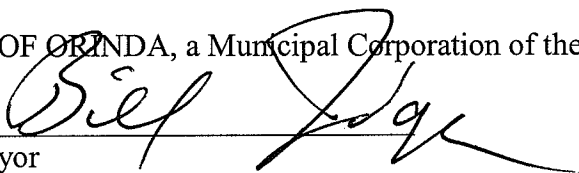
3. Effective Date: Recordation. This Third Amendment shall be dated and effective on the later of the dates on which the City and OGLLC execute this Third Amendment. This Third Amendment shall then be recorded as provided in Section 2.1 of the Development Agreement.

IN WITNESS WHEREOF, the City and OGLLC have executed this Third Amendment pursuant to Section 11.1 of the Development Agreement to signify their commitment to be bound hereby as of the day and year first written above.

CITY:

CITY OF ORINDA, a Municipal Corporation of the State of California

By \_\_\_\_\_  
Its Mayor



343058

Approved as to form:

By Osra Wolff  
Its Interim City Attorney

Attest:

By Michelle Olson  
Its City Clerk

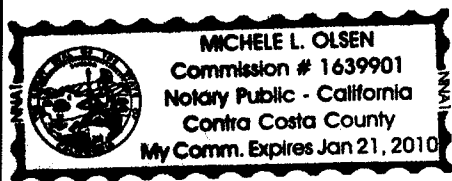
CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

State of California )  
 )s.  
County of Contra Costa )

On October 25, 2006 before me, Michele L. Olsen, a Notary Public, in and for the State of California, personally appeared

Bill Judge

personally known to me, or  
 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 upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

*Michele L. Olsen*  
Michele L. Olsen, Notary Public

OGLLC:

ORINDA GATEWAY, LLC, a limited liability company

By its Voting Members:

By: ORINDA GATEWAY ASSOCIATES, LLC, Member

By: Farallon Orinda Investors, LLC, its Managing Member

By: Farallon Orinda Associates, LLC, its Manager

By: Farallon Capital Management, L.L.C., its Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Managing Member  
Date: \_\_\_\_\_

By: WSC ORINDA GATEWAY INVESTORS IV, LLC, Member

By: Walton Acquisition REOC Holdings IC, LLC, its Sole Member

By: Walton Street Real Estate Fund IV, L.P., its Managing Member

By: Walton Street Managers IV, L.P., its General Partner

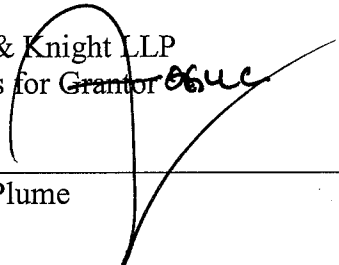
By: WSC Managers IV, Inc., its General Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Approved as to form:

Holland & Knight LLP  
Attorneys for Grantor

BY: \_\_\_\_\_  
Tamsen Plume



OGLLC:

ORINDA GATEWAY, LLC, a limited liability company

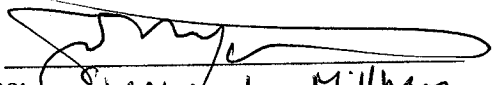
By its Voting Members:

By: ORINDA GATEWAY ASSOCIATES, LLC, Member

By: Farallon Orinda Investors, LLC, its Managing Member

By: Farallon Orinda Associates, LLC, its Manager

By: Farallon Capital Management, L.L.C., its Manager

By:   
Name: Stephen L. Millham  
Title: Managing Member  
Date: \_\_\_\_\_

By: WSC ORINDA GATEWAY INVESTORS IV, LLC, Member

By: Walton Acquisition REOC Holdings IC, LLC, its Sole Member

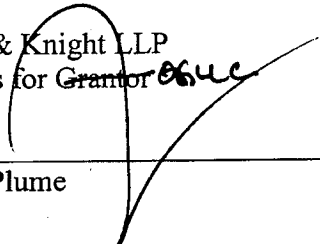
By: Walton Street Real Estate Fund IV, L.P., its Managing Member

By: Walton Street Managers IV, L.P., its General Partner

By: WSC Managers IV, Inc., its General Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Approved as to form:

Holland & Knight LLP  
Attorneys for Grantor 

BY: \_\_\_\_\_  
Tamsen Plume



OGLLC:

ORINDA GATEWAY, LLC, a limited liability company

By its Voting Members:

By: ORINDA GATEWAY ASSOCIATES, LLC, Member

By: Farallon Orinda Investors, LLC, its Managing Member

By: Farallon Orinda Associates, LLC, its Manager

By: Farallon Capital Management, L.L.C., its Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Managing Member  
Date: \_\_\_\_\_

By: WSC ORINDA GATEWAY INVESTORS IV, LLC, Member

By: Walton Acquisition REOC Holdings IC, LLC, its Sole Member

By: Walton Street Real Estate Fund IV, L.P., its Managing Member

By: Walton Street Managers IV, L.P., its General Partner

By: WSC Managers IV, Inc., its General Partner

By: TJL  
Name: **Timothy J. Junker**  
Title: **Vice President**  
Date: **10-20-06**

Approved as to form:

Holland & Knight LLP  
Attorneys for Grantor

BY: \_\_\_\_\_  
Tamsen Plume

NOTARY ACKNOWLEDGEMENT

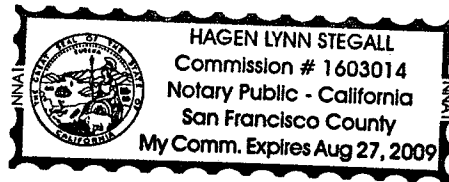
STATE OF CALIFORNIA )

COUNTY OF San Francisco ) ss.  
)

On October 20, 2006, before me, Hagen Lynn Stegall a Notary Public, personally appeared Stephen L. Millham and \_\_\_\_\_, personally known to me 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 capacity(ies), and that by his/her/their signature on the within instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the within instrument.

WITNESS my hand and official seal.

Hagen Lynn Stegall



NOTARY ACKNOWLEDGEMENT

STATE OF ILLINOIS )

COUNTY OF \_\_\_\_\_ ) ss.  
)

On \_\_\_\_\_, 200\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_ and \_\_\_\_\_, personally known to me 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 capacity(ies), and that by his/her/their signature on the within instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the within instrument.

WITNESS my hand and official seal.

\_\_\_\_\_

**NOTARY ACKNOWLEDGEMENT**

STATE OF CALIFORNIA )

) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 200\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_ and \_\_\_\_\_, personally known to me 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 capacity(ies), and that by his/her/their signature on the within instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the within instrument.

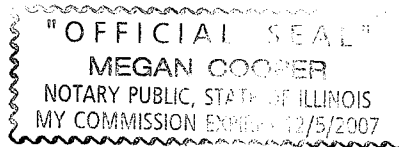
WITNESS my hand and official seal.

\_\_\_\_\_

**NOTARY ACKNOWLEDGEMENT**

STATE OF ILLINOIS )

) ss.  
COUNTY OF Cook )



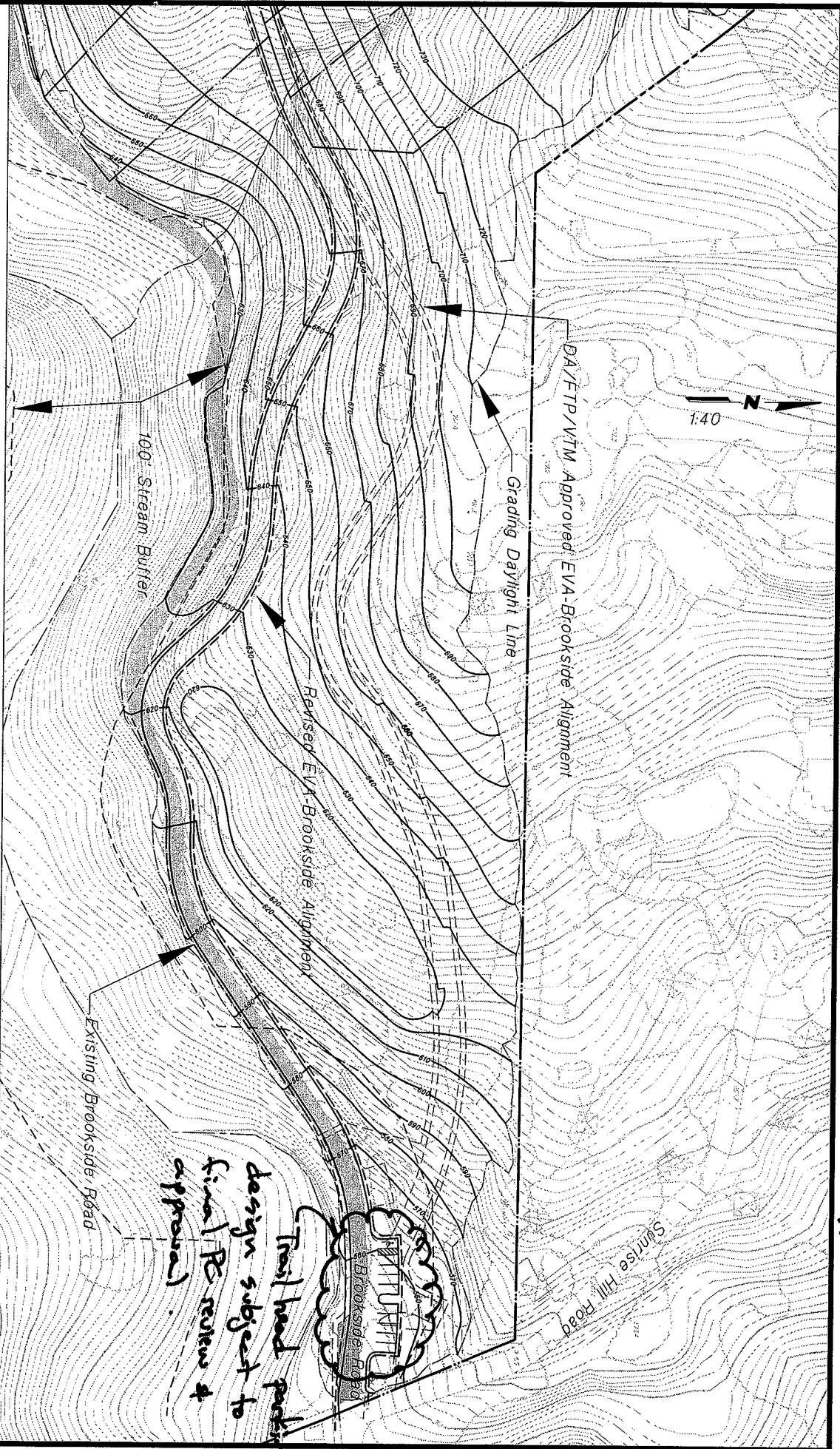
On October 20, 2006, before me, Megan Daly, a Notary Public, personally appeared \_\_\_\_\_ and Timothy Junker, personally known to me to be the person(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature on the within instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the within instrument.

WITNESS my hand and official seal.

Megan Daly  
(aka Megan Cooper)

\* CONTOURS AND ELEVATIONS SHOWN ON THIS PLAN ARE PRE-CONSTRUCTION CONDITIONS.

# EXHIBIT A



END OF DOCUMENT

**PA** **Design Resources, Inc.**  
 Planning • Engineering • Surveying

2700 Terrace Valley Road, Suite 100  
 Walnut Creek, California 94595-3485 TEL 925/251-0000