

CITY OF OAKLAND
Agenda Report

OFFICE OF THE CITY CLERK
2006 FEB 21 11:28

TO: Office of the City Administrator
ATTN: Deborah Edgerly
FROM: Community and Economic Development Agency
DATE: February 21, 2006

RE: Resolutions Approving A Final Map For Tract 7548 and A Subdivision Improvement Agreement For Deferred Construction Of Public Infrastructure Improvements At 6549 San Pablo Avenue For The Artisan Walk Residential Townhouse Project

SUMMARY

Two resolutions have been prepared approving:

- a Final Map for "Tract No. 7548, Emeryville and Oakland, Alameda County, California" for the voluntary merger of three existing parcels and their re-subdivision by Olson 737 Emeryville 1 LLC, a California limited liability company (no. 200226010117), into fourteen lots for residential townhouses and sixteen lots for undevelopable open space, public utility easements, and private access easements (private street); and approving
- a Subdivision Improvement Agreement (SIA) for deferred construction of public street and underground utility improvements.

The Planning Commission approved the Tentative Map and a companion Major Condition Use Permit on December 4, 2004. The City Engineer has determined that the Final Map is in substantial compliance with the Tentative Map. Approval of the Final Map will be a ministerial action by the City Council, and approval of the Subdivision Improvement Agreement will be a discretionary action.

The Artisan Walk project is bounded by 66th Street and San Pablo Avenue in Oakland and by Vallejo Street in Emeryville. The townhouses abut an interior private street which has a main entrance and two emergency entrances (with removable bollards) onto 66th Street. The subdivision will have fourteen multiple-story buildings with seventy-two residential units. One of the buildings will be within Emeryville.

The City Engineer has approved the plans and specifications prepared by the developer for construction of public infrastructure in Oakland and Emeryville. Dedications of public easements for underground utilities beneath the private street are being offered to the City of Emeryville and the City of Oakland. On-site storm drain and sanitary sewer lines and off-site street trees and public sidewalks will be privately maintained by the homeowners' association. The developer has provided surety bonding (150% of the estimated cost) that guarantees the completion of the infrastructure improvements and payment of the contractors and suppliers and warrants the performance of the completed work and the maintenance by the developer of the infrastructure for one year following acceptance by the City Engineer.

FISCAL IMPACT

Staff costs for processing the Final Map and Subdivision Improvement Agreement will be covered by fees set by the Master Fee Schedule and paid by the developer and deposited in the General Purpose Fund (1010), Engineering Services organization (88432), Tract Map account (45119), Engineering and Architectural Approval (PS30). The standard conditions of the encroachment permit require the property owner to maintain liability and property damage insurance and to include the City as a named insured on the policy.

KEY ISSUES AND IMPACTS

Subdivision Infrastructure

The Artisan Walk infrastructure permit (PX0400051) for private and public street and utility improvements, which are currently under construction, includes the:

- installation of street lights and street trees along 66th Street; and the
- construction of public sidewalk and replacement of sanitary sewer and storm drain lines in 66th Street; and the
- repaving of 66th Street between the new sidewalk and the roadway centerline; and the
- replacement of public sidewalk along San Pablo Avenue (State highway 123) and Vallejo Street (City of Emeryville) ; and the
- construction of other underground public utilities, including potable water, natural gas, electrical, and telecommunication mains.

Final Map

As set forth in California Government Code section 664474.1 (Subdivision Map Act), approval of the Final Map is an administrative, ministerial, and mandatory action by the City Council once the City Engineer has determined that the Final Map conforms substantially with the approved Tentative Map and is technically correct (correct map size and medium, correct metes and bounds, required signatures, required statements, required licensures, etc.). The controlling discretionary action to be taken by the City relating to a subdivision map is at the Tentative Map stage. The purpose of submitting the Final Map to the City Council is to ensure that the Council and the public remain informed about development in the City. The City Council has no discretionary authority to withhold approval of a Final Map.

Subdivision Improvement Agreement

Whenever public infrastructure improvements are required for a proposed subdivision, state law and City ordinance require that the subdivider execute an SIA with the City (on mutually agreeable terms) as a condition for approving a Final Map. An SIA, with its accompanying security (surety bond, irrevocable letter of credit, etc. for 150% of the construction cost), guarantees the completion of the infrastructure improvements within a prescribed period of time

(typically, one year) and the payment of the contractors and suppliers and also warrants the performance of the completed work and maintenance by the developer over a determinate period of time (typically, one year). Upon expiration of the warrantee period, the City assumes maintenance of the infrastructure.

The City Attorney has reviewed the SIA for form and legality and the surety bonds provided by the developer for conformance with the requirements of the state Subdivision Map Act (California Government Code section 664933 et seq.).

SUSTAINABLE OPPORTUNITIES

Economic

The Artisan Walk project will provide opportunities for professional services and construction related jobs for the Oakland community.

Environmental

Land use approvals and construction permits for public infrastructure improvements and new buildings require that the permittee comply with City ordinances and regional Best Management Practices for reducing nuisance noise, fugitive dust, construction debris disposal, and storm drainage pollutant runoff. The infrastructure work will not require pile driving.

Social Equity

The Artisan Walk project will provide housing ownership opportunities and will assist the economic revitalization of the City.

DISABILITY AND SENIOR CITIZEN ACCESS

Public sidewalks, tree well grates, and curb ramps will be constructed or replaced to conform with Caltrans and City requirements for handicapped accessibility. Access within the project will similarly comply with State and City requirements for handicapped accessibility.

RECOMMENDATIONS

Adoption of the resolution approving the Final Map is a ministerial action of the City Council, which does not require an action by a Committee of the Council.


ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the Council accept this report for the Artisan Walk project, and

- adopt the proposed resolution, as a ministerial action,
 - approving the Final Map for Tract 75486, and
 - authorizing the City Engineer and City Clerk to execute the Final Map, and

- directing the City Clerk to file the executed Final Map with Alameda County for recordation, and
 - accepting the offer of dedication of the public utility easements upon recordation of the Final Map, and
 - accepting certain public improvements for maintenance by the City after expiration of the one-year warrantee period; and
- adopt the proposed resolution, as a discretionary action,
- approving the Subdivision Improvement Agreement with Olson 737 Emeryville 1 LLC, and
 - authorizing the City Administrator to execute the Subdivision Improvement Agreement and to grant an extension of time, without returning to Council, to complete the work, and
 - directing the City Clerk to file the executed Subdivision Improvement Agreement with the Alameda County Recorder concurrently with the Final Map for simultaneous recordation.

Respectfully submitted,



CLAUDIA CAPPIO
Development Director
Community and Economic Development Agency

Prepared by:

Raymond M. Derania
Interim City Engineer
Building Services Division

APPROVED FOR FORWARDING
TO THE CITY COUNCIL



OFFICE OF THE CITY ADMINISTRATOR

Attachment: Resolution - approval of Final Map for Tract 7548
Resolution - approval of Subdivision Improvement Agreement

Introduced by

Councilmember

OFFICE OF THE CITY CLERK
Approved for Form and Legality

2006 FEB - 28
City Attorney

OAKLAND CITY COUNCIL

Resolution No. _____ C.M.S.

RESOLUTION APPROVING THE FINAL MAP FOR TRACT 7548 FOR THE ARTISAN WALK RESIDENTIAL TOWNHOUSE PROJECT AT 6549 SAN PABLO AVENUE AND ACCEPTING OFFERS OF DEDICATION FOR ON-SITE PUBLIC UTILITY EASEMENTS

Whereas, the developer of the Artisan Walk residential townhouse project, Olson 737 Emeryville 1 LLC, a California limited liability company (no. 200226010117), is the Subdivider of previously divided parcels identified as Tract 7548 and bounded on three sides by San Pablo Avenue (state highway 123) and 66th Street in the City of Oakland and Vallejo Street in the City of Emeryville; and

Whereas, the Planning Commission of the City of Oakland approved the Tentative Map and a major conditional use permit for Tract 7548 on December 4, 2004, which proposed a voluntary merger of three existing parcels and their re-subdivision into fourteen developable lots and an additional sixteen lots for use as undevelopable open space, public utility easements, and private access easements (private street); and

Whereas, the Subdivider has acquired by purchase for valuable consideration all real property comprising Tract 7548; and

Whereas, the Subdivider has applied to the City of Emeryville and the City of Oakland to voluntarily merge the existing three parcels, identified as APN 0106-1506-001-02, 016-1506-011-00, 016-1506-010-01, and re-subdivide them into the thirty lots comprising Tract 7548; and

Whereas, the Subdivider has complied with the terms and conditions attached to the Tentative Map for Tract 7548, and the City Engineer has determined that the Final Map for Tract 7548 is substantially the same as the Tentative Map approved by the Planning Commission and that the Final Map is technically correct and accurately delineates the metes and bounds of the thirty proposed lots, the limits of which have been established by field survey and can be re-established from the monuments, property corners, radii, bearings, and distances shown on the Final Map; and

Whereas, the City Engineer has further determined that the Final Map for Tract 7548, attached hereto as Exhibit A, complies in all manners with the provisions of the California Government Code (Section 66400, et seq. - Subdivision Map Act), and the City of Oakland's local ordinance (Municipal Code Title 16 - Subdivisions); and

Whereas, the Subdivider has employed a competent and qualified design professional, who is licensed by the State of California to practice civil engineering, to prepare plans and specifications, attached hereto as Exhibit B, for the construction of required publicly and

privately maintained surface and subsurface improvements within the existing public rights-of-way; and

Whereas, the City Engineer has approved said plans and specifications and has issued infrastructure permit no. PX0400041 for construction of said improvements; and

Whereas, at the time of approval of said Final Map, the Subdivider will not have completed and the City will not have accepted the necessary public infrastructure improvements required by the project; and

Whereas, pursuant to Government Code section 66462 and Municipal Code section 16.20.100, the Subdividers may record a Final Map before completing the public infrastructure improvements by entering into an agreement with the City giving assurance that the required improvements will be completed within a determinate period of time; and

Whereas, pursuant to Government Code section 66462 and Municipal Code section 16.20.100 as a condition precedent to approval of said Final Map by the Council of the City of Oakland, the Subdivider has executed a Subdivision Improvement Agreement assuring the timely construction, unconditional warrantee, and prescribed maintenance of all required publicly and privately maintained infrastructure improvements within the public right-of-way; and

Whereas, pursuant to Government Code section 66499 et seq. and Municipal Code section 16.20.100, the Subdivider has posted securities in the form of surety bonds that are sufficient in estimated amounts to the City Engineer; and

Whereas, said surety bonds are intended to secure the Subdivider's performance under Exhibits B and C guaranteeing the construction of the public infrastructure improvements and the payment of laborers and material and equipment suppliers and warranting the performance and maintenance of the completed work for the period of time prescribe in said Agreement; and

Whereas, that upon City Attorney's approval as to form and legality of the Subdivision Improvement Agreement and the surety bonds, the City Administrator is authorized to execute said Agreement on behalf of the City of Oakland; and

Whereas, the Subdivider has offered the dedication of non-exclusive public easements under, on, and over the on-site private access easements (private street), as identified in said Final Map, to the City of Emeryville and the City Oakland that include, but are not limited to, wires and conduits for gas, electricity, cable television, fiber optics, sanitary sewer mains, and all appurtenances; and

Whereas, the requirements of the California Environmental Quality Act (CEQA) have been complied with and the project was determined to be categorically exempt under Section 15332 of the CEQA Guidelines; now, therefore, be it

Resolved, that the Final Map for Tract 7548 is hereby conditionally approved; and be it

Further Resolved, that the City Engineer is hereby authorized to endorse said Final Map; and be it

Further Resolved, that the City Clerk is authorized to endorse said Final Map and directed to file the endorsed Final Map and the executed Subdivision Improvement Agreement concurrently with the Alameda County Recorder for simultaneous recordation; and be it

Further Resolved, that this Resolution shall become effective upon the recordation of said Final Map and said Agreement; and be it

Further Resolved, that upon recordation of said Final Map, the offers of dedication by the Subdivider of the public utility easements, as identified in said Map, are hereby accepted; and be it

Further Resolved, that maintenance of the sanitary sewer and stormwater drainage mains within said public utility easements shall remain the responsibility in perpetuity of the property owners of Tract 7548 and their homeowners association, both severally and jointly, and their representatives, agents, heirs, successors, and assigns; and be it

Further Resolved, that upon expiration of the warrantee and maintenance period, as identified in said Agreement, following the issuance of a Certificate of Completion by the City Engineer, the maintenance of newly constructed public infrastructure within the public right-of-way is hereby accepted by the City, excepting from said maintenance all of the public sidewalks, curbs and gutters and street trees and further excepting those improvements that are within the corporate limits of the City of Emeryville or are otherwise regulated by the California Public Utilities Commission.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2006

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT DE LA FUENTE

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

TRACT NO. 7548

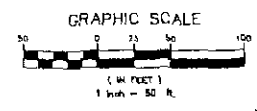
FOR CONDOMINIUM PURPOSES
CONSISTING OF FOUR (4) SHEETS

BEING ALL OF LOTS 4, 57, 58, 59, 60, 61 AND 62 AND A PORTION OF
LOT 3 OF THE MAXWELL TRACT FILED SEPTEMBER 19, 1872 IN BOOK 3,
PAGE 21 RECORDS OF ALAMEDA COUNTY, CALIFORNIA, LYING WITHIN
THE CITY OF EMERYVILLE & THE CITY OF OAKLAND COUNTY OF
ALAMEDA, STATE OF CALIFORNIA.

SCALE: 1"=50'

DATE: JANUARY 2008

Civil Engineering Associates
Civil Engineers - Planners - Surveyors
836 North First Street - Building A - San Jose, CA 95112



LEGEND

- SUBDIVISION BOUNDARY
- - - RIGHT OF WAY
- - - CENTERLINE
- - - EASEMENT LINE
- - - BOUNDARY TIE
- - - LOT LINE
- - - MONUMENT LINE
- ⊗ FOUND BRASS DISC IN CITY MONUMENT WELL (AS NOTED)
- ⊙ SET STANDARD CITY MONUMENT, A 3/4" BRASS DISC STAMPED "ICE 31854" SET IN CONCRETE, IN WELL WITH ROUND FRAME AND COVER
- SET 3/4" IRON PIPE TAGGED RICE 31854
- M-U MONUMENT TO MONUMENT
- I.C.E. EGRESS AND EGRESS EASEMENT
- P.U.E. PUBLIC UTILITY EASEMENT

NOTES

1. ALL DIMENSIONS SHOWN HEREON ARE IN FEET AND DECIMALS THEREOF.
2. THE AREA WITHIN THE DISTINCTIVE BORDER = 2.90 ACRES

BASIS OF BEARINGS

THE BEARING NORTH TO 15.00', EAST OF THE CENTERLINE OF 65th STREET AS SHOWN ON TRACT NO. 1358 RECORDED IN ALAMEDA COUNTY RECORDS, BK 5 PG 21.

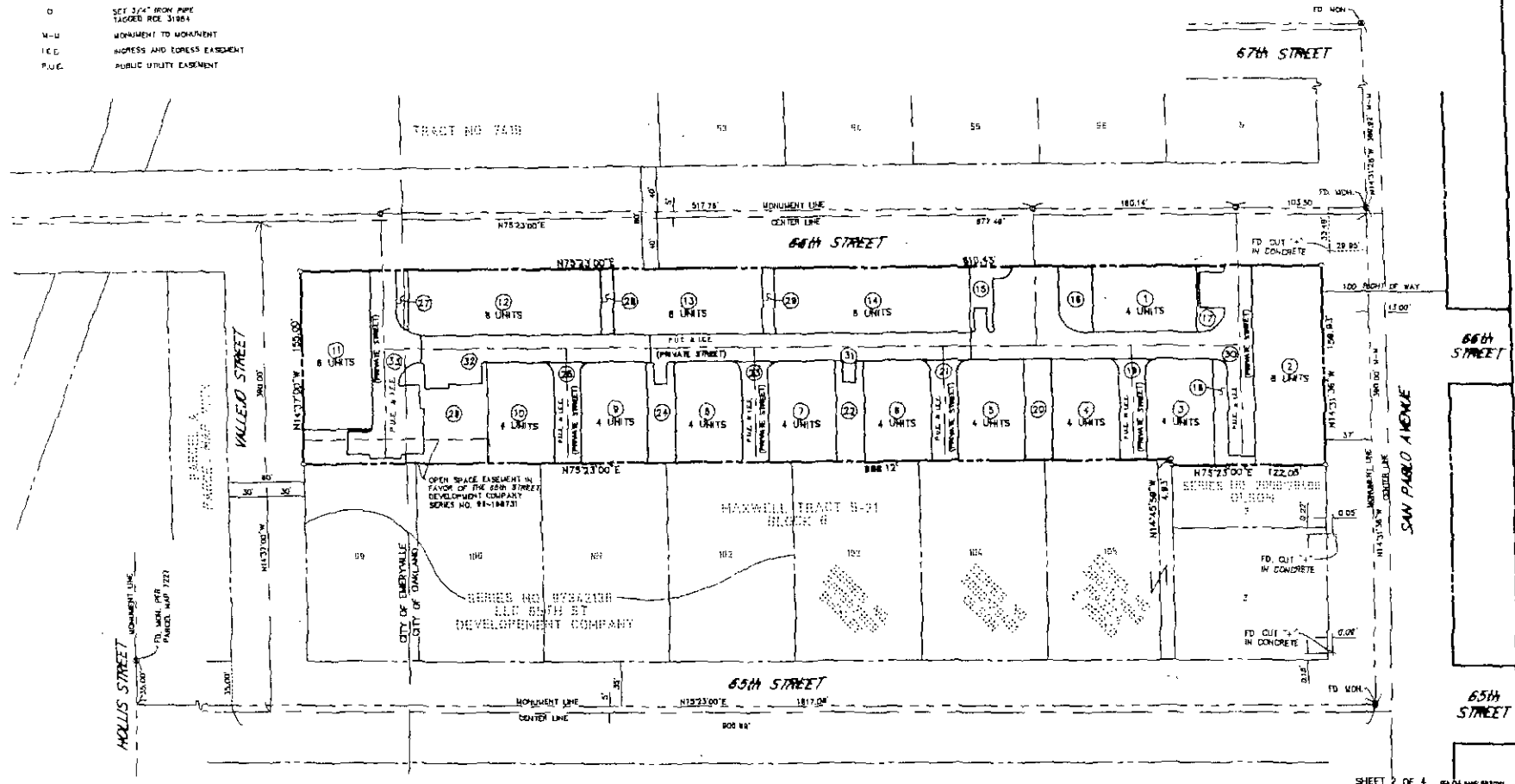


Exhibit A

Introduced by

OFFICE OF THE CITY CLERK Approved for Form and Legality

Councilmember

2006 FEB - 2 AM 11: 28 *F. Fair*

City Attorney

OAKLAND CITY COUNCIL

Resolution No. _____ C.M.S.

RESOLUTION APPROVING A SUBDIVISION IMPROVEMENT AGREEMENT FOR THE FINAL MAP FOR TRACT 7548 WITH OLSON 737 EMERYVILLE 1 LLC FOR DEFERRED CONSTRUCTION OF PUBLIC INFRASTRUCTURE IMPROVEMENTS FOR THE ARTISAN WALK RESIDENTIAL TOWNHOUSE PROJECT AT 6549 SAN PABLO AVENUE

Whereas, the developer of the Artisan Walk residential townhouse project, Olson 737 Emeryville 1 LLC, a California limited liability company (no. 200226010117), is the Subdivider of previously divided parcels identified as Tract 7548 and bounded on three sides by San Pablo Avenue (state highway 123) and 66th Street in the City of Oakland and Vallejo Street in the City of Emeryville; and

Whereas, the Planning Commission of the City of Oakland approved the Tentative Map and a major conditional use permit for Tract 7548 on December 4, 2004; and

Whereas, the Subdivider has acquired by purchase for valuable consideration all real property comprising Tract 7548; and

Whereas, the Subdivider has complied with the terms and conditions attached to the Tentative Map for Tract 7548, and the City Engineer has determined that the Final Map for Tract 7548 is substantially the same as the Tentative Map approved by the Planning Commission and that the Final Map is technically correct and accurately delineates the metes and bounds of the thirty proposed lots, the limits of which have been established by field survey and can be re-established from the monuments, property corners, radii, bearings, and distances shown on the Final Map; and

Whereas, the City Engineer has further determined that the Final Map for Tract 7548 complies in all manners with the provisions of the California Government Code (Section 66400, et seq. - Subdivision Map Act), and the City of Oakland's local ordinance (Municipal Code Title 16 - Subdivisions); and

Whereas, the Subdivider has employed a competent and qualified design professional, who is licensed by the State of California to practice civil engineering, to prepare plans and specifications for the construction of required publicly and privately maintained surface and subsurface improvements within the existing public rights-of-way; and

Whereas, the City Engineer has approved said plans and specifications and has issued infrastructure permit no. PX0400041 for construction of said improvements; and

Whereas, at the time of approval of said Final Map, the Subdivider will not have completed and the City will not have accepted the necessary public infrastructure improvements required by the project; and

Whereas, pursuant to Government Code section 66462 and Municipal Code section 16.20.100, the Subdividers may record a Final Map before completing the public infrastructure improvements by entering into an agreement with the City giving assurance that the required improvements will be completed within a determinate period of time; and

Whereas, pursuant to Government Code section 66462 and Municipal Code section 16.20.100 as a condition precedent to approval of said Final Map by the Council of the City of Oakland , the Subdivider has executed a Subdivision Improvement Agreement, attached hereto as Exhibit A, assuring the timely construction, unconditional warrantee, and prescribed maintenance of all required publicly and privately maintained infrastructure improvements within the public right-of-way; and

Whereas, pursuant to Government Code section 66499 et seq. and Municipal Code section 16.20.100, the Subdivider has posted sufficient securities in the form of surety bonds, attached hereto as Exhibit B, that are sufficient in estimated amounts to the City Engineer; and

Whereas, said surety bonds are intended to secure the Subdivider's performance under Exhibit A guaranteeing the construction of the public infrastructure improvements and the payment of laborers and material and equipment suppliers and warranting the performance and maintenance of the completed work for the period of time prescribe in said Agreement; and

Whereas, that subject to the approval by the Council of the City of Oakland of the Subdivision Improvement Agreement, the City Engineer has recommended that the City Council approve the Final Map for Tract 7548; and

Whereas, the requirements of the California Environmental Quality Act (CEQA) have been complied with and the project was determined to be categorically exempt under Section 15332 of the CEQA Guidelines; now, therefore, be it

Resolved, that the Subdivision Improvement Agreement with Olson 737 Emeryville 1 LLC for the Final Map for Tract 7548 is conditionally approved; and be it

Further Resolved, that the City Attorney's review and approval of the Agreement and the surety bonds securing the Subdivider's performance under said Agreement shall be obtained prior to execution of said Agreement by the City Administrator on behalf of the City of Oakland; and be it

Further Resolved, that the City Clerk is hereby directed to file the executed Subdivision Improvement Agreement concurrently with the endorsed Final Map for Tract 7548 for simultaneous recordation by the Alameda County Recorder; and be it

Further Resolved, that upon recommendation of the City Engineer, the City Administrator is further authorized, without returning to City Council, to extend the time period designated in the Subdivision Improvement Agreement for completion of the public infrastructure improvements upon demonstration of good cause by the Subdivider, as determined by the City Administrator at his or her sole discretion.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2006

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT DE LA FUENTE

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

recording requested by:

CITY OF OAKLAND

when recorded mail to:

City of Oakland
CEDA - Building Services
Dalziel Administration Building
250 Ogawa Plaza - 2nd Floor
Oakland, CA 94612
Attn: S. Aghamir

----- space above for Recorder's use only -----

APPROVED FOR FORM AND LEGALITY


CITY ATTORNEY

SUBDIVISION IMPROVEMENT AGREEMENT

Deferred Construction of Public Infrastructure Improvements

Artisan Walk Residential Townhouse Project

Tract No. 7548

This Agreement is between Olson 737 Emeryville 1 LLC (“Developer”), a California limited liability company (no. 200226010117), and the City of Oakland (“City”), a California municipal corporation.

RECITALS

The Developer is the owner and subdivider of three contiguous parcels located within the corporate limits of the City of Oakland and the City of Emeryville and identified by Alameda County Assessor’s Parcel Numbers 0106-1506-001-02, 016-1506-011-00, and 016-1506-010-01 who has presented a Final Map to the Council of the City of Oakland that proposes a voluntary merger of the originally divided nine lots of this platted land and its re-subdivision into the proposed thirty lots, which is identified as subdivision Tract No. 7548.

As a condition precedent to the approval of the proposed Final Map for Tract No. 7548, which is included by referenced as *Exhibit A*, the City requires the irrevocable dedication of public easements on the privately owned real property as shown on the map. In addition, the City requires construction on-site of public infrastructure improvements within these public easements and off-site in the public right-of-way that customarily include grading, paving, striping and lettering, curbs, gutters and sidewalks, trees, landscaping and irrigation, retaining walls, storm drains and sanitary sewers, street name and public transportation signs, survey monuments, electricity, communication, water, and natural gas utility mains and branch piping and wiring, fire hydrants, street light electroliers, traffic control and curb parking signs, signals and meters, and all appurtenances thereto. The subdividers have asked the City to accept the dedication of the public easements shown on the map and the permanent maintenance of the public infrastructure improvements in the public right-of-way as shown on the plans accompanying permit number PX 0400041, which are included by reference as *Exhibit B*.

Construction of the public infrastructure improvements, however, has not been completed nor accepted by the City. Consequently, the parties desire to establish an Agreement binding the Developer to complete the improvements within one year of the date that this Agreement is fully executed and filed with and recorded by the Alameda County Recorder in consideration of the approval of the subdivision Final Map and acceptance of the irrevocable offers of dedication of public easements and acceptance of the permanent maintenance of the improvements.

THEREFORE, it is agreed as follows:

1. Approval of Final Map

Approval of the Final Map for the subdivision of Tract No. 7548 by Resolution of the Council of the City of Oakland shall be conditioned upon recordation of this Agreement with the Alameda County Recorder, as well as Developer's satisfactory performance of its obligations specified in this Agreement, as determined by the City.

2. Construction of Improvements

The Developer shall construct all on-site and off-site public infrastructure improvements in strict accordance with all permits, specifications, plans and applicable City standards and performance criteria as specified in *Exhibit B* and set forth below in paragraph 3, *Special Conditions*.

3. Special Conditions

The Developer shall comply with the special conditions as follows:

A. Public infrastructure shall conform with the performance criteria specified in Oakland Municipal Code Chapter 16.16 - Design Standards and in Standard Details for Public Works Construction 2002 Edition and Standard Specifications for Public Works Construction 2002 Edition.

B. The time duration for the completion of public infrastructure improvements, as set forth in paragraph 4 below, shall include allowance for construction workday delays attributable to consecutive and intermittent inclement weather, as has been recorded by the United States Weather Bureau for the City of Oakland and surrounding area and seasonally averaged for the previous ten years.

C. Hours, days, and months of operation and control of public nuisance conditions for the construction of public infrastructure improvements shall conform with the requirements of Planning Conditions of Approval for the Uptown Oakland project and the Oakland Municipal Code, including section 15.04.780 and subsections 3304.6 and 3304.11. No work shall be performed on Saturdays or Sundays or federal holidays or before 8:00 am or after 5:00 pm local time without the written authorization of the City Engineer.

D. Performance standards for the construction of public infrastructure improvements shall comply with the requirements of Oakland Municipal Code chapter 17.120 and with regional, state, and federal regulations for "Best Management Practices" for erosion and sedimentation control.

E. In order to safeguard life, public and private property, and to ensure that the work will be carried out in an orderly manner in conformance with all regulations and without creating a public nuisance, the City Engineer may add to, remove, or change these Special Conditions from time to time during the duration of the permit as he or she deems reasonably necessary.

4. Completion of Improvements

A. All construction of public infrastructure improvements shall be completed by the Developer within one year of the date of recordation of this Agreement, except those improvements for which another

completion date is stated in *Exhibit B* or set forth above in paragraph 3, Special Conditions. Construction shall not be deemed complete until the Public Infrastructure permit has been finalized by the City Engineer.

B. The City Administrator may extend the time for completion of said improvements. Upon consultation with the City Engineer and the Redevelopment Agency, the City Administrator shall be the sole and final judge as to whether or not good cause has been shown to entitle the Developer to an extension under this paragraph 4B.

C. An extension may be granted without notice to the Developer's surety, and extensions so granted shall not relieve the surety's liability on any of the bonds required by this Agreement.

D. In the event that an extension is granted, Developer agrees to promptly extend the term of all surety bonds securing its performance under this agreement, and/or provide additional bonds or other surety acceptable to the City. All such bonds and/or other surety are subject to review and approval by the City Attorney for legal sufficiency, and if no bonds or other surety acceptable to the City Attorney are provided to secure Developer's performance, the extension shall be void.

5. Acceptance of Dedications and Ownership of Improvements

Upon final approval by the City Engineer of the public infrastructure improvement permit, all irrevocable offers of dedication of public rights-of-way and public easements will be accepted by the City, and all improvements required by this Agreement shall become the sole property of the City. The City will subsequently accept the permanent maintenance of these improvements as set forth below in paragraphs 7, Maintenance, and 8, Guarantee and Warranty.

6. Responsibility for Dedications and Improvements

Until final approval by the City Engineer of the public infrastructure improvement permit, the Developer shall give good and adequate warning to the public of each and every defective or dangerous condition existing or arising within all public rights-of-way and public easements irrevocably offered for dedication and shall adequately protect the public from said unsafe conditions. Warning to and protection of the public shall remain the sole responsibility and expense of the Developer until such time as said permit is unconditionally approved by the City.

7. Maintenance of Improvements

Until one year has elapsed following final approval by the City Engineer of the public infrastructure improvement permit, the Developer shall maintain the construction of the improvements and shall immediately perform or cause to be performed at its sole expense all necessary repairs, replacements, additions, or other corrective actions.

8. Guarantee of Workmanship and Warranty of Equipment, Materials, and Expertise

Until one year has elapsed following final approval by the City Engineer of the public infrastructure improvement permit, the Developer warrants that the improvements, and the equipment and materials provided for the improvements are and will be free from defects and guarantees that the construction of the improvements is and will be free from deficiencies and that the improvements will perform satisfactorily in accordance with the specifications, plans and applicable City standards and performance criteria as specified in *Exhibit B* and set forth above in paragraph 3, Special Conditions. Developer further warrants that its design professionals are competent, that their analyses are adequate, and that their designs will meet or exceed the applicable City standards and performance criteria as specified in *Exhibit B* and set forth above in paragraph 3, Special Conditions.

If at any time before the expiration of the guarantee and warrantee period specified herein said designs prove to be inadequate in any respect, as determined by the City Engineer, the Developer shall make changes at its sole expense necessary to assure conformance with said standards and criteria.

9. Inspection of Construction

Inspection of the construction and/or equipment and materials, or approval of the construction and/or equipment and materials inspected, or statement by any officer, representative, agent, volunteer, or employee of the City indicating the construction and/or equipment and materials, or any part thereof, comply with the requirements and conditions of this Agreement, or acceptance of the whole or any part of the construction and/or materials, or payments thereof, or any combinations, or any combination, or all of these acts shall not relieve the Developer of its obligation to fulfill this Agreement as prescribed herein; nor shall the City be thereby stopped from bringing any action for damages arising from the failure of the Developer to comply with any of the requirements and conditions of this Agreement.

10. Payment of Fees and Penalties and Accrued Interest

Prior to final approval by the City Engineer of the public infrastructure improvement permit and prior to acceptance by the City of the on-site and off-site improvements for permanent maintenance, the Developer shall pay all fees and penalties and accrued interest to the City and other Public Agencies that remain unpaid. Interest on amounts owed to the City shall accrue at the rates set forth in its Master Fee Schedule and from date that the fees and penalties are assessed and shall continue until full payment is received, whether or not any conditions of this Agreement are extended or modified.

11. Reversion to Acreage

If the Developer fails to perform its obligations under this Agreement, Developer, as the subdivider, consents to the reversion to acreage of the land which is the subject to this Agreement pursuant to Government Code section 66499.16 and to bear all applicable costs.

12. Property Acquisition

If the Developer is unable to acquire property required for the construction of required improvements, the Developer agrees to execute the standard City Contract for Real Property Acquisition to provide for acquisition through eminent domain.

13. Security

The Developer shall present to the City surety bonds, in a form satisfactory to the City Attorney, issued by a corporate surety authorized to issue said security in the State of California as follows:

A. Before execution of this Agreement, the following securities shall be presented:

1. **Faithful Performance Bond** in a face amount not less than the City Engineer's total (one-hundred percent) estimated cost of the on-site and off-site public infrastructure improvements to secure faithful performance of this Agreement by the Developer, in an amount not less than four hundred thirty-two thousand and thirty-two dollars (\$ 432,032.00); and

2. **Labor and Materials Bond** in a face amount not less than one-half (fifty percent) of the City Engineer's total estimated cost of the on-site and off-site public infrastructure improvements to secure payment by the Developer to its contractor, subcontractors, laborers and materialmen furnishing supervision, labor, materials and equipment engaged in the construction pursuant to this Agreement, and further to secure payment as required by the Unemployment Insurance Act, in an amount not less than two hundred sixteen thousand and sixteen dollars (\$ 216,016.00).

B. Before final approval of the Public Infrastructure Improvement permit, the following security shall be presented:

Maintenance Bond in a face amount not less than one-quarter (twenty-five percent) of the City Engineer's total estimated cost of the on-site and off-site public infrastructure improvements to secure faithful performance of paragraphs 7, Maintenance, and 8, Guarantee and Warranty, above, in an amount not less than one hundred eight thousand dollars (\$ 108,000.00). This Maintenance Bond shall remain in effect for not less than one year after the date of acceptance by the City Engineer of the improvements required by this Agreement.

C. Pursuant to Government Code section 66499.4, the obligation guaranteed by each bond shall include costs and reasonable expenses and fees, including reasonable attorneys' fees, incurred by the City in successfully enforcing said obligations and shall be in addition to the face amount of each bond.

14. Alternative Security

In lieu of the bonds required above in paragraph 13, Security, alternative securities may be substituted in a form provided by Government Code Section 66499.3 by the Developer of the site, Forest City, and subject to review and approval by the City Attorney.

15. Hold Harmless

The Developer shall indemnify, defend and hold the City, its officers, directors, officials, employees, representatives, agents and volunteers harmless against any and all claims, injuries, damages, losses and suits, including attorney fees and expert witness fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages directly caused by the sole negligence of the City.

Not in limitation of the foregoing, Developer further agrees to defend and protect the City and its officers, directors, officials, employees, representatives, agents and volunteers from all liability or claim because of, or arising out of the use of any patent or patented articles in the construction of said improvements.

Developer waives all claims and recourse against the City, including, without limitation, the right of contribution for loss or damage to persons or property, arising from, growing out of, or in any way connected with or incident to the work performed or failed to be performed under this agreement, except claims and recourse arising directly from the sole gross negligence of the City, its officers, directors, officials, representatives, employees, and agents.

This indemnification clause shall survive the termination of this agreement.

16. Insurance Required

Developer shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the developer, his agents, representatives, employees or subcontractors.

A. **Minimum Scope of Insurance**

Coverage shall be at least as broad as:

1. Insurance Services Office **Commercial General Liability** coverage ("occurrence" form CG 0001).

2. Insurance Services Office form number CA 0001 covering **Automobile Liability**, code 1 "any auto."
3. **Workers' Compensation** insurance as required by the Labor Code of the State of California and Employers Liability insurance.

B. Minimum Limits of Insurance

1. **Commercial General Liability** insurance: **not less than \$2,000,000** combined single limit per occurrence for bodily damage, personal injury and property damage, including but not limited to, Bodily Injury, Broad Form Property Damage, Contractual Liability, Operations, Products and Completed Operations, Owners and Contractors Protective Liability, and/or XCU coverage, when applicable. The limits of insurance shall apply separately to this project or location. The policy shall contain a severability of interest clause or cross liability clause or the equivalent thereof.
2. **Automobile Liability** insurance: **not less than \$2,000,000** combined single limit per accident for bodily injury and property damage.
3. **Worker's Compensation** insurance as required by the laws of the State of California. Statutory coverage may include Employers Liability coverage with limits **not less than \$1,000,000**. The Contractor certifies that he/she is aware of the provisions of section 3700 of the California Labor Code, which requires every employer to provide Workers' Compensation coverage, or to undertake self-insurance in accordance with the provisions of that Code. The Contractor shall comply with the provisions of section 3700 of the California Labor Code before commencing performance of the work under this Agreement and thereafter as required by that code.
4. **Professional Liability/ Errors and Omissions** insurance: **not less than \$1,000,000**.
5. **Builders' Risk/ Course of Construction** insurance covering all risks of loss in an amount **not less than the completed value of the project** with no coinsurance penalty provisions. The City shall be named as loss payee under this policy. The insurer shall waive all rights of subrogation against the City.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the City, its officers, directors, officials, employees, representatives, agents and volunteers; or the Developer shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

D. Other Insurance Provisions

The general and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City, its officers, directors, officials, employees, representatives, agents and volunteers are to be covered as additional insured as respects: liability arising out of activities performed by or on behalf of the Developer, products and completed operations of the Developer; premises owned, occupied or used by the Developer, or automobiles owned, leased, hired or borrowed by the Developer. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, directors, officials, representatives, employees, agents or volunteers.

2. The Developer's insurance coverage shall be primary insurance as respects the City, its officers, directors, officials, employees, representatives, agents and volunteers. Any insurance or self-insurance maintained by the City, its officers, directors, officials, employees, representatives, agents and volunteers shall be excess of the Developer's insurance and shall not contribute with it.

3. Any failure to comply with reporting provisions of the policies required by this clause, including breaches of warranties, shall not affect coverage provided to the City of Oakland, its officers, directors, officials, employees, representatives, agents and volunteers.

4. The Developer's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5. The insurer shall agree to waive all rights of subrogation against the City, its officers, directors, officials, employees, representatives, agents, and volunteers for losses arising from work performed by the Developer for the City.

6. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled, except for non-payment of premium, by either party, except after thirty (30) days prior written notice by certified mail, return receipt required, has been given to the City of Oakland. In the event the policy is canceled for non-payment of premium, ten (10) days prior written notice, as stated above, will be given.

E. Acceptability of Insurers

If the insurance company providing coverage is licensed to do business in the State of California, the company shall have an A.M. Best rating of not less than A:VII. If the insurance company is not licensed to do business in California, the A.M. Best rating shall not be less than A+:X. The maximum A.M. Best rating is A++:XV.

F. Verification of Coverage

Developer shall furnish the City of Oakland with certificates of insurance and with original endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The Commercial General Liability endorsement shall be a form CG 20 10 (or proprietary equivalent), attached to this form. The Commercial Automobile Liability endorsement shall be a form CA 20 48, attached to this document. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time. A STATEMENT OF ADDITIONAL INSURED ENDORSEMENT ON THE ACORD INSURANCE CERTIFICATE FORM IS INSUFFICIENT AND WILL BE REJECTED AS PROOF OF THE ADDITIONAL INSURED REQUIREMENT.

G. Subcontractors

The Developer shall include all subcontractors as insured under its policies or shall furnish separate *certificates and endorsements for each subcontractor*. All coverage's for subcontractors shall be subject to all of the requirements stated herein.

17. Participation in Benefit Districts

The Developer shall participate in all Benefit Districts formed by the City prior to the execution of this Agreement and shall pay the prorated fee due the City under the terms of Benefit District or Districts as applied to the real property covered by this Agreement.

18. Actions to Enforce

If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to costs and reasonable expenses and fees, including reasonable attorneys' fees and expert witness fees, in addition to any other relief to which they may be entitled.

19. Beneficiaries, Heirs, Assigns, and Successors In Interest

This Agreement pertains to and runs with the real property included within Tract No. 7548, which land is expressly agreed to benefit from the privileges granted to Developer under this Agreement, and binds the beneficiaries, heirs, assigns, and successors in interest of the Developer.

20. Severability

If any provision of this agreement or the application thereof is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of this agreement.

21. Attachments

The following documents are incorporated into this Agreement by reference:

A. Exhibit A - Final Map for Tract 7548

B. Exhibit B - City permits

Infrastructure: PX 0400041	Planning: CMDV 04522
Creek Protection: n.a.	Building: B0405687, B0405691, B0405727, B0405728, B0405729, B0405730, B0405731, B0405732, B0405733, B0405734, B0405735, B0405736, B0405749, B0405750, B0503436
Grading: GR 0400082 GR 0400087	

C. Exhibit C - Ancillary Instruments

Resolution: approval of Final Map for Tract 7548

City Engineer's Estimate of the Cost of Improvements

Security: _____ Insurance: _____

22. Constructive Notice

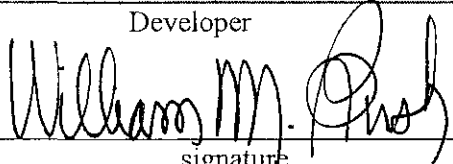
Developer shall cause this agreement to be filed for recordation in the Official Records of Alameda County within 5 calendar days of its execution.

23. Effective Date

This Agreement shall not become effective until it has been filed with and recorded by the Alameda County Recorder.

IN WITNESS WHEREOF, the Developer has caused its name to be subscribed hereto, and the City has caused its name to be affixed hereto, and this Agreement has been duly executed by both parties on the

_____ day of _____, 2006.

Olson 737 Emeryville I LLC
Developer

signature

WILLIAM M. BUSH
name

VICE PRESIDENT OF OPERATIONS
title

(attach corporate seal and notary acknowledgement)

CITY OF OAKLAND
a municipal corporation


signature

DEBORAH EDGERLY
City Administrator

NOTARY ACKNOWLEDGMENT

STATE OF CALIFORNIA)ss
COUNTY OF Contra Costa }

On January 30, 2006, before me, Allison L. Dobbins, a Notary Public in and for said State, personally appeared William M. Bush, 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.

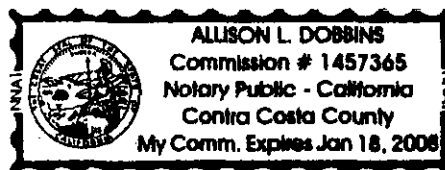
Signature 

My Commission Expires: January 18, 2008

Notary Name: Allison L. Dobbins Notary Phone: (925) 244-6208

Notary Registration Number 1457365

County of Principal Place of Business: Contra Costa



**LABOR & MATERIAL
BOND**

Exhibit B

SUBDIVISION IMPROVEMENT
BOND LABOR AND MATERIAL
(CALIFORNIA)

Premium included in charge for
Performance Bond

Bond 838754S

KNOW ALL BY THESE PRESENTS, That OLSON 737 - EMERYVILLE 1, LLC

3130 Crow Canyon Place, Suite 210 San Ramon CA 94583 as Principal, and the
DEVELOPERS SURETY AND INDEMNITY COMPANY, a Corporation organized and existing
under the laws of the State of IA and authorized to transact surety business in the State
of California, as Surety, are held and firmly bound unto THE CITY OF OAKLAND

250 Frank H. Ogawa Plaza Oakland CA 94612
for the use and benefit of any and all persons entitled to file claim under Title 15 (commencing with Section 3082) of Part 4 of
Division 3 of the Civil Code of the State of California, in the sum of Seven Hundred Seventy Two Thousand Two Hundred Four and 75/100 (\$ 772,204.75),

for the payment whereof, well and truly to be made, said Principal and Surety bind themselves, their heirs, administrators, successors
and assigns, jointly and severally, firmly by these presents.

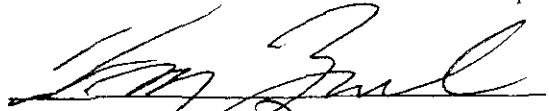
THE CONDITION OF THIS OBLIGATION IS SUCH, That WHEREAS, the Principal entered into a certain Agreement or Contract
with the Oblige, dated the _____ day of _____, wherein the Principal has
agreed to complete the following improvements:
as more fully set forth in said agreement.

NOW THEREFORE, if the Principal shall pay all contractors, subcontractors, laborers, materialmen and other persons employed in
the performance of the Agreement, for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment
Insurance Act with respect to such work or labor, then this obligation shall be null and void; otherwise, to remain in full force and
effect. Provided, however:

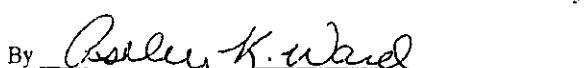
- (1) That said Surety will pay the same in an amount not exceeding the amount hereinafter set forth, and also in case suit is
brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including
attorney's fees, incurred by County (or City) in successfully enforcing such obligation, to be awarded and fixed by the court,
and to be taxed as costs and to be included in the judgment therein rendered;
- (2) That the Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of said
Agreement or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does
hereby waive notice of any such change, extension, alteration or addition.
- (3) That the time for filing suit on this bond shall be limited to six (6) months from date of completion of said improvements as
"completion" is defined under applicable sections of the Civil Code of The State of California.

Signed and sealed this 24th day of February, 2005.

OLSON 737 - EMERYVILLE 1, LLC
Principal


Anthony Basawski

DEVELOPERS SURETY AND INDEMNITY COMPANY
Surety

By 
Ashley K. Ward Attorney-in-Fact

425 W. Broadway, Suite 105
Glendale, CA 91204
Address

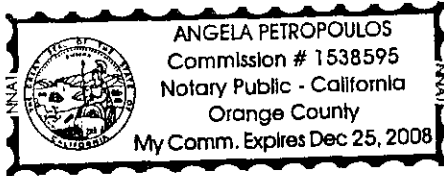
State of California

County of Orange

On February 24 2005 before me, Angela Petropoulos, Notary Public
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared Ashley K. Ward
NAME(S) OF SIGNER(S)

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.

Angela Petropoulos
SIGNATURE OF NOTARY

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- INDIVIDUAL
- CORPORATE OFFICER

- TITLE(S)
- PARTNER(S) LIMITED GENERAL
 - ATTORNEY-IN-FACT
 - TRUSTEE(S)
 - GUARDIAN/CONSERVATOR
 - OTHER: _____

TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

SIGNER IS REPRESENTING:

NAME OF PERSON(S) OR ENTITY(IES)

DATE OF DOCUMENT

SIGNER(S) OTHER THAN NAMED ABOVE

MAINTENACE BOND

Premium included in charge
for Performance Bond

MAINTENANCE BOND

KNOW ALL MEN BY THESE PRESENTS: That OLSON 737 - EMERYVILLE 1, LLC
as Principal, and DEVELOPERS SURETY AND INDEMNITY COMPANY, a corporation organized and existing
under the laws of the State of IA and duly authorized to transact a general surety business in the state of
California hereinafter called the Surety, are held and firmly bound unto ** in the sum of Three Hundred Eighty Six Thousand One Hundred Two and 38/100 DOLLARS (\$ 386,102.38) lawful
money of the United States of America, for the payment of which sum well and truly to be made, we bind
ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these
presents.

WHEREAS, on the _____ day of _____, the said principal entered into an agreement to the Obligee for
Artisan Walk, Tract 7548 Offsite and Onsite Improvements

WHEREAS, under the terms of the specification for said work, the said Principal is required to give bond or
maintenance to protect the said Obligee against the result of faulty materials or workmanship for a period of
One Year year(s) from and after the date of completion and acceptance of same.

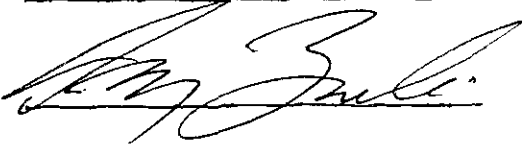
NOW, THEREFORE, if the said Principal for a period of one year(s) from and after the date of completion and
acceptance of same by said Obligee, replace any and all defects in said work resulting from defective materials or
defective workmanship, then the above obligation to be void; otherwise to remain in full force and effect.

SIGNED, SEALED, DATED:

OLSON 737 - EMERYVILLE 1, LLC

DEVELOPERS SURETY AND INDEMNITY COMPANY
(Surety)

By:



By:

Ashley K. Ward
Ashley K. Ward, Attorney-in-Fact

** THE CITY OF OAKLAND

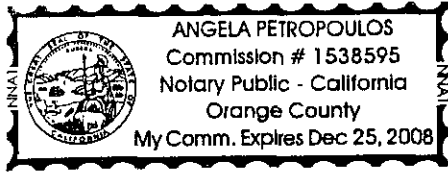
State of California

County of Orange

On February 24 2005 before me, Angela Petropoulos, Notary Public
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared Ashley K. Ward
NAME(S) OF SIGNER(S)

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.

[Signature]
SIGNATURE OF NOTARY

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- INDIVIDUAL
- CORPORATE OFFICER

- TITLE(S) _____
- PARTNER(S) LIMITED
 - ATTORNEY-IN-FACT GENERAL
 - TRUSTEE(S)
 - GUARDIAN/CONSERVATOR
 - OTHER: _____

TITLE OR TYPE OF DOCUMENT _____

NUMBER OF PAGES _____

SIGNER IS REPRESENTING:

NAME OF PERSON(S) OR ENTITY(IES)

DATE OF DOCUMENT _____

SIGNER(S) OTHER THAN NAMED ABOVE _____

**POWER OF ATTORNEY FOR
DEVELOPERS SURETY AND INDEMNITY COMPANY
INDEMNITY COMPANY OF CALIFORNIA**

PO BOX 19725, IRVINE, CA 92623 (949) 263-3300

KNOW ALL MEN BY THESE PRESENTS, that except as expressly limited, DEVELOPERS SURETY AND INDEMNITY COMPANY and INDEMNITY COMPANY OF CALIFORNIA, do each, hereby make, constitute and appoint:

Rhonda C. Abel, James A. Schaller, Mike Parizino, Linda Enright, Patricia H. Brebner, Jane Kepner, Nanette Myers, Jeri Apodaca, Leigh McDonough, Ashley K. Ward, Rachelle Rheault, jointly or severally


as their true and lawful Attorney(s)-in-Fact, to make, execute, deliver and acknowledge, for and on behalf of said corporations, as sureties, bonds, undertakings and contracts of suretyship giving and granting unto said Attorney(s)-in-Fact full power and authority to do and to perform every act necessary, requisite or proper to be done in connection therewith as each of said corporations could do, but reserving to each of said corporations full power of substitution and revocation, and all of the acts of said Attorney(s)-in-Fact, pursuant to these presents, are hereby ratified and confirmed.

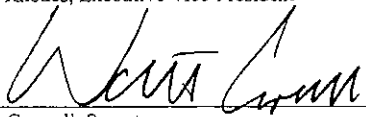
This Power of Attorney is granted and is signed by facsimile under and by authority of the following resolutions adopted by the respective Board of Directors of DEVELOPERS SURETY AND INDEMNITY COMPANY and INDEMNITY COMPANY OF CALIFORNIA, effective as of November 1, 2000:

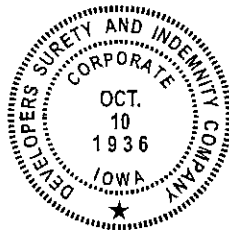
RESOLVED, that the Chairman of the Board, the President and any Vice President of the corporation be, and that each of them hereby is, authorized to execute Powers of Attorney, qualifying the attorney(s) named in the Powers of Attorney to execute, on behalf of the corporations, bonds, undertakings and contracts of suretyship; and that the Secretary or any Assistant Secretary of the corporations be, and each of them hereby is, authorized to attest the execution of any such Power of Attorney;

RESOLVED, FURTHER, that the signatures of such officers may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures shall be valid and binding upon the corporation when so affixed and in the future with respect to any bond, undertaking or contract of suretyship to which it is attached.

IN WITNESS WHEREOF, DEVELOPERS SURETY AND INDEMNITY COMPANY and INDEMNITY COMPANY OF CALIFORNIA have severally caused these presents to be signed by their respective Executive Vice President and attested by their respective Secretary this 1st day of February, 2005.

By: 
David H. Rhodes, Executive Vice-President

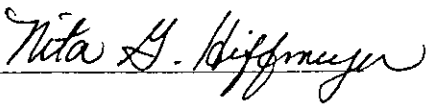
By: 
Walter A. Crowell, Secretary

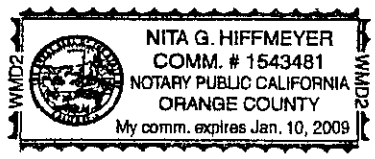


STATE OF CALIFORNIA)
)SS.
COUNTY OF ORANGE)

On February 1, 2005, before me, Nita G. Hiffmeyer, personally appeared David H. Rhodes and Walter A. Crowell, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Signature: 



CERTIFICATE

The undersigned, as Executive Vice-President, of DEVELOPERS SURETY AND INDEMNITY COMPANY and INDEMNITY COMPANY OF CALIFORNIA, does hereby certify that the foregoing Power of Attorney remains in full force and has not been revoked, and furthermore, that the provisions of the resolutions of the respective Boards of Directors of said corporations set forth in the Power of Attorney, are in force as of the date of this Certificate.

This Certificate is executed in the City of Irvine, California, the 24th day of February, 2005.

By: 
David L. Kerrigan, Executive Vice-President

CERTIFICATE OF INSURANCE

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YY)
02/16/05

PRODUCER
Aon Risk Services, Inc. of Southern California
707 Wilshire Boulevard
Suite 6000
Los Angeles CA 90017-0460 USA

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

PHONE: 949 608 6300 FAX: 949 608 6459

INSURERS AFFORDING COVERAGE

INSURED
Olson 737 - Emeryville 72, LLC
3020 Old Ranch Pkwy
Suite 250
Seal Beach CA 90740 USA

INSURER A: Steadfast Insurance Company
INSURER B:
INSURER C:
INSURER D:
INSURER E:

COVERAGES This Certificate is not intended to specify all endorsements, coverages, terms, conditions and exclusions of the policies shown. SIR May Apply

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	GENERAL LIABILITY	HBP3991385-00	05/07/04	05/15/06	EACH OCCURRENCE	\$15,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				FIRE DAMAGE (Any one fire)	\$100,000
	<input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR				MED EXP (Any one person)	\$25,000
	GEN'L AGGREGATE LIMIT APPLIES PER:				PERSONAL & ADV INJURY	
	<input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				GENERAL AGGREGATE	\$30,000,000
	AUTOMOBILE LIABILITY				PRODUCTS - COMP/OP AGG	\$45,000,000
	<input type="checkbox"/> ANY AUTO				COMBINED SINGLE LIMIT (Ea accident)	
	<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per person)	
	<input type="checkbox"/> SCHEDULED AUTOS				BODILY INJURY (Per accident)	
	<input type="checkbox"/> HIRED AUTOS				PROPERTY DAMAGE (Per accident)	
	<input type="checkbox"/> NON OWNED AUTOS					
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	
	<input type="checkbox"/> ANY AUTO				OTHER THAN AUTO ONLY: EA ACC	
	EXCESS LIABILITY				AGG	
	<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				EACH OCCURRENCE	
	<input type="checkbox"/> DEDUCTIBLE				AGGREGATE	
	<input type="checkbox"/> RETENTION					
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				WC STATUTORY LIMITS	OTHER
					E.L. EACH ACCIDENT	
					E.L. DISEASE-POLICY LIMIT	
					E.L. DISEASE-EA EMPLOYEE	
	OTHER					

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

Re: Artisan Walk Project in the City of Oakland
See endorsement(s) attached

CERTIFICATE HOLDER

City of Oakland
Attn: Don Smith
250 Frank H. Ogawa Plaza
Suite 2340
Oakland CA 94612 USA

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Kelley Bubernick

Holder Identifier : 570012632101 Certificate No :



POLICY NUMBER: 01CE8976465

AUTOMOBILE LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. READ IT CAREFULLY.

ADDITIONAL INSURED

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

SCHEDULE

Name of Person or Organization:

Tannery Building Ownership and The City of Benicia

Re: Harbor Walk Project @ Benicia, California

We agree with you that the person or organization shown in the schedule above is an insured for "bodily injury" or "property damage" arising out of the operation of a covered "auto" under a contract or agreement which is made prior to the injury or damage.



Authorized Representative

2/17/2005

Date

AUTOAI (10-95)

POLICY NUMBER: HBP3991385-00

GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

**ADDITIONAL INSURED - OWNERS, LESSEES OR
CONTRACTORS (FORM B)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization:

City of Oakland

Re: Artisan Walk Project in the City of Oakland

If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of or related to "your work"

PRIMARY INSURANCE: It is agreed that such insurance as afforded by this policy for the benefit of the additional insured shall be primary insurance as respects any claim, loss or liability arising directly or indirectly from the insured's operations and any other insurance maintained by the additional insured shall be non-contributory with the insurance provided hereunder.



DISCLOSURE RIDER

Terrorism Risk Insurance Act of 2002

The Terrorism Risk Insurance Act of 2002 created a three-year program under which the Federal Government will share in the payment of covered losses caused by certain events of international terrorism. The Act requires that we notify you of certain components of the Act, and the effect, if any, the Act will have on the premium charged for this bond.

Under this program, the Federal Government will cover 90% of the amount of covered losses caused by certified acts of terrorism, as defined by the Act. The coverage is available only when aggregate losses resulting from a certified act of terrorism exceed \$5,000,000.00. Insurance carriers must also meet a variable deductible established by the Act. The Act also establishes a cap of \$1,000,000,000.00 for which the Federal Government or an insurer can be responsible.

Participation in the program is mandatory for specified lines of property and casualty insurance, including surety insurance. The Act does not, however, result in any change in coverage under the attached bond. No additional premium has been charged for the terrorism coverage required by the Act.

Inscodico Insurance Services, Inc.
Underwriting Manager for:
Developers Surety and Indemnity Company . Indemnity Company of California
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