

Introduced by

OFFICE OF THE CITY CLERK

Approved for Form and Legality

2007 MAY 26 PM 4: 18

F. Fair
City Attorney

Councilmember

OAKLAND CITY COUNCIL

Resolution No. 80601 C.M.S.

RESOLUTION CONDITIONALLY APPROVING A SUBDIVISION IMPROVEMENT AGREEMENT WITH PULTE CORPORATION FOR DEFERRED CONSTRUCTION OF PUBLIC INFRASTRUCTURE IMPROVEMENTS FOR FINAL MAP NO. 7640 FOR THE ARCADIA PARK SUBDIVISION AT 921 98th AVENUE

WHEREAS, the developer of a residential dwelling project, Pulte Corporation, a Michigan corporation doing business in California (no. C1271167), is the Subdivider of six (6) parcels identified by the Alameda County Assessor as APN 044-4989-009-04, 044-4989-010-08, 044-4989-010-09, 044-4989-011-02, 044-4989-016-00, and 044-4989-017-00, by the Alameda County Clerk-Recorder as Tract 7640, and by the City of Oakland as 854 and 860 92nd Street and 921 and 999 98th Avenue, and by the Subdivider as Arcadia Park; and

WHEREAS, the Subdivider has acquired by purchase for valuable consideration the real property comprising Tract 7640; and

WHEREAS, the Subdivider has previously applied to the City of Oakland to subdivide the platted land into the two hundred forty-seven (247) contiguous lots comprising Tract 7640; and

WHEREAS, the Planning Commission of the City of Oakland approved the Environmental Impact Report (ER05003) on March 15, 2005, and subsequently approved the site rezoning (RZ05332), site general plan amendment (GP05331), project land use entitlements (PUD05335, CMD05446), and the Tentative Map for Tract 7640 on September 30, 2005, which proposed the voluntary merger and re-subdivision of the existing parcels into two hundred thirteen (213) developable lots for three hundred sixty-five (365) residential dwellings and seventeen (17) additional for privately maintained public-access parks, and seventeen (17) privately maintained streets, the irrevocable offers of dedication of public rights-of-way for twelve (12) publicly maintained streets and a public service easement for access and utilities, and the reservation of private easements, and the approval of a final map is a ministerial action and exempt under CEQA; and

WHEREAS, the Secretary of the Planning Commission of the City of Oakland has certified to the Council of the City of Oakland that the Planning Commission approved the Tentative Map for Tract 7640, upon which the Final Map for Tract 7640 is based; and

WHEREAS, the City Engineer of the City of Oakland has determined that

- the Final Map for Tract 7640, attached hereto as Exhibit A, is substantially the same as the Tentative Map approved by the Planning Commission, and

- the Final Map 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 City Engineer has further determined that the Final Map is technically correct and accurately delineates the metes and bounds of the proposed lots and the proposed on-site public and private easements, 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 for Tract 7640; 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 surface and subsurface public infrastructure improvements within the existing public rights-of-way of 92nd Avenue, 98th Avenue, San Leandro Street, and the proposed on-site public easements; and

WHEREAS, the City Engineer has approved infrastructure permit no. PX0600089 and the Subdividers' plans and specifications for construction of the required public infrastructure improvements, included with Exhibit *B* and attached hereto; and

WHEREAS, at the time of approval of the Final Map by the Council of the City of Oakland, the Subdivider will not have commenced nor competed construction of the required public infrastructure improvements, and consequently the City Engineer will not have approved the construction of nor issued a Certificate of Completion for the required improvements; and

WHEREAS, pursuant to Government Code section 66462 and Municipal Code section 16.20.100, the Subdivider may record a Final Map before completing construction of required 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 the Final Map, the Subdivider has executed a Subdivision Improvement Agreement, attached hereto as Exhibit *C*, assuring the timely construction, unconditional warrantee, and prescribed maintenance of all required public infrastructure improvements; and

WHEREAS, pursuant to Government Code section 66499 et seq. and Municipal Code section 16.20.100, the Subdivider has deposited securities in the form of surety bonds, included by reference with Exhibit *C*, and in sufficient amounts, as estimated by the City Engineer, to secure the Subdivider's performance under Exhibit *B* as:

- a guarantee that the required public infrastructure improvements will be constructed in accordance with the approved plans and specifications, and as a
- guarantee that the contractor and his subcontractors and all persons renting equipment or furnishing labor and materials will receive full payment, and as a
- warrantee that the required public infrastructure improvements will perform as designed and intended, and as a

- guarantee that the Subdivider will maintain the required public infrastructure improvements for the duration prescribed Subdivision Improvement Agreement; and

WHEREAS, that upon City Attorney's approval for form and legal sufficiency of the Subdivision Improvement Agreement and the surety bonds, the City Administrator is authorized to execute the Subdivision Improvement Agreement on behalf of the City of Oakland; and

WHEREAS, the Subdivider has irrevocably offered to the City of Oakland the dedications of public rights-of-way and a non-exclusive public service easement under, on, and over the proposed subdivision, as described and delineated in the Final Map, for unimpeded access, use, installation, maintenance, repair, and replacement in perpetuity of vehicles, pedestrians, and utilities; and

WHEREAS, the requirements of the California Environmental Quality Act (CEQA) have been complied with, and the project Environmental Impact Report was circulated for comment and certified complete pursuant to Section 15132 of the CEQA Guidelines; now, therefore, be it

RESOLVED: That the Subdivision Improvement Agreement for Final Map No. 7640 is hereby approved and conditioned upon the performance by the Subdivider of its obligations to construct, warrant, and maintain required public infrastructure improvements, as set forth in the Subdivision Improvement Agreement; and be it

FURTHER RESOLVED: That the City Administrator of the City of Oakland, or her designee, is hereby authorized to endorse the Subdivision Improvement Agreement for Final Map No. 7640; and be it

FURTHER RESOLVED: That the City Clerk of the City of Oakland is hereby directed to file the fully executed Subdivision Improvement Agreement with the fully endorsed Final Map concurrently with the Alameda County Clerk-Recorder for simultaneous recordation; and be it

FURTHER RESOLVED: That this Resolution shall become effective upon the recordation of Final Map No. 7640 and the Subdivision Improvement Agreement.

IN COUNCIL, OAKLAND, CALIFORNIA, JUN 5 2007 , 2007

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, and
PRESIDENT DE LA FUENTE - 8

NOES - 0

ABSENT - 0

ABSTENTION - 0

ATTEST:



LATONDA SIMMONS

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

TRACT NO. 7640

CONSISTING OF NINE (9) SHEETS

BEING LOTS 1 AND 2, IN BLOCK 3, AS SAID LOTS AND BLOCK ARE SHOWN ON THE "MAP OF BERTHERS ADDITION TO THE JONES TRACT, ELKHURST, BEING A SUBDIVISION OF LOTS 2 AND 16 OF THE FERALTA TRACT, BROOKLYN TOWNSHIP, ALAMEDA COUNTY, CALIFORNIA," FILED OCTOBER 28, 1895, IN BOOK 15 OF MAPS, PAGE 37, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY.

LYING WITHIN THE CITY OF OAKLAND, COUNTY OF ALAMEDA, STATE OF CALIFORNIA

DATE: MAY 2007



Civil Engineering Associates
Civil Engineers • Planners • Surveyors
2500 North First Street • Suite 200 • San Jose, CA 95131

ENGINEER'S STATEMENT

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF PULTE HOME CORPORATION ON JUNE 2006. I HEREBY STATE THAT ALL THE MONUMENTS ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED OR THAT THEY WILL BE SET IN THOSE POSITIONS BEFORE JANUARY 2008, AND THAT THE MONUMENTS ARE, OR WILL BE, SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACTED, AND THAT THIS FINAL MAP SUBSTANTIALLY CONFORMS TO THE CONDITIONALLY APPROVED TENTATIVE MAP.

PETER B. McMORROW, R.C.E. NO. 31854
REGISTRATION EXPIRES: 12-31-08

DATE

CITY PLANNING COMMISSIONS STATEMENT

I HEREBY STATE THAT THE PLANNING COMMISSION OF THE CITY OF OAKLAND APPROVED THE TENTATIVE MAP OF SUBDIVISION 7640 (TTM-7640) UPON WHICH THIS FINAL MAP IS BASED AND APPROVED ON SEPTEMBER 21, 2005 THE FINAL DEVELOPMENT PLAN FOR NO. 7640.

CLAUDIA CAPPID
DEVELOPMENT DIRECTOR OF COMMUNITY & ECONOMIC DEVELOPMENT AGENCY

DATE

CITY CLERKS STATEMENT

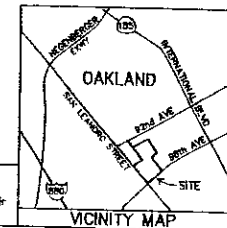
I, THE UNDERSIGNED, LATONDA SIMMONS, CITY CLERK AND CLERK OF THE CITY COUNCIL OF THE CITY OF OAKLAND, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, DO HEREBY STATE THAT THIS MAP, CONSISTING OF 8 SHEETS AND ENTITLED "FINAL TRACT MAP 7640" WAS PRESENTED TO SAID COUNCIL, AS PROVIDED BY LAW AT A REGULAR MEETING HELD ON THE _____ DAY OF _____, 2007 AND THAT SAID COUNCIL DID THEREUPON APPROVE SAID MAP AND DID ACCEPT, SUBJECT TO COMPLETION OF IMPROVEMENTS, IN FEE ON BEHALF OF THE PUBLIC USE ALL STREETS AND PORTIONS OF SAID LANDS DESIGNATED ON SAID MAP AS "PUBLIC RIGHT-OF-WAY".

I APPROVE THE ABANDONMENT OF A SEWER PIPE EASEMENT SHOWN ON THIS MAP, THAT WAS DEDICATED TO PUBLIC USE BY THE FOLLOWING INSTRUMENTS BOOK 7387 PAGE 235, OFFICIAL RECORDS OF THE COUNTY OF ALAMEDA.

I FURTHER STATE THAT ALL AGREEMENTS AND SURETY AS REQUIRED BY LAW TO ACCOMPANY THE MAP HAVE BEEN APPROVED BY THE CITY COUNCIL OF THE CITY OF OAKLAND AND ARE FILED IN MY OFFICE.

IN WITNESS, I HAVE HEREUNTO SET MY HAND THIS _____ OF _____, 2007.

LATONDA SIMMONS CITY CLERK & CLERK OF THE COUNCIL OF THE CITY OF OAKLAND, COUNTY OF ALAMEDA, STATE OF CALIFORNIA



OWNER/DEVELOPER:
PULTE HOMES
621D Stoneridge Mall Road, 5th Fl
Folsom, California 94566

OWNER'S CERTIFICATE

I HEREBY STATE THAT WE ARE THE OWNERS OF OR HAVE SOME RIGHT, TITLE OR INTEREST IN AND TO THE REAL PROPERTY INCLUDED WITHIN THE SUBDIVISION SHOWN ON THE MAP; THAT WE ARE THE ONLY PERSONS WHOSE CONSENT IS NECESSARY TO PASS A CLEAR TITLE TO SAID REAL PROPERTY; THAT WE HEREBY CONSENT TO THE MAKING OF SAID MAP AND SUBDIVISION AS SHOWN WITHIN THE DISTINCTIVE BORDER LINE; AND THAT WE HEREBY OFFER FOR DEDICATION TO PUBLIC USE ALL STREETS AND PORTIONS OF STREETS NOT PREVIOUSLY EXISTING AS SHOWN ON THE MAP WITHIN SAID SUBDIVISION, AND ALSO DEDICATE TO PUBLIC USE EASEMENTS FOR ANY AND ALL PUBLIC USES UNDER, UPON AND OVER SAID STREETS AND SAID PORTIONS THEREOF.

I ALSO HEREBY DEDICATE A PUBLIC UTILITY EASEMENT FOR ANY AND ALL PUBLIC UTILITY FACILITIES INCLUDING POLES, WIRES, CONDUITS, GAS, WATER, HEAT MAINS AND ALL APPURTENANCES TO THE ABOVE, UNDER, UPON, OR OVER THOSE CERTAIN STRIPS OF LAND DESIGNATED AS "P.U.E." (PUBLIC UTILITY EASEMENT). THE ABOVE MENTIONED PUBLIC UTILITY EASEMENT TO BE KEPT OPEN AND FREE FROM BUILDING AND STRUCTURES OF ANY KIND, EXCEPT PUBLIC UTILITY STRUCTURES, IRRIGATION SYSTEMS AND APPURTENANCES THERETO, LAWFUL FENCES AND ALL LAWFUL UNSUPPORTED ROOF OVERHANGS.

I ALSO HEREBY DEDICATE TO PUBLIC USE EASEMENTS FOR EMERGENCY ACCESS PURPOSES ON OR OVER THOSE CERTAIN STRIPS OF LAND DESIGNATED AND DELINEATED AS "E.A.E." (EMERGENCY ACCESS EASEMENT).

I ALSO HEREBY DEDICATE TO PUBLIC USE EASEMENTS FOR SIDEWALK PURPOSES ON OR OVER THOSE CERTAIN STRIPS OF LAND DESIGNATED AND DELINEATED AS "S.E." (SIDEWALK EASEMENT).

THERE ARE ALSO SHOWN ON THE HERON MAP EASEMENTS FOR SANITARY SEWER PURPOSES DESIGNATED AND DELINEATED AS "P.S.E." (PRIVATE SANITARY SEWER EASEMENT) FOR THE INSTALLATION AND MAINTENANCE OF PRIVATE SANITARY SEWER FACILITIES. THESE EASEMENTS ARE TO BE KEPT OPEN AND FREE FROM ALL BUILDINGS AND STRUCTURES OF ANY KIND, EXCEPT IRRIGATION SYSTEMS AND APPURTENANCES THERETO, LAWFUL FENCES, AND ALL LAWFUL UNSUPPORTED ROOF OVERHANGS. THE MAINTENANCE, REPAIR, AND/OR REPLACEMENT OF PRIVATE SANITARY SEWER FACILITIES SHALL BE THE SOLE RESPONSIBILITY OF THE LOT OWNERS BENEFITED, AS DETERMINED BY THE APPROPRIATE COVENANTS, CONDITIONS, AND RESTRICTIONS. SAID EASEMENT IS NOT OFFERED, NOR IS IT ACCEPTED FOR DEDICATION BY THE CITY OF OAKLAND.

THERE IS ALSO SHOWN ON THE HERON MAP, EASEMENTS FOR STORM DRAINAGE PURPOSES, DESIGNATED AND DELINEATED AS "P.S.D.E." (PRIVATE STORM DRAINAGE EASEMENT) FOR THE INSTALLATION AND MAINTENANCE OF PRIVATE STORM DRAINAGE FACILITIES. THESE EASEMENTS ARE TO BE KEPT OPEN AND FREE FROM BUILDINGS AND STRUCTURES OF ANY KIND, EXCEPT IRRIGATION SYSTEMS AND APPURTENANCES THERETO, LAWFUL FENCES AND ALL LAWFUL UNSUPPORTED ROOF OVERHANGS. THE MAINTENANCE, REPAIR, AND/OR REPLACEMENT OF PRIVATE STORM DRAINAGE FACILITIES SHALL BE THE SOLE RESPONSIBILITY OF THE LOT OWNERS BENEFITED, AS DETERMINED BY THE APPROPRIATE COVENANTS, CONDITIONS, AND RESTRICTIONS. SAID EASEMENT IS NOT OFFERED, NOR IS IT ACCEPTED FOR DEDICATION BY THE CITY OF OAKLAND.

I ALSO HEREBY DEDICATE TO PUBLIC USE ACCESS EASEMENTS FOR ALL PARK FACILITIES ON LOTS D, E, G, H, J, K, L, M AND O IDENTIFIED AS "P.A.E." (PUBLIC ACCESS EASEMENT). THE ABOVE MENTIONED EASEMENT TO BE KEPT OPEN AND FREE FROM BUILDINGS AND STRUCTURES OF ANY KIND, EXCEPT IDENTIFIED PARK EQUIPMENT AND STRUCTURES, IRRIGATION SYSTEMS, PUBLIC UTILITIES, APPURTENANCES THERETO AND LAWFUL FENCES. THIS EASEMENT IS RESTRICTED TO THE HOURS OF OPERATION OF SAID PARK FACILITIES AS SET FORTH BY THE HOME OWNERS ASSOCIATION.

I ALSO HEREBY RESERVE FOR THE OWNERS OF LOTS A, B, F, I, P, M AND AA THROUGH Q, THEIR LICENSES, VISITORS AND TENANTS RECIPROCAL RIGHTS OF INGRESS AND EGRESS UPON AND OVER THOSE CERTAIN STRIPS OF LAND DESIGNATED AND DELINEATED AS "I.E." (INGRESS AND EGRESS EASEMENT).

I ALSO HEREBY OFFER AN IRREVOCABLE OFFER OF DEDICATION TO THE CITY OF OAKLAND A PORTION OF LOT D AS SHOWN ON THIS MAP FOR FUTURE RIGHT OF WAY PURPOSES FOR THE EXTENSION OF ELKHURST AVENUE. SAID AREA TO BE KEPT OPEN AND FREE FROM BUILDINGS AND STRUCTURES OF ANY KIND EXCEPT IRRIGATION SYSTEMS, APPURTENANCES THERETO AND LAWFUL FENCES.

THE PRIVATE STREETS CONTAINED WITHIN THIS TRACT ARE NOT OFFERED NOR ACCEPTED FOR DEDICATION FOR PUBLIC STREET PURPOSES.

AS OWNER

PULTE HOME CORPORATION, A MICHIGAN CORPORATION

BY:

DANIEL J. CARROLL
ATTORNEY IN FACT

*SEE SHEET 2 FOR ADDITIONAL OWNER SIGNATURES

OWNER'S ACKNOWLEDGMENT

STATE OF CALIFORNIA SS.
COUNTY OF _____

ON _____ BEFORE ME, _____ "NOTARY PUBLIC", PERSONALLY APPEARED _____ PERSONALLY KNOWN TO ME (OR PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE) TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME IN HIS AUTHORIZED CAPACITY, AND THAT BY HIS SIGNATURE ON THE INSTRUMENT THE PERSON, OR THE ENTITY UPON BEHALF OF WHICH THE PERSON ACTED, EXECUTED THE INSTRUMENT.

WITNESS MY HAND AND OFFICIAL SEAL

NOTARY'S SIGNATURE _____

PRINTED NOTARY'S NAME _____

NOTARY'S PRINCIPAL COUNTY OF BUSINESS _____

EXPIRATION OF NOTARY'S COMMISSION _____

COUNTY RECORDER'S STATEMENT

FILED AT THE REQUEST OF _____ AT _____ M. ON THE _____ DAY OF _____, 2006 IN BOOK _____ OF MAPS AT PAGES _____ IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA.

FEE _____ SERIES NO. _____

PATRICK O'CONNELL
COUNTY RECORDER, COUNTY OF ALAMEDA
STATE OF CALIFORNIA

BY: _____
DEPUTY COUNTY RECORDER

CLERK OF THE BOARD OF SUPERVISORS STATEMENT

I, CRYSTAL K. HISHIDA GRAFT, CLERK OF THE BOARD OF SUPERVISORS FOR THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA, HEREBY CERTIFY, AS CHECKED BELOW THAT:

AN APPROVED BOND HAS BEEN FILED WITH SAID BOARD IN THE AMOUNT OF \$ _____ CONDITIONED FOR PAYMENT OF ALL TAXES AND SPECIAL ASSESSMENTS COLLECTED AS WHICH ARE NOW A LIEN AGAINST THE LAND OR ANY PART THEREOF, BUT NOT YET PAYABLE, AND WAS DULY APPROVED BY SAID BOARD IN SAID AMOUNT.

ALL TAXES AND SPECIAL ASSESSMENTS COLLECTED AS TAXES HAVE BEEN PAID, AS CERTIFIED BY THE TREASURER-TAX COLLECTOR OF THE COUNTY OF ALAMEDA.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND THIS _____ DAY OF _____, 200__.

CRYSTAL K. HISHIDA GRAFT
CLERK OF THE BOARD OF SUPERVISORS OF
THE COUNTY OF ALAMEDA,
STATE OF CALIFORNIA

BY: _____
DEPUTY CLERK

CITY ENGINEER'S STATEMENT

I, RAYMOND M. DERANIA, INTERIM CITY ENGINEER, HAVING BEEN AUTHORIZED TO PERFORM THE FUNCTIONS OF THE CITY ENGINEER OF THE CITY OF OAKLAND, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, DO HEREBY STATE THAT I HAVE EXAMINED THIS TRACT MAP AS SHOWN HEREIN, AND THAT SUBSTANTIALLY THE SAME AS THAT APPEARING ON THE TENTATIVE MAP, AND ANY APPROVED ALTERATIONS THEREOF, THAT ALL PROVISIONS OF DIVISION 2, CHAPTER 2 OF THE MAP ACT OF THE GOVERNMENT CODE OF THE STATE OF CALIFORNIA AND ANY LOCAL ORDINANCES APPLICABLE AT THE TIME OF APPROVAL OF SAID TENTATIVE MAP, HAVE BEEN COMPLIED WITH, AND THAT SAID TRACT MAP IS TECHNICALLY CORRECT. THE OFFER OF DEDICATION TENDERED ON THE OWNER'S STATEMENT ON THE HEREIN EMBODIED MAP "FINAL TRACT MAP 7640" IS HEREBY ACCEPTED IN ACCORDANCE WITH SECTION 18.24.130 OF THE OAKLAND MUNICIPAL CODE.

RAYMOND M. DERANIA, R.C.E. NO. 27815
INTERIM CITY ENGINEER
CITY OF OAKLAND, ALAMEDA COUNTY
REGISTRATION EXPIRES: 03-31-08

DATE

EXHIBIT A

AS OWNER (CONTINUED)

RONALD T. DREIBACH AND MARIANNE L. DREIBACH, AS TRUSTEES OF THE DREIBACH FAMILY TRUST U/D/T DATED MARCH 2, 1892, BY:

RONALD T. DREIBACH, TRUSTEE

MARIANNE L. DREIBACH, TRUSTEE

SND-FLEISCHMANN, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, BY:

NAME: TITLE

NAME: TITLE

JND-FLEISCHMANN, A CALIFORNIA LIMITED LIABILITY COMPANY, BY:

NAME: TITLE

NAME: TITLE

AS BENEFICIARY

WELLS FARGO BANK, N.A., AS BENEFICIARY UNDER DEEDS OF TRUST RECORDED UNDER SERIES NO.'S 2003-143419 AND 2003-582536, OFFICIAL RECORDS, BY:

NAME: TITLE

NAME: TITLE

OWNER'S ACKNOWLEDGMENT

STATE OF CALIFORNIA COUNTY OF SS.

ON _____ BEFORE ME, _____ "NOTARY PUBLIC", PERSONALLY APPEARED _____ PERSONALLY KNOWN TO ME (OR PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE) TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME IN HIS AUTHORIZED CAPACITY, AND THAT BY HIS SIGNATURE ON THE INSTRUMENT THE PERSON, OR THE ENTITY UPON BEHALF OF WHICH THE PERSON ACTED, EXECUTED THE INSTRUMENT.

WITNESS MY HAND AND OFFICIAL SEAL.

NOTARY'S SIGNATURE _____

PRINTED NOTARY'S NAME _____

NOTARY'S PRINCIPAL COUNTY OF BUSINESS _____

EXPIRATION OF NOTARY'S COMMISSION _____

OWNER'S ACKNOWLEDGMENT

STATE OF CALIFORNIA COUNTY OF SS.

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STATE OF CALIFORNIA COUNTY OF SS.

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EXPIRATION OF NOTARY'S COMMISSION _____

TRACT NO. 7640

CONSISTING OF NINE (9) SHEETS

BEING LOTS 1 AND 2, IN BLOCK 3, AS SAID LOTS AND BLOCK ARE SHOWN ON THE "MAP OF BERTHERS ADDITION TO THE JONES TRACT, ELMHURST, BEING A SUBDIVISION OF LOTS 2 AND 18 OF THE PERALTA TRACT, BROOKLYN TOWNSHIP, ALAMEDA COUNTY, CALIFORNIA", FILED OCTOBER 25, 1895, IN BOOK 15 OF MAPS, PAGE 37, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY.

LYING WITHIN THE CITY OF OAKLAND, COUNTY OF ALAMEDA, STATE OF CALIFORNIA



Civil Engineering Associates Civil Engineers - Planners - Surveyors 2500 North First Street - Suite 200 - San Jose, CA 95131

DATE: MAY 2007

BENEFICIARY'S ACKNOWLEDGMENT

STATE OF CALIFORNIA COUNTY OF SS.

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NOTARY'S PRINCIPAL COUNTY OF BUSINESS _____

EXPIRATION OF NOTARY'S COMMISSION _____



OWNER/DEVELOPER: PULTE HOMES 6210 Stoneridge Mall Road, 5th Fl Pleasanton, California 94566

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: City Engineer

EXHIBIT C

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

APPROVED FOR FORM AND LEGALITY

CITY ATTORNEY

SUBDIVISION IMPROVEMENT AGREEMENT

Deferred Construction of Public Infrastructure Improvements

921 & 999 98th Avenue and 854 & 860 92nd Avenue - Arcadia Park

Final Map - No. 7640

This Agreement is between **Pulte Home Corporation** (DEVELOPER), a Michigan corporation doing business in California (no. C1271167), and its successors or assigns, affiliated companies or corporations, parent companies or corporations, or partners, and the **City of Oakland** (CITY), a California municipal corporation.

RECITALS

The DEVELOPER is the owner in fee title and subdivider of originally subdivided contiguous lots located within the corporate limits of the CITY, which are identified by the Alameda County Assessor as parcel numbers 044-4989-009-04; 044-4989-011-02; 044-4989-010-09; 044-4989-010-08; 044-4989-016 and 044-4989-017 and by the CITY as 854 & 860 92nd Ave and 921 & 999 98th Ave, who has presented a proposed Final Map, which is identified by the Alameda County Recorder as No. 7640, to the Council of the CITY that proposes a voluntary merger of the previously subdivided lots of this platted land and its re-subdivision as 247 lots which are comprised of 213 lots for 184 residential condominiums and 181 single-family dwellings, 17 lots for privately maintained public-access parks, and 17 lots for privately maintained streets along with 12 dedicated public streets.

As a condition precedent to the approval of the proposed Final Map, the CITY requires the irrevocable dedication of public right-of-way and public easements shown on the map. In addition, the CITY requires the construction of public infrastructure improvements off-site in the CITY right-of-way and on-site in dedicated right-of-way and easements that customarily includes 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 DEVELOPER has asked the CITY and local public utility companies to accept the permanent maintenance of the required public infrastructure improvements shown on the construction plans accompanying permit numbers PX 0600089, PX 0600093, and PX 0600094 and included in *Exhibit A*, attached hereto.

Construction of the required public infrastructure improvements, however, has not commenced nor been accepted by the CITY. Consequently and in consideration of the approval of the proposed Final Map and acceptance of the irrevocable offers of dedication of public right-of-way and easements and acceptance of the permanent maintenance of the required public infrastructure improvements, the parties desire to establish an Agreement binding the DEVELOPER to complete the required improvements within the time duration set forth in paragraph 4 below.

THEREFORE, it is agreed as follows:

1. Approval of Parcel Map

Approval of the proposed Final Map No. 7640 by the CITY 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 required off-site and on-site public infrastructure improvements in strict accordance with all permits, specifications, plans and applicable CITY standards and performance criteria as specified in *Exhibit A* 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 improvements 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 required 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 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 required public infrastructure improvements shall conform with the requirements of all CITY Conditions of Approval for the 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 holidays nor commence before 8:00 am local time nor be performed after 5:00 pm local time without the written authorization of the City Engineer.

D. Performance standards for the construction of required 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 required public infrastructure improvements shall be completed by the DEVELOPER within eighteen (18) months of the date of recordation of this Agreement, except those required improvements for which another completion date is stated *in Exhibit A* or set forth above in paragraph 3, Special Conditions. Construction shall not be deemed complete until the public infrastructure permit has been finalized and an unconditional Certificate of Completion has been issued by the City Engineer.

B. The City Administrator may extend the time for completion of the required public infrastructure improvements. Upon consultation with the City Engineer, 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 of the public infrastructure improvement permit and unconditional issuance of a Certificate of Completion, 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 the Certificate of Completion is unconditionally issued, 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 right-of-way and public easements 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 the Certificate of Completion is unconditionally issued.

7. Maintenance of Improvements

Until one (1) year has elapsed following unconditional issuance of the Certificate of Completion, the DEVELOPER shall maintain the construction of the required public infrastructure 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 (1) year has elapsed following the unconditional issuance of the Certificate of Completion, the DEVELOPER warrants that the required public infrastructure improvements, including the equipment and materials provided for the required improvements, are and will be free from defects and guarantees that the construction of the required improvements is and will be free from deficiencies and that the required improvements will perform satisfactorily in accordance with the specifications, plans and applicable CITY

standards and performance criteria as specified in *Exhibit A* 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 A* 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 equipment and materials, or approval of the construction and equipment and materials inspected, or statement by any officer, agent, or employee of the CITY indicating the construction and 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 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 estopped 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 issuance of the Certificate of Completion and prior to acceptance by the CITY of the on-site and off-site required public infrastructure 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 \$ **6,214,065.00**, which is the full amount (one-hundred percent) of the City Engineer's total estimated cost for constructing the on-site and off-site public infrastructure improvements, to secure faithful performance of this Agreement by the DEVELOPER; and

2. Labor and Materials Bond in a face amount not less \$ **3,107,032.00**, which is one-half (fifty percent) of the full amount of the City Engineer's total estimated cost for constructing the required 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.

B. Before final approval of the public infrastructure permit, the following security shall be presented:

Maintenance Bond in a face amount not less than \$ **1,553,516.00**, which is one-quarter (twenty-five percent) of the full amount of the City Engineer's total estimated cost for constructing the required on-site and off-site public infrastructure improvements, to secure faithful performance of paragraphs 7, Maintenance, and 8, Guarantee and Warranty, above. This Maintenance Bond shall remain in effect for not less than one year after the date of the unconditional issuance of the Certificate of Completion of the required public infrastructure improvements.

C. Pursuant to Government Code section 66499.4, the obligation guaranteed by each bond shall include costs and reasonable expenses and fees, including reasonable attorney fees and expert witness 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 by the DEVELOPER in a form provided by Government Code Section 66499.3 and subject to review and approval by the City Attorney.

15. Hold Harmless

The DEVELOPER shall indemnify, defend and hold the CITY and its officers, 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 gross negligence of the CITY and its officers, official, employees, representative, agents, or volunteers.

Not in limitation of the foregoing, DEVELOPER further agrees to defend and protect the CITY and its officers, 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 and its officers, officials, employees, representatives, agents or volunteers.

This indemnification clause shall survive the termination of this Agreement.

16. Insurance Required

DEVELOPER shall procure and maintain for the duration of the Agreement sufficient insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the DEVELOPER and 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, 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, with limits not less than **\$2,000,000.00** combined single limit per occurrence for bodily damage, personal injury and property damage. 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** with limits not less than **\$2,000,000.00** 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 with limits not less than **\$1,000,000.00**. Statutory coverage may include Employers Liability coverage. 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/ Omissions** insurance with limits not less than **\$1,000,000.00**.

5. **Builders' Risk/ Course of Construction** insurance covering all risks of loss with limits not less than the completed value of the project with no coinsurance penalty provisions. 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 the CITY, 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 shall contain, or be endorsed to contain, the following provisions:

1. The CITY and its officers, 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 and its officers, officials, employees, representatives, agents, and volunteers.

2. The DEVELOPER's insurance coverage shall be primary insurance as respects the CITY and its officers, officials, representatives, employees, agents and volunteers. Any insurance or self-insurance

maintained by the CITY and its officers, officials, employees, representatives, agents, or 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 and its officers, 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 and its officers, 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. 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. However, 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 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 review all required insurance policies at the DEVELOPER's office, at any time, and the DEVELOPER shall cooperate with the CITY in this respect. 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 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 Final Map No. 7640, 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. Attachments

The following documents are incorporated into this Agreement by reference:

CITY permits: Infrastructure PX 0600089	Planning RZ05332, PUD05335, CMD05446
Creek Protection n.a.	Building
Grading GR 0600114/ 134	Encroachment

Resolutions: _____ CMS _____ CMS

Subdivision: Final Map No. 7640 City Engineer's Estimate of the Cost of Improvements

Insurer: _____ Surety: _____

21. Constructive Notice

DEVELOPER shall cause this Agreement to be filed for recordation in the Official Records of Alameda County within five (5) calendar days following execution by the CITY.

22. Effective Date

This Agreement shall not become effective until recorded as provided in paragraph 21 above.

IN WITNESS WHEREOF, the DEVELOPER has caused its name to be subscribed hereto, and the CITY has caused its name to be affixed hereto on the dates indicated below.

PULTE HOME CORPORATION *

CITY OF OAKLAND

signature

signature

name

DEBORAH EDGERLY
City Administrator

title

date

date

* *notarized acknowledgment required*