

TO: JAMES L. APP, CITY MANAGER
FROM: JOHN R. McCARTHY, DIRECTOR OF PUBLIC WORKS
SUBJECT: APPROVING THE FINAL MAP AND ANNEXING PR 98-038 INTO PASO ROBLES LANDSCAPE AND LIGHTING DISTRICT NO. 1
DATE: DECEMBER 15, 1998

Needs: That the City Council approve a Resolution authorizing execution and recordation of the Final map for and authorizing acceptance of the Faithful Performance and Maintenance Securities for PR 98-038; a Resolution annexing PR 98-038 into Paso Robles Landscape and Lighting District No. 1.

- Facts:**
1. This is the next phase subdivision of Woodland Plaza Shopping Center.
 2. The Subdivider requests to enter a Subdivision Improvement Agreement with the City.
 3. The Subdivider has posted securities to guarantee the installation of public improvements in accordance to the signed Subdivision Agreement, the Subdivision Map Act and the City of Paso Robles Municipal Code.
 4. The Tentative map was approved by the Planning Commission on July 14, 1998 by Resolution No. 98-043.
 5. In conformance with the Conditions of Approval for the Tentative Map, the Subdivider has also executed a Petition requesting that his project be annexed into the City of Paso Robles Landscape and Lighting District No. 1.

Analysis and

Conclusion: Staff requests the City Council to adopt a Resolution approving the Final Map for PR 98-038 for execution and recordation; and a Resolution annexing PR 98-038 into Paso Robles Landscape and Lighting District No. 1.

Policy

Reference: Title 22 of the Municipal Code Section and Subdivision Map Act, Landscaping and Lighting Act of 1971, Sections 22500, et. Seq. And 22608.1, Street and Highways Code, and Resolution No. 98-043.

Fiscal

Impact: The City has collected park fees, drainage fees, and plancheck and inspection fees, in accordance to the conditions of approval for this Parcel Map.

No general funds are needed for, and all costs associated with, the landscaping and lighting will be paid through the **Paso Robles Landscape and Lighting District No. 1** and levied to the benefiting property owners within **PR 98-038**.

- Options:**
- A. That the City Council adopt a Resolution authorizing execution and recordation of the Final Map for **PR 98-038** and adopt a **Resolution annexing PR 98-038** into the Paso Robles Landscape and Lighting District No. 1.
 - B. That the City Council amend, modify, or reject the above options.

Attachments: (3)

- 1) Resolution Approving Final Map
- 2) Resolution Annexing to Landscape and Lighting District
- 3) Vicinity Map

11-2-13

Recording Requested by:
City of Paso Robles

When Recorded Return to:
City of Paso Robles
City Engineer
1000 Spring Street
Paso Robles, CA 93446

FOR RECORDER USE ONLY

RESOLUTION NO. 98-

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES,
CALIFORNIA, AS ANNEXING PR 98-038 TO THE "PASO ROBLES LANDSCAPE
AND LIGHTING DISTRICT NO 1" (STREETS AND HIGHWAYS CODE SECTIONS
22500, ET SEQ.)**

WHEREAS, the owner of the real property described in Exhibit "A" has petitioned to annex **PR 98-038** into Paso Robles Landscape and Lighting District No. 1 ("District"); and

THEREFORE BE IT RESOLVED AS FOLLOWS:

Section 1. That the City Council of the City of Paso Robles does hereby declare that the real property located in the City of Paso Robles, County of San Luis Obispo, as more particularly described in Exhibit "A" hereto, is hereby annexed into the "District" and that all landscape and lighting improvements required as conditions of approval of **PR 98-038** be installed by the developer.

Section 2. That the City Council for the City of Paso Robles does hereby declare that the current owner of the real property, according to the Petition for Formation of the District, is **The Richard Woodland and Patricia Woodland Trust, Dated May 23, 1987.**

Section 3. That the City Council for the City of Paso Robles does hereby declare that the assessment for **PR 98-038** shall begin with Fiscal Year 1999-00.

PASSED AND ADOPTED by the City Council of the City of Paso Robles, this **15th** day of **December, 1998**, on the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Duane Picanco, Mayor

ATTEST:

Madelyn Paasch, City Clerk

164

Recording Requested by and
when Recorded Return to:

**City of Paso Robles
City Engineer
1000 Spring Street
Paso Robles, CA 93446**

FOR RECORDER USE ONLY

RESOLUTION No. 98-

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES,
CALIFORNIA, ACCEPTING AND APPROVING THE EXECUTION AND
RECORDATION OF THE FINAL PARCEL MAP FOR PR 98-038**

WHEREAS, the Developer has signed a Subdivision Agreement and has posted payment and performance securities to guarantee the installation of public improvements. A Certificate of Insurance has been submitted and all final map have been paid; and

WHEREAS, the City staff has reviewed the final parcel map and finds it to be in substantial conformance with the approved tentative map and technically correct; and.

THEREFORE, BE IT RESOLVED AS FOLLOWS:

Section 1. That the City Council of the City of Paso Robles does hereby approve the final parcel map for PR 98-038.

Section 2. That the City Council of the City of Paso Robles does hereby approve the execution and recordation of the Subdivision Agreement.

Section 3. That the City Council of the City of Paso Robles does hereby accept the Performance and Payment securities posted to guarantee the installation of the public improvements.

PASSED AND ADOPTED by the City Council of the City of Paso Robles, this 15th day of **December**, 1998, on the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

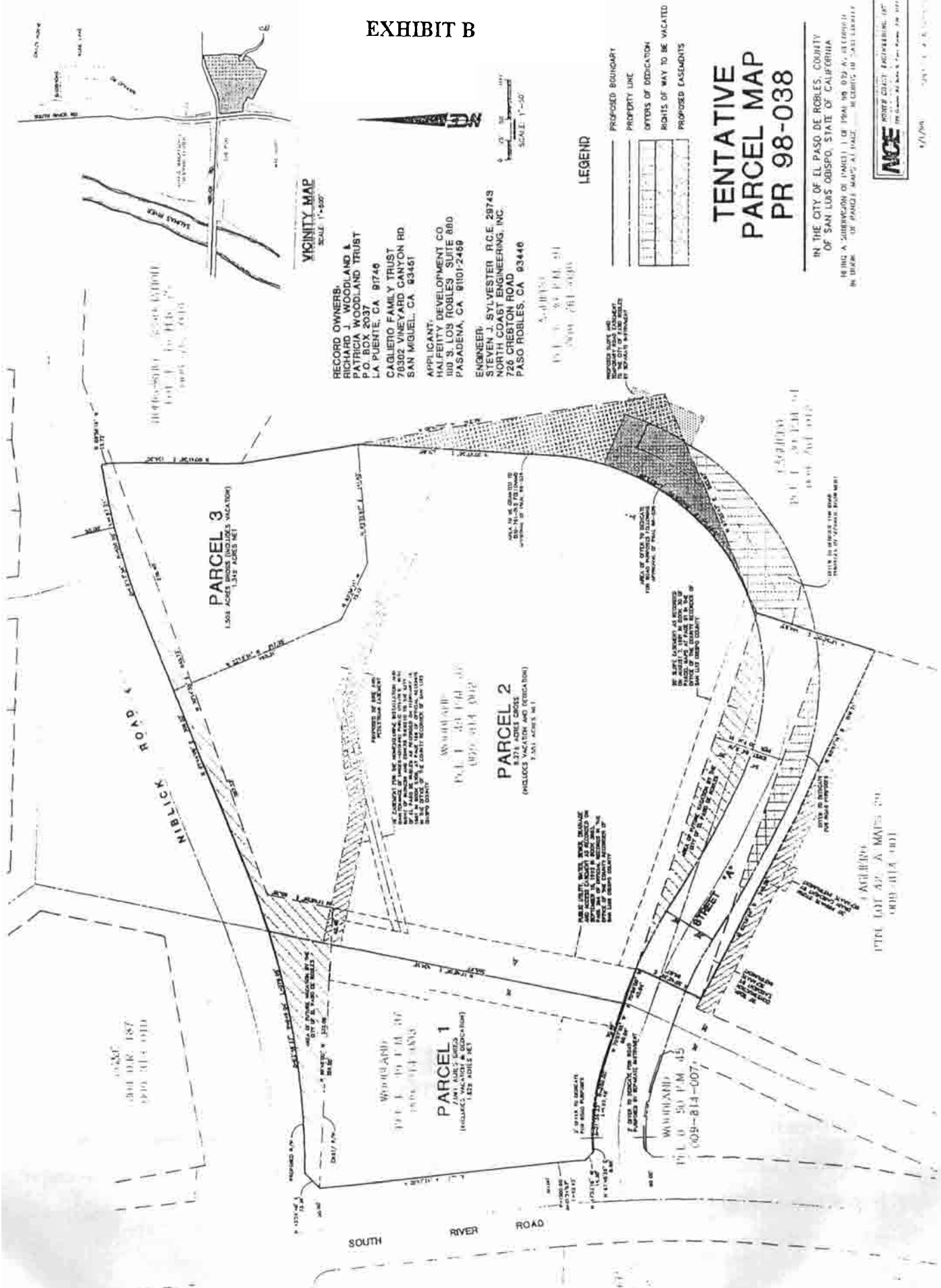
Duane Picanco, Mayor

ATTEST:

Madelyn Paasch, City Clerk

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EXHIBIT B



RECORD OWNERS:
 WOODLAND & WOODLAND TRUST
 P.O. BOX 2037
 LA PUENTE, CA 91746

CAGLIERO FAMILY TRUST
 70302 VINEYARD CANYON RD
 SAN MIGUEL, CA 93461

APPLICANT:
 HALFEITY DEVELOPMENT CO
 1100 S. LOS ROBLES SUITE 880
 PASADENA, CA 91101-2459

ENGINEER:
 STEVEN J. SYLVESTER R.C.E. 28743
 NORTH COAST ENGINEERING, INC.
 728 CHESTON ROAD
 PASO ROBLES, CA 93446

3.01.00
 30.00 (61.00) 21

LEGEND

—	PROPOSED BOUNDARY
---	PROPERTY LINE
- - - -	RIGHTS OF DEDICATION
---	RIGHTS OF WAY TO BE VACATED
---	PROPOSED EASEMENTS

TENTATIVE PARCEL MAP PR 98-038

IN THE CITY OF EL PASO DE ROBLES, COUNTY
 OF SAN LUIS OBISPO, STATE OF CALIFORNIA



AGRIERO
 1748 LOT 47, A MAP 579
 9393-0114 (00)

110-6

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

City of Paso Robles
Engineering Division
1000 Spring Street
Paso Robles, CA 93446

FOR RECORDER USE ONLY

SUBDIVISION IMPROVEMENT AGREEMENT

DATE OF AGREEMENT: _____

NAME OF SUBDIVIDER: Halferty Development Company
(referred to as "SUBDIVIDER")

TRACT MAP NO.: PR 98-038 (Recorded _____, at Book _____ and Page _____)
(referred to as "SUBDIVISION")

TENTATIVE MAP RESOLUTION OF APPROVAL NO.: 98-038
(referred to as "Resolution of Approval")

ESTIMATED TOTAL COST OF IMPROVEMENTS: \$502,188 five hundred two thousand, one hundred eighty eight dollars.

MONUMENTATION: included above

SURETY: _____

BONDS: PERFORMANCE BOND NO. _____ (\$502,188)

LABOR & MATERIALS (PAYMENT) BOND _____ (\$251,094)

This Agreement is made and entered into by and between the **CITY OF EL PASO DE ROBLES**, a municipal corporation of the State of California (hereinafter referred to as "CITY") and **HALFERTY DEVELOPMENT COMPANY** (hereinafter referred to as "SUBDIVIDER").

RECITALS

A. **SUBDIVIDER** has presented to **CITY** for approval and recordation, a final subdivision map of a proposed subdivision pursuant to provisions of the Subdivision Map Act of the State of California and **CITY's** ordinances and regulations relating to the filing, approval and recordation of subdivision maps. The Subdivision Map Act and **CITY's** ordinances and regulations

relating to the filing, approval and recordation of subdivision maps are collectively referred to in this Agreement as the "Subdivision Laws."

B. A tentative map of the Subdivision has been approved, subject to the Subdivision Laws and to the requirements and conditions contained in the Resolution of Approval. The Resolution of Approval is on file in the Office of the City Clerk and is incorporated into this Agreement by reference.

C. The Subdivision Laws establish as a condition precedent to the approval of a final map that **SUBDIVIDER** must have complied with the Resolution of Approval and must have either (1) completed, in compliance with **CITY** standards, all of the improvements and land development work required by the Subdivision Laws or the Resolution of Approval, or (2) have entered into a secured agreement with **CITY** to complete the improvements and land development within a period of time specified by **CITY**.

D. In consideration of approval of a final map for the Subdivision by the City Council, **SUBDIVIDER** desires to enter into this Agreement, whereby **SUBDIVIDER** promises to install and complete, at **SUBDIVIDER's** own expense, all the public improvement work required by **CITY** in connection with the proposed Subdivision. **SUBDIVIDER** has secured this Agreement by improvement security required by the Subdivision Laws and approved by the City Attorney.

E. Complete Improvement Plans for the construction, installation and completion of the improvements shall be prepared by **SUBDIVIDER** and approved by the City Engineer prior to issuance of the first building permit for **PR 98-038**. All references in this Agreement to the Improvement Plans shall include reference to any specifications for the improvements as approved by the City Engineer.

F. An estimate of the cost for construction of the public improvements and performing land development work in connection with the improvements according to the Improvement Plans has been made and had been approved by the City Engineer. The estimated amount is stated on Page 1 of this Agreement. The basis for the estimate is attached as **Exhibit "A"** to this Agreement.

G. **CITY** has adopted standards for the construction and installation of improvements within **CITY**. The Improvement Plans shall be prepared in conformance with **CITY** standards in effect on the date of approval of the Resolution of Approval.

H. Prior to completion of the required improvements and their acceptance by **CITY**, it is necessary that certain monuments and stakes, as specified on the final map for the Subdivision, shall be installed and also that street signs be placed at intersections.

I. **SUBDIVIDER** recognizes that by approval of the final map for Subdivision, **CITY** has conferred substantial rights upon **SUBDIVIDER**, including the right to sell, lease, or finance lots within

I. **SUBDIVIDER** recognizes that by approval of the final map for Subdivision, **CITY** has conferred substantial rights upon **SUBDIVIDER**, including the right to sell, lease, or finance lots within the Subdivision, and has taken the final act necessary to subdivide the property within the Subdivision. As a result, **CITY** will be damaged to the extent of the cost of installation of the improvements by **SUBDIVIDER's** failure to perform its obligations under this Agreement, including, but not limited to, **SUBDIVIDER's** obligation to commence construction of the improvements by the time established in this Agreement. **CITY** shall be entitled to all remedies available to it pursuant to this Agreement and law in the event of a default by **SUBDIVIDER**. It is specifically recognized that the determination of whether a reversion to acreage or rescission of the Subdivision constitutes an adequate remedy for default by the **SUBDIVIDER** shall be within the sole discretion of **CITY**.

NOW, THEREFORE, in consideration of the approval and recordation by the City Council of the final map of the Subdivision, **SUBDIVIDER** and **CITY** agree as follows:

1. **SUBDIVIDER's Obligations to Construct Improvements.** **SUBDIVIDER** shall:

- a. Comply with all the requirements of the Resolution of Approval, and any amendments thereto, and with the provisions of the Subdivision Laws.
- b. Complete, at **SUBDIVIDER's** own expense, all the public improvement work required on the Tentative Map and Resolution of Approval in conformance with approved Improvement Plans and the **CITY** standards as follows:

<u>IMPROVEMENT</u>	<u>DEADLINE DATE</u>
IMPROVEMENTS (Public):	
Grading of Right-of-Way	<u>DECEMBER 1999</u>
Underground Utilities Installation	<u>DECEMBER 1999</u>
Storm Drainage Installation	<u>DECEMBER 1999</u>
Water Main, Sewer Main, Detention Basin	<u>DECEMBER 1999</u>
Street Improvements	<u>DECEMBER 1999</u>
Street Trees	<u>DECEMBER 1999</u>
Drive Approach	<u>DECEMBER 1999</u>
Landscaping and Irrigation	<u>DECEMBER 1999</u>

NOTE: All improvements must be completed within one year from the date of this Agreement.

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SUBDIVIDER agrees that **CITY** may impose necessary changes to the scope of the improvement work if **CITY** determines that such changes are necessary and incidental to the successful completion and function of the improvements or required to meet **CITY**'s standards.

c. Furnish the necessary materials for completion of the public improvements in conformity with the Improvement Plans and **CITY** standards.

d. Acquire and dedicate, or pay the cost of acquisition by **CITY**, of all rights-of-way, easements and other interests in real property for construction or installation of the public improvements, free and clear of all liens and encumbrances. The **SUBDIVIDER**'s obligations with regard to acquisition by **CITY** of off-site rights-of-way, easements and other interests in real property shall be subject to a separate agreement between **SUBDIVIDER** and **CITY**. **SUBDIVIDER** shall also be responsible for obtaining any public or private drainage easements or authorization to accommodate the Subdivision.

e. Commence construction of the improvements by the time established in Section 21 of this Agreement and complete the improvements by the deadline stated in Paragraph 1(b) above, unless a time extension is granted by the **CITY** as authorized in Section 21.

f. Install all Subdivision monuments required by law prior to the completion and acceptance of the public improvements by **CITY**.

g. Install street name signs conforming to **CITY** standards. If permanent street name signs have not been installed before acceptance of the improvements by **CITY**, **SUBDIVIDER** shall install temporary street name signs according to such conditions as the City Engineer may require.

2. **Acquisition and Dedication of Easements or Rights-of-Way.** If any of the public improvement and land development work contemplated by this Agreement is to be constructed or installed on land not owned by **SUBDIVIDER**, no construction or installation shall be commenced before:

a. The offer of dedication to **CITY** of appropriate rights-of-way, easements or other interest in real property, and appropriate authorization from the property owner to allow construction or installation of the improvements or work, or

b. The dedication to, and acceptance by, the **CITY** of appropriate rights-of-way, easements or other interests in real property, as determined by the City Engineer, or

c. The issuance by a court of competent jurisdiction pursuant to the State Eminent Domain Law of an order of possession. **SUBDIVIDER** shall comply in all respects with the order of possession.

3. **Security.** **SUBDIVIDER** shall at all times guarantee **SUBDIVIDER's** performance of this Agreement by furnishing to **CITY**, and maintaining, good and sufficient security as required by the Subdivision Laws on forms approved by **CITY** for the purposes and in the amounts as follows:

a. To assure faithful performance of this Agreement in regard to said improvements in an amount of 100% of the estimated cost of the improvements; and

b. To secure payment to any contractor, subcontractor, persons renting equipment, or furnishing labor, materials for the improvements required to be constructed or installed pursuant to this Agreement in the additional amount of 50% of the estimated cost of the improvements; and

c. To guarantee or warranty the work done pursuant to this Agreement for a period of one year following acceptance thereof by **CITY** against any defective work or labor done or defective materials furnished in the additional amount of 10% of the estimated cost of the improvements; and

d. **SUBDIVIDER** shall also furnish to **CITY** good and sufficient security in the amount of 100% of the estimated cost of setting Subdivision monuments as stated previously in this Agreement.

The securities required by this Agreement shall be kept on file with the City Clerk. The terms of the security documents referenced on Page 1 of this Agreement are incorporated into this Agreement by this reference. If any security is replaced by another approved security, the replacement shall be filed with the City Clerk and, upon filing, shall be deemed to have been made a part of and incorporated into this Agreement. Upon filing of a replacement security with the City Clerk, the former security may be released.

4. **Alterations to Improvements Plans.**

a. Any changes, alterations or additions to the improvement plans and specifications or to the improvements, not exceeding 10% of the original estimated cost of the improvement, which are determined by **CITY** to be necessary and incidental to the successful completion and function of the improvements or required to meet **CITY** standards, shall not relieve the improvement security given for faithful performance of this Agreement. In the event such changes, alterations, or

additions exceed 10% of the original estimated cost of the improvement, **SUBDIVIDER** shall provide improvement security for faithful performance as required by Paragraph 3 of this Agreement for 100% of the total estimated cost of the improvement as changed, altered, or amended, minus any completed partial releases allowed by Paragraph 6 of this Agreement.

b. **SUBDIVIDER** shall construct the improvements in accordance with **CITY** standards in effect at the time of adoption of the Resolution of Approval. **CITY** reserves the right to modify the standards applicable to the Subdivision and this Agreement, when necessary to protect the public safety or welfare or comply with applicable State or Federal law or **CITY** zoning ordinances. If **SUBDIVIDER** requests and is granted an extension of time for completion of the improvements, **CITY** may apply the standards in effect at the time of the extension.

5. **Inspection.** **SUBDIVIDER** shall at all times maintain proper facilities and safe access for inspection of the public improvements by **CITY** inspectors and to the shops wherein any work is in preparation. Upon completion of the work, **SUBDIVIDER** may request a final inspection by the City Engineer, or the City Engineer's authorized representative. If the City Engineer, or the designated representative, determine that the work has been completed in accordance with this Agreement, then the City Engineer shall certify the completion of the public improvements to the City Council. No improvements shall be finally accepted unless all aspects of the work have been inspected and determined to have been completed in accordance with the Improvement Plans and **CITY** standards. **SUBDIVIDER** shall bear all costs of inspection and certification.

6. **Release of Securities.** The securities required by this Agreement shall be released as follows:

a. Security given for faithful performance of any act, obligation, work or agreement shall be released upon the final completion and acceptance of the act or work, subject to the provisions of subsection (b) hereof.

b. Security given to secure payment to the contractor, his or her subcontractors and to persons furnishing labor, materials or equipment shall, six months after the completion and acceptance of the work, be reduced to an amount equal to the total claimed by all claimants for whom lien have been filed and of which notice has been given to the legislative body, plus an amount reasonably determined by the City Engineer to be required to assure the performance of any other obligations secured by the security. The balance of the security shall be released upon the settlement of all claims and obligations for which the security was given.

c. No security given for the guarantee or warranty of work shall be released until the expiration of the warranty period and until any claims filed during the warranty period have been settled. As provided in Paragraph 11, the warranty period shall not commence until final acceptance of all the work and improvements by the City Council.

d. CITY may retain from any security released an amount sufficient to cover costs and reasonable expenses and fees, including reasonable attorneys' fees.

7. **Injury to Public Improvements, Public Property or Public Utilities Facilities.**

SUBDIVIDER shall replace or have replaced, or repair or have repaired, as the case may be, all public improvements, public utilities facilities and surveying or subdivision monuments which are destroyed or damaged as a result of any work under this Agreement. SUBDIVIDER shall bear the entire cost of replacement or repairs of any and all public or private utility property damaged or destroyed by reason of any work done under this Agreement, whether such property is owned by the United States or any agency thereof, or the State of California, or any agency or political subdivision thereof, or by CITY or any public or private utility corporation or by any combination of such owners. Any repair or replacement shall be to the satisfaction, and subject to the approval, of the City Engineer.

8. **Permits.** SUBDIVIDER shall, at SUBDIVIDER's expense, ensure that his/her contractors obtain all necessary permits and licenses for the construction and installation of the improvements, give all necessary notices and pay all fees and taxes required by law.

9. **Default of SUBDIVIDER.**

a. Default of SUBDIVIDER shall include, but not be limited to, SUBDIVIDER's failure to timely commence construction of this Agreement; SUBDIVIDER's failure to timely cure any defect in the improvements; SUBDIVIDER's failure to perform substantial construction work for a period of 20 calendar days after commencement of the work; SUBDIVIDER's insolvency, appointment of a receiver, or the filing of any petition in bankruptcy either voluntary or involuntary which SUBDIVIDER fails to discharge within 30 days; the commencement of a foreclosure action against the Subdivision or a portion thereof, or any conveyance in lieu or in avoidance of foreclosure; or SUBDIVIDER's failure to perform any other obligation under this Agreement.

b. CITY reserves to itself all remedies available to it at law or in equity for breach of SUBDIVIDER's obligations under this Agreement. CITY shall have the right, subject to this section, to draw upon or utilize the appropriate security to mitigate CITY's damages in event of default by SUBDIVIDER. The right of CITY to draw upon or utilize the security is additional to and not in lieu of

any other remedy available to CITY. It is specifically recognized that the estimated costs and security amounts may not reflect the actual cost of construction or installation of the improvements and, therefore, CITY's damages for SUBDIVIDER's default shall be measured by the cost of completing the required improvements. The sums provided by the improvement security may be used by CITY for the completion of the public improvements in accordance with the improvement plans and specifications contained herein.

In the event of SUBDIVIDER's default under this Agreement, SUBDIVIDER authorizes CITY to perform such obligation 20 days after mailing written notice of default to SUBDIVIDER and to SUBDIVIDER's surety, and agrees to pay the entire cost of such performance by CITY.

CITY may take over the work and prosecute the same to completion, by contract or by any other method CITY may deem advisable, for the account and at the expense of SUBDIVIDER, and SUBDIVIDER's surety shall be liable to CITY for any excess cost or damages occasioned CITY thereby; and, in such event, CITY, without liability for so doing, may take possession of, and utilize in completing the work, such materials, appliances, plant and other property belonging to SUBDIVIDER as may be on the site of the work and necessary for the performance of the work.

c. Failure of SUBDIVIDER to comply with the terms of this Agreement shall constitute consent to the filing by CITY of a notice of violation against all the lots in the Subdivision, or to rescind the approval or otherwise revert the Subdivision to acreage. The remedy provided by this subsection c. is in addition to and not in lieu of other remedies available to CITY. SUBDIVIDER agrees that the choice of remedy or remedies for SUBDIVIDER's breach shall be in the discretion of CITY.

d. In the event that SUBDIVIDER fails to perform any obligation hereunder, SUBDIVIDER agrees to pay all costs and expenses incurred by CITY in securing performance of such obligations, including costs of suit and reasonable attorneys' fees.

e. The failure of CITY to take an enforcement action with respect to a default, or to declare a breach, shall not be construed as a waiver of that default or breach or any subsequent default or breach of SUBDIVIDER.

11. **Warranty.** SUBDIVIDER shall guarantee or warranty the work done pursuant to Section 1 of this Agreement for a period of one year after final acceptance by the City Council of the work and improvements against any defective work or labor done or defective materials furnished. If within

the warranty period any work or improvement or part of any work or improvement done, furnished, installed, constructed or caused to be done, furnished, installed or constructed by **SUBDIVIDER** fails to fulfill any of the requirements of this Agreement or the improvement plans and specifications referred to herein, **SUBDIVIDER** shall without delay and without any cost to **CITY**, repair or replace or reconstruct any defective or otherwise unsatisfactory part or parts of the work or structure. **SUBDIVIDER** further acknowledges and understands within the one (1) year warranty period as the project is accepted as final, **SUBDIVIDER** will bear the total responsibility for all repair and/or replacement of the improvements as installed, reserving to **SUBDIVIDER** the right of recourse or indemnity against any third party who causes damage to such improvements. Should **SUBDIVIDER** fail to act promptly or in accordance with this replacement, **SUBDIVIDER** hereby authorizes **CITY**, at **CITY**'s option, to perform the work 20 days after mailing written notice of default to **SUBDIVIDER** and to **SUBDIVIDER**'s surety, and agrees to pay the cost of such work by **CITY**. Should **CITY** determine that an urgency requires repairs or replacements to be made before **SUBDIVIDER** can be notified, **CITY** may, in its sole discretion, make the necessary repairs or replacement or perform the necessary work and **SUBDIVIDER** shall pay to **CITY** the cost of such repairs.

12. **SUBDIVIDER Not Agent of CITY.** Neither **SUBDIVIDER** nor any of **SUBDIVIDER**'s agents or contractors are or shall be considered to be agents of **CITY** in connection with the performance of **SUBDIVIDER**'s obligations under this Agreement.

13. **Injury to Work.** Until such time as the improvements are accepted by **CITY**, **SUBDIVIDER** shall be responsible for and bear the risk of loss to any of the improvements constructed or installed. Until such time as all improvements required by this Agreement are fully completed and accepted by **CITY**, **SUBDIVIDER** will be responsible for the care, maintenance of, and any damage to such improvements. **CITY** shall not, nor shall any officer or employee thereof, be liable or responsible for any accident, loss or damage, regardless of the cause, happening or occurring to the work or improvements specified in this Agreement prior to the completion and acceptance of the work or improvements. All such risks shall be the responsibility of and are hereby assumed by **SUBDIVIDER**.

14. **Other Agreements.** Nothing contained in this Agreement shall preclude **CITY** from expending monies pursuant to agreements concurrently or previously executed between the parties, or from entering into agreements with other subdividers for the apportionment of costs of water and sewer mains, or other improvements, pursuant to the provisions of **CITY** ordinances providing therefor, nor shall anything in this Agreement commit **CITY** to any such apportionment.

15. **SUBDIVIDER's Obligation to Warn Public During Construction.** Until final acceptance of the improvements, **SUBDIVIDER** shall give good and adequate warning to the public of each and every dangerous condition existent in said improvements, and will take all reasonable actions to protect the public from such dangerous condition.

16. **Vesting of Ownership.** Upon acceptance of the work on behalf of **CITY** and recordation of the Notice of Completion, ownership of the improvements constructed pursuant to this Agreement shall vest in **CITY**.

17. **Final Acceptance of Work.** Acceptance of the work on behalf of **CITY** shall be made by the City Council upon recommendation of the City Engineer after final completion and inspection of all improvements. The City Council shall act upon the Engineer's recommendation within 30 days from the date the City Engineer certifies that the work has been finally completed, as provided in Paragraph 5. Such acceptance shall not constitute a waiver of defects by **CITY**.

18. **Indemnity/Hold Harmless.** **CITY** or any officer or employee thereof shall not be liable for any injury to persons or property occasioned by reason of the acts or omissions of **SUBDIVIDER**, its agents or employees in the performance of this Agreement. **SUBDIVIDER** further agrees to protect, indemnify, and hold harmless **CITY**, its officials and employees from any and all claims, demands, causes of action, liability or loss of any sort, because of, or arising out of, acts or omissions of **SUBDIVIDER**, its agents or employees in the performance of this Agreement, including all claims, demands, causes of action, liability, or loss because of, or arising out of, in whole or in part, the design or construction of the improvements. This indemnification and agreement to hold harmless shall extend to injuries to persons and damages or taking of property resulting from the design or construction of said Subdivision, and the public improvements as provided herein, and in addition, to adjacent property owners as a consequence of the diversion of waters from the design or construction of public drainage systems, streets and other public improvements. Acceptance by **CITY** of the improvements shall not constitute an assumption by the **CITY** of any responsibility for any damage or taking covered by this paragraph. **CITY** shall not be responsible for the design or construction of the Subdivision or the improvements pursuant to the approved improvement plans or map, regardless of any negligent action or inaction taken by **CITY** in approving the plans or map, unless the particular improvement design was specifically required by **CITY** over written objection by **SUBDIVIDER** submitted to the City Engineer before approval of the particular improvement design, which objection indicated that the particular improvement design was dangerous or defective and suggested an alternative safe and feasible design. After acceptance of the improvements, **SUBDIVIDER** shall remain obligated to eliminate any defect in

design or dangerous condition caused by the design or construction defect, and to be responsible for maintenance and care of the improvements. Provisions of this paragraph shall remain in full force and effect for 10 years following the acceptance by CITY of improvements. It is the intent of this section that **SUBDIVIDER** shall be responsible for all liability for design and construction of the improvements installed or work done pursuant to this Agreement and that **CITY** shall not be liable for any negligence, nonfeasance, misfeasance or malfeasance in approving, reviewing, checking, or correcting any plans or specifications or in approving, reviewing or inspecting any work or construction. The improvement security shall not be required to cover the provisions of this paragraph. **SUBDIVIDER** shall provide **CITY** with a certificate of insurance in the aggregate amount of \$1,000,000.00 and in a form acceptable to the City Engineer.

19. **Sale or Disposition of Subdivision.** Sale or other disposition of this property will not relieve **SUBDIVIDER** from the obligations set forth herein. **SUBDIVIDER** agrees to notify **CITY** in writing at least 30 days in advance of any actual or pending sale or other disposition of the property. If **SUBDIVIDER** sells the property or any portion of the property within the Subdivision to any other person, **SUBDIVIDER** may request a novation of this Agreement and a substitution of security. Upon approval of the novation and substitution of securities, **SUBDIVIDER** may request a release or reduction of the securities required by this Agreement. Nothing in the novation shall relieve **SUBDIVIDER** of the obligations under Paragraph 17 for the work or improvement done by **SUBDIVIDER**.

20. **Time of the Essence.** Time is of the essence of this Agreement.

21. **Time for Commencement of Work/Time Extensions.** **SUBDIVIDER** shall commence substantial construction of the improvements required by this Agreement not later than nine (9) months prior to the time for completion. In the event good cause exists as determined by the City Manager, the time for commencement of construction or completion of the improvements hereunder may be extended. The extension shall be made in writing executed by the City Manager. Any such extension may be granted without notice to **SUBDIVIDER**'s surety and shall not affect the validity of this Agreement or release the surety or sureties on any security given for this Agreement. The City Manager shall be the sole and final judge as to whether or not good cause has been shown to entitle **SUBDIVIDER** to an extension. Delay, other than delay in the commencement of work, resulting from an act of **CITY**, or by an act of God, which **SUBDIVIDER** could not have reasonably foreseen, or by storm or inclement weather which permits the conducting of work, or by strikes, boycotts, similar actions by employees or labor organizations, which prevent the conducting of work, and which were not caused by or contributed

to by **SUBDIVIDER**, shall constitute good cause for an extension of the time for completion. As a condition of such extension, the City Manager may require **SUBDIVIDER** to furnish new security guaranteeing performance of this Agreement as extended in an increased amount as necessary to compensate for any increase in construction costs as determined by the City Engineer.

22. **No Vesting of Rights.** Performance by **SUBDIVIDER** of this Agreement shall not be construed to vest **SUBDIVIDER's** rights with respect to any change in any zoning or building law or ordinance.

23. **Notices.** All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by mail, postage prepaid and addressed as provided in this section. Notice shall be effective on the date it is delivered in person, or, if mailed, on the date of deposit in the United States Mail. Notices shall be addressed as follows unless a written change of address is filed with **CITY**:

CITY: City of El Paso de Robles
1000 Spring Street
Paso Robles, CA 93446

SUBDIVIDER: Attn: Jim Halferty
Halferty Development
199 S. Los Robles Ave., Suite 880
Pasadena, CA 91101-2459

Surety:

24. **Severability.** The provisions of this Agreement are severable. If any portion of this Agreement is held invalid by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect unless amended or modified by the mutual consent of the parties.

25. **Captions.** The captions of this Agreement are for convenience and reference only and shall not define, explain, modify, limit, exemplify, or aid in the interpretation, construction or meaning of any provisions of this Agreement.

26. **Litigation or Arbitration.** In the event that suit or arbitration is brought to enforce the terms of this Agreement, the prevailing party shall be entitled to litigation costs and reasonable attorneys' fees.

27. **Incorporation of Recitals.** The Recitals to this Agreement are hereby incorporated into the terms of this Agreement.

28. Entire Agreement. This Agreement constitutes the entire Agreement of the parties with respect to the subject matter. All modifications, amendments, or waivers of the terms of this Agreement must be in writing and signed by the appropriate representatives of the parties. In the case of CITY, the appropriate party shall be the City Manager.

IN WITNESS WHEREOF, this Agreement is executed by CITY, by and through its Mayor.

CITY:

CITY OF EL PASO DE ROBLES

By: _____
Mayor, DUANE PICANCO

ATTEST:

MADELYN PAASCH, City Clerk

SUBDIVIDER:

HALFERTY DEVELOPMENT COMPANY
JIM HALFERTY

(SIGNATURES MUST BE NOTARIZED)

OFFICIAL BALLOT

**CITY OF EL PASO DE ROBLES SPECIAL PROPERTY OWNER PROTEST
PROCEEDING TO PROPOSE THE LEVY AND COLLECTOIN OF ASSESSMENTS
AND ASSESSMENT RANGE FORMULA FOR THE EL PASO DE ROBLES
LANDSCAPE AND LIGHTING MAINTENANCE ASSESMENT DISTRICT No. 1,
SUBAREA No. 7**

HEARING DATE: Second Quarter Calendar 1999

This Ballot represents: **Name:** Richard Woodland
 Address: P.O. Box 2037
 City, State: La Puente, CA 91746
 Property: PR 98-038, A.P.N. 009-814-002, 009-814-003
 Sub Area: 46

According to Section 4, Sub-Section 4 (e) of Proposition 218, the ballots are weighted according to the proportional financial obligation of the affected property. The proposed assessment for your property is presented above and the total proposed Balance to Levy for the Sub Area is

To vote, make a cross (+) in the voting square next to the word "YES" or the word "NO", sign and date the ballot. If you wrongly mark, tear, or deface this ballot, return it to the City Clerk, and obtain another. Mail or deliver this completed ballot to:

City Clerk
City of Paso Robles
1000 Spring Street
Paso Robles, CA 93446

PLEASE CAST YOUR VOTE BY MARKING AND SIGNING BELOW

- Yes, I approve of the proposed assessment of \$1052.00 per parcel for the 1999-2000 fiscal year on the parcel(s) identified on this ballot, and the establishment of an annual assessment range formula based on the level of the Consumer Price Index most recently reported by the San Francisco/Oakland Urban Wage Earners and Clerical Workers increase over its level as of the date of this ballot.
- No, I do not approve the proposed assessment of \$1052.00 per parcel for the 1999-2000 fiscal year on the parcel or parcels identified on this ballot, and the establishment of an annual assessment range formula based on the level of the Consumer Price Index most recently reported by the San Francisco/Oakland Urban Wage Earners and Clerical Workers increase over its level as of the date of this ballot.

Signature of Record Owner or Authorized Representative
in case of property owned by non-individuals.

Date

16-26

PETITION

A PETITION TO THE CITY COUNCIL OF EL PASO DE ROBLES, COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, PETITIONING SAID COUNCIL TO INITIATE PROCEEDINGS FOR THE ANNEXATION OF TERRITORY INTO **“EL PASO DE ROBLES LANDSCAPE AND LIGHTING MAINTENANCE DISTRICT NO. 1,”** AN ASSESSMENT DISTRICT ESTABLISHED PURSUANT TO THE **“LANDSCAPING AND LIGHTING ACT OF 1972”** AS SET FORTH IN PART 2 OF DIVISION 15 (SECTIONS 22500 ET SEQ.) OF THE STREETS AND HIGHWAYS CODE OF THE STATE OF CALIFORNIA

WITNESSETH:

A. WHEREAS, the petitioner, **Richard J. Woodland and Patricia Woodland,** (hereinafter referred to as the **“Developer”**), is the sole owner of that certain real property located in the **City of El Paso de Robles,** County of San Luis Obispo, State of California, more particularly described in **Exhibit “A”** attached hereto, (hereinafter referred to as the **“Property”**); and

B. WHEREAS, **Developer** is developing the Property Phase III of the Woodland Plaza Shopping Center approved as **PR 98-038** (hereinafter referred to as the **“Project”**); and

C. WHEREAS, as a condition to its approval of the recordation of the final tract map to be recorded on the Project, the **City of El Paso de Robles** (hereinafter referred to as the **“City”**) has required that those certain areas within the **Project** be improved with landscaping, lighting, and other related improvements, **more particularly street lights, landscaping and irrigation along parkways, pedestrian and bike pathways and open space lots** (hereinafter referred to as the **“Landscape and Lighting Improvements”**) to a standard acceptable to the **City**; and that the **Developer** provide a means satisfactory to the **City** for assuring the continued maintenance, operation, and servicing of the **Landscape and Lighting Improvements**; and

D. WHEREAS, pursuant to the **“Landscaping and Lighting Act of 1972”** as set forth in part 2 of Division 15 (Sections 22500 et seq.) of the Streets and Highways Code of the State of California, the **City** may form an assessment district to provide for the maintenance, operation and servicing of the **Landscape and Lighting Improvements**, and for the payment of the costs and expenses incurred for such maintenance, operation, and servicing; and

E. **WHEREAS**, the **Developer** is the owner of all of the real property to be benefitted by the **Landscape and Lighting Improvements** of the maintenance, operation and servicing thereof.

NOW, THEREFORE, in furtherance of the foregoing recitals, the **Developer** does hereby petition the **City** as follows:

1. In order to assure the continued maintenance, operation, and servicing of the **Landscape and Lighting Improvements**, and the payment of the costs and expenses incurred for such maintenance, operation, and servicing, the **Developer** hereby requests that the **City** annex the **Property** into the **Paso Robles Landscape Maintenance District No. 1** (hereinafter referred to as the "**District**") pursuant to the "**Landscaping and Lighting Act of 1972**" as set forth in Part 2 of Division 15 (Sections 22500 et seq.) of the Streets and Highways Code of the State of California, in accordance with this **Petition**.

2. The **Developer** requests that the territory to be annexed to the **District** consists of all of the **Property** referenced in Paragraph A of the recitals hereinabove.

3. As the sole owner(s) of all of the real property to be annexed into the **District**, the **Developer** hereby waives, pursuant to Streets and Highways Code Section 22608.1, preparation of an initial engineer's report and hearings of objections and protests by interested property owners to the proposed annexation

4. In consideration of the approval of the annexation into the **District** by the **City**, the **Developer** hereby agrees as follows:

a. To install the **Landscape and Lighting Improvements** as required by conditions of approval of the **Project** and to bear all costs of constructing or otherwise installing the **Landscape and Lighting Improvements**;

b. To complete the construction or other installation of the **Landscape and Lighting Improvements** within **PR 98-038** to the reasonable satisfaction of the **City** prior to the first close of an escrow for the sale of any lot within said **PR 98-038**.

c. To consent to the establishment and payment of an assessment for the proposed annexation of the **Property** into the **District** in an amount ranging from \$1000 to \$1500 per lot, to cover all costs and expenses incurred for the continued maintenance, operations and servicing of the **Landscape and Lighting Improvements** for Fiscal Year 99-00. The

Developer hereby agrees that this petition complies with the requirements of Proposition 218 for property owner notification and protest ballot and, by signature on this document, is not protesting the above assessment range.

d. To agree that this Petition shall run with the land and shall be binding upon the Developer, his heirs, successors, executors, administrators, and assigns.

PROPERTY OWNER:

The Richard J. Woodland and Patricia Woodland Trust, dated May 23, 1987.

Richard J. Woodland, Co-Trustee

Date

Patricia D. Woodland A.K.A. Patricia Woodland, Co-Trustee

Date

(SIGNATURES MUST BE NOTARIZED)