

Introduced by

FILED
OFFICE OF THE CITY CLERK
OAKLAND

Approved for Form and Legality

2006 JUL -7 PM 3:00

Councilmember

F. Faiz

City Attorney

OAKLAND CITY COUNCIL

Resolution No. 79987 C.M.S.

RESOLUTION CONDITIONALLY APPROVING THE FINAL MAP FOR TRACT 7672 FOR A RESIDENTIAL HOME SUBDIVISION AT 1000 APGAR STREET AND CONDITIONALLY ACCEPTING AN IRREVOCABLE OFFER OF DEDICATION FOR AN ON-SITE PUBLIC ACCESS EASEMENT

WHEREAS, the residential developer of a single-family dwelling project, Apgar LLC, a California limited liability company (no. 200520710074), is the Subdivider of a two parcels identified by the Alameda County Assessor as APN 012-0952-012 and 012-0952-029, by the Alameda County Recorder as Tract no. 7672 and by the City of Oakland as 1000 Apgar Street and 1024 Apgar Street; and

WHEREAS, the Subdivider has acquired by purchase for valuable consideration all real property comprising Tract 7672; and

WHEREAS, the Subdivider has previously applied to the City of Oakland to merge voluntarily the existing two parcels and re-subdivide the platted land into the twenty (20) contiguous lots comprising Tract 7672; and

WHEREAS, the Planning Commission of the City of Oakland approved the environmental determination (categorically exempted), land use entitlements (permit CD05048), and Tentative Map for Tract 7672 on November 16, 2005, which proposed the voluntary merger and re-subdivision of the two parcels into nineteen (19) developable lots for single-family dwellings and an additional common-area lot with irrevocable offers of dedication of coterminous public easements for utilities and emergency vehicle access; 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 7672, upon which the Final Map for Tract 7672 is based; and

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

- the Final Map for Tract 7672, 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 twenty (20) 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 7672; 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 right-of-way of Apgar Street and the proposed on-site public easements; and

WHEREAS, the City Engineer has approved infrastructure permit no. PX0600078 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 dedication of a non-exclusive public easement under, on, and over the on-site common-area lot, as described and delineated in the Final Map, for unimpeded access in perpetuity of emergency vehicles; 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 7672 is hereby approved; and be it

FURTHER RESOLVED, that the approval of the Final Map for Tract 7672 is hereby 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 Engineer of the City of Oakland is hereby authorized to endorse the Final Map for Tract 7672; and be it

FURTHER RESOLVED, that the City Clerk of the City of Oakland is hereby authorized to endorse the Final Map for Tract 7672, upon its execution by the City Engineer, and directed to file the fully endorsed Final Map and the fully 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 the Final Map for Tract 7672 and the Subdivision Improvement Agreement; and be it

FURTHER RESOLVED, that upon issuance of a Certificate of Completion by the City Engineer for construction of the required public infrastructure improvements, the irrevocable offers of dedication of the on-site public access easement is hereby accepted by the City of Oakland; and be it

FURTHER RESOLVED, that upon expiration of the warrantee and maintenance period, as identified in the Subdivision Improvement Agreement, following the issuance of a Certificate of Completion by the City Engineer, the maintenance of newly constructed public infrastructure improvements within the public right-of-way is hereby accepted by the City of Oakland, excepting from said maintenance all infrastructure improvements, including but not limited to sidewalks, curbs, gutters, trees and landscaping, sanitary sewer piping, and storm water piping, that are identified in the California Streets and Highways Code and the Oakland Municipal Code to be the responsibility of the abutting property owner and also excepting from said maintenance all infrastructure improvements that are otherwise regulated by California Public Utilities Commission; and be it

FURTHER RESOLVED, that private maintenance of the required public infrastructure improvements shall remain the responsibility in perpetuity of the property owners of Tract 7672 and their homeowners association, both severally and jointly, and their representatives, agents, heirs, successors, and assigns.

IN COUNCIL, OAKLAND, CALIFORNIA, JUN 20 2006, 2006

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

EXHIBIT A

OWNERS' STATEMENT

THE UNDERSIGNED DOES HEREBY STATE THAT HE IS THE OWNER OF THE LAND DELINEATED AND EMBRACED WITHIN THE EXTERIOR BOUNDARY LINES ON THE HEREIN EMBODIED MAP ENTITLED "TRACT MAP NO. 7672, CITY OF OAKLAND, ALAMEDA COUNTY, CALIFORNIA"; CONSISTING OF THREE (3) SHEETS, THIS STATEMENT BEING UPON SHEET ONE (1) THEREOF

THAT SAID OWNER ACQUIRED TITLE TO SAID LAND BY VIRTUE OF THE GRANT DEEDS RECORDED DECEMBER 07, 2005, UNDER SERIES NO. 2005522144, AND RECORDED SEPTEMBER 13, 2005, UNDER SERIES NO. 2005393316, RECORDS OF ALAMEDA COUNTY, CALIFORNIA; AND DO HEREBY CONSENT TO THE PREPARATION AND RECORDATION OF SAID MAP AND SUBDIVISION.

WE ALSO HEREBY RESERVE THOSE AREAS SHOWN ON THIS MAP AS "INGRESS AND EGRESS EASEMENT" (I.E.E.) FOR THE BENEFIT OF LOTS 1-19 INCLUSIVE.

WE ALSO HEREBY DEDICATE THOSE AREAS SHOWN ON THIS MAP AS "LOT 20" FOR THE PURPOSES OF INGRESS AND EGRESS (I.E.E.), AND PARKING FOR THE COMMON USE OF THE OWNERS OF LOTS 1-19 INCLUSIVE.

WE ALSO HEREBY IRREVOCABLY OFFER FOR DEDICATION THOSE AREAS SHOWN ON THIS MAP AS "LOT 20" TO THE LOCAL UTILITY COMPANIES (PG&E, AT&T, AND ERMUD) AND THEIR SUCCESSORS FOR THE PURPOSE OF PUBLIC UTILITY EASEMENT (P.U.E.) TO CONSTRUCT AND MAINTAIN PUBLIC UTILITIES AND ALL THEIR APPURTENANCES THERE TO UNDER, ON, AND OVER THE SAID STRIP OF LAND.

WE ALSO HEREBY IRREVOCABLY OFFER FOR DEDICATION THOSE AREAS SHOWN ON THIS MAP AS "LOT 20" TO THE CITY OF OAKLAND FOR THE PURPOSE OF PUBLIC ACCESS EASEMENT (P.A.E.) FOR EMERGENCY VEHICLES. MAINTAINANCE OF THE P.A.E. SHALL BE THE RESPONSIBILITY OF THE OWNERS OF LOTS 1-19 INCLUSIVE.

WE ALSO HEREBY RESERVE THOSE AREAS SHOWN ON THIS MAP AS "LOT 20" FOR THE INSTALLATION AND MAINTENANCE OF PRIVATE SANITARY SEWER, STORM DRAINS AND OTHER SERVING UTILITIES FOR THE BENEFIT OF LOTS 1-19 INCLUSIVE. MAINTENANCE OF THESE PRIVATE UTILITIES SHALL BE THE RESPONSIBILITY OF THE OWNERS OF LOTS 1-19 INCLUSIVE.

ALL EASEMENTS SHALL BE KEPT OPEN AND FREE FROM TREES, FENCES, BUILDINGS AND STRUCTURES OF ANY KIND.

ANDREW SWETT
APGAR DEVELOPMENT CORPORATION

OWNERS' ACKNOWLEDGMENT

STATE OF _____)
COUNTY OF _____) SS
ON _____ 2006 BEFORE _____ PERSONALLY APPEARED,
ME, _____ 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.

NOTARY'S SIGNATURE

PRINTED NOTARY'S NAME

EXPIRATION OF NOTARY'S COMMISSION

PRINCIPAL PLACE OF BUSINESS COUNTY

TRUSTEE STATEMENT

THE UNDERSIGNED CORPORATION, AS TRUSTEE UNDER THE DEED OF TRUST RECORDED APRIL 11, 2005, RECORDER SERIAL NO. 2005-142031 OF OFFICIAL RECORDS, ALAMEDA COUNTY, CALIFORNIA, DOES HEREBY JOIN IN AND CONSENT TO THE FOREGOING OWNER'S STATEMENT AND ALL DEDICATIONS SHOWN HEREON.

HERZER FINANCIAL SERVICES, INC. A CALIFORNIA CORPORATION

BY: _____

TITLE: _____

TRUSTEE'S ACKNOWLEDGMENT

STATE OF _____)
COUNTY OF _____) SS
ON _____ 2006 BEFORE _____ PERSONALLY APPEARED,
ME, _____ 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.

NOTARY'S SIGNATURE

PRINTED NOTARY'S NAME

EXPIRATION OF NOTARY'S COMMISSION

PRINCIPAL PLACE OF BUSINESS COUNTY

SEISMIC HAZARD ZONE

THIS REAL PROPERTY LIES WITHIN THE FOLLOWING HAZARDOUS AREA: A SEISMIC HAZARD ZONE - LANDSLIDE ZONE PURSUANT TO SECTION 2598 OF THE PUBLIC RESOURCES CODE. THESE HAZARDS MAY LIMIT YOUR ABILITY TO DEVELOP THE REAL PROPERTY, TO OBTAIN INSURANCE, OR TO RECEIVE ASSISTANCE AFTER A DISASTER. THE MAPS ON WHICH THESE DISCLOSURES ARE BASED ESTIMATE WHERE NATURAL DISASTERS EXIST; THEY ARE NOT DEFINITIVE INDICATORS OF WHETHER OR NOT A PROPERTY WILL BE AFFECTED BY A NATURAL DISASTER. TRANSFEREE(S) AND TRANSFEROR(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE REGARDING HAZARDS AND OTHER HAZARDS THAT MAY AFFECT THE PROPERTY.

OWNER/DIVIDER:
APGAR DEVELOPMENT
CORPORATION
P.O. BOX 7361
MENLO PARK, CALIFORNIA 94026

TRUSTEE STATEMENT

THE UNDERSIGNED CORPORATION, AS TRUSTEE UNDER THE DEED OF TRUST RECORDED APRIL 11, 2005, RECORDER SERIAL NO. 2005-142035 OF OFFICIAL RECORDS, ALAMEDA COUNTY, CALIFORNIA, DOES HEREBY JOIN IN AND CONSENT TO THE FOREGOING OWNER'S STATEMENT AND ALL DEDICATIONS SHOWN HEREON.

MARIN CONVEYANCING CORP.

BY: _____

TITLE: _____

TRUSTEE'S ACKNOWLEDGMENT

STATE OF _____)
COUNTY OF _____) SS
ON _____ 2006 BEFORE _____ PERSONALLY APPEARED,
ME, _____ 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.

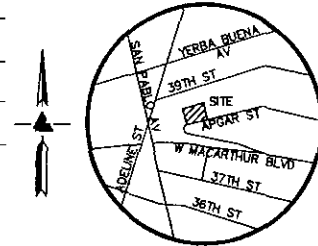
WITNESS MY HAND AND OFFICIAL SEAL.

NOTARY'S SIGNATURE

PRINTED NOTARY'S NAME

EXPIRATION OF NOTARY'S COMMISSION

PRINCIPAL PLACE OF BUSINESS COUNTY



VICINITY MAP
NO SCALE

TRACT MAP NO. 7672

BEING A SUBDIVISION OF THE LANDS OF APGAR AS DESCRIBED IN DEED DOC. NO. 2005393316 ALONG WITH PARCEL B AS SHOWN ON THAT CERTAIN MAP ENTITLED "PARCEL MAP 4711 CITY OF OAKLAND, ALAMEDA COUNTY CAL." RECORDED IN BOOK 174 OF MAPS, AT PAGES 52-53 ALAMEDA COUNTY RECORDS

CITY OF OAKLAND ALAMEDA COUNTY CALIFORNIA
APRIL 2006

LEA & BRAZE ENGINEERING, INC.
CIVIL ENGINEERS • LAND SURVEYORS

2495 INDUSTRIAL PARKWAY WEST
HAYWARD, CALIFORNIA 94545
(510) 887-4086
FAX (510) 887-3019
WWW.LEABRAZE.COM

STATEMENT OF THE SECRETARY OF THE PLANNING COMMISSION

I, GARY V. PATTON, SECRETARY OF THE CITY PLANNING COMMISSION OF THE CITY OF OAKLAND, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, DO HEREBY CERTIFY THAT A TENTATIVE MAP OF "TRACT MAP NO. 7672, CITY OF OAKLAND, ALAMEDA COUNTY, CALIFORNIA", WAS PRESENTED TO THE CITY PLANNING COMMISSION AS PROVIDED BY THE "SUBDIVISION MAP ACT" OF THE GOVERNMENT CODE; THAT AT A MEETING OF SAID CITY PLANNING COMMISSION, HELD ON NOVEMBER 16, 2005, THE SAID COMMISSION APPROVED SAID TENTATIVE MAP UPON WHICH THIS MAP IS BASED.

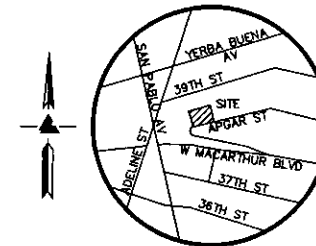
IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND THIS ____ DAY OF _____ 2006.

GARY V. PATTON
SECRETARY OF THE CITY PLANNING COMMISSION
OF THE CITY OF OAKLAND
ALAMEDA COUNTY, STATE OF CALIFORNIA

CLERK OF THE BOARD OF SUPERVISORS STATEMENT

_____, CLERK OF THE BOARD OF SUPERVISORS OF THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA, HEREBY STATE THAT THE CERTIFICATES HAVE BEEN FILED AND DEPOSITS HAVE BEEN MADE IN CONFORMANCE WITH THE REQUIREMENTS OF SECTIONS 66492 AND 66493 OF THE GOVERNMENT CODE OF THE STATE OF CALIFORNIA.

DATED: _____
CRYSTAL K. GRAFF, CLERK OF THE BOARD OF SUPERVISORS OF THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA



VICINITY MAP
NO SCALE

RECORDER'S STATEMENT

FILED THIS ____ DAY OF ____ 2006
AT ____ M. IN BOOK ____ OF ____ AT PAGE ____
AT THE REQUEST OF LEA AND BRAZE ENGINEERING INC.

PATRICK O'CONNELL
COUNTY RECORDER
COUNTY OF ALAMEDA, CALIFORNIA

By: _____
DEPUTY COUNTY RECORDER

SURVEYOR'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 APGAR DEVELOPMENT CORP. ON FEBRUARY 3, 2006. I HEREBY STATE THAT ALL THE MONUMENTS ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED OR THAT WILL BE SET IN THOSE POSITIONS BEFORE _____ AND THAT THE MONUMENTS ARE, OR WILL BE, SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED, AND THAT THIS FINAL MAP SUBSTANTIALLY CONFORMS TO THE CONDITIONALLY APPROVED TENTATIVE MAP.



GREGORY F. BRAZE
LS 7623
Exp. 12-31-2006

TRACT MAP NO. 7672

BEING A SUBDIVISION OF THE LANDS OF APGAR AS DESCRIBED IN DEED DOC. NO. 2005393316 ALONG WITH PARCEL B AS SHOWN ON THAT CERTAIN MAP ENTITLED "PARCEL MAP 4711 CITY OF OAKLAND, ALAMEDA COUNTY CAL." RECORDED IN BOOK 174 OF MAPS, AT PAGES 52-53 ALAMEDA COUNTY RECORDS

CITY OF OAKLAND ALAMEDA COUNTY CALIFORNIA
APRIL 2006

LEA & BRAZE ENGINEERING, INC.
CIVIL ENGINEERS • LAND SURVEYORS
2495 INDUSTRIAL PARKWAY WEST
HAYWARD, CALIFORNIA 94545
(510) 887-4086
FAX (510) 887-3019
WWW.LEABRAZE.COM

CITY CLERK'S STATEMENT

I, LATONDA SIMMONS, CITY CLERK OF THE CITY COUNCIL OF THE CITY OF OAKLAND, STATE OF CALIFORNIA, DO HEREBY CERTIFY THAT THE HEREIN EMBODIED MAP ENTITLED, "TRACT MAP NO. 7672, CITY OF OAKLAND, ALAMEDA COUNTY, CALIFORNIA", WAS PRESENTED TO THE COUNCIL OF THE CITY OF OAKLAND AT A REGULAR MEETING THEREOF HELD ON THE ____ DAY OF ____ 2006; AND THAT SAID COUNCIL DID THEREUPON, BY RESOLUTION NO. _____ APPROVED SAID MAP.

I HEREBY ACCEPT ON BEHALF OF THE CITY OF OAKLAND THE AREA DESIGNATED AS PUBLIC ACCESS EASEMENT (P.A.E.) ON SAID TRACT MAP AS HEREIN DEDICATED IN ACCORDANCE WITH SECTION 16.12.080 OF THE OAKLAND MUNICIPAL CODE.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND THIS ____ DAY OF ____ 2006.

LATONDA SIMMONS
CITY CLERK AND CLERK OF THE COUNCIL
OF THE CITY OF OAKLAND, STATE OF CALIFORNIA

CITY ENGINEER'S STATEMENT

I, RAYMOND M. DERANIA, DIRECTOR OF BUILDING SERVICES, HAVING BEEN AUTHORIZED TO PERFORM THE FUNCTIONS OF THE CITY ENGINEER OF THE CITY OF OAKLAND, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, FOR THE PURPOSE OF REVIEWING SUBDIVISION MAPS, DO HEREBY STATE THAT I HAVE EXAMINED THE HEREON EMBODIED FINAL MAP ENTITLED "TRACT MAP NO. 7672, CITY OF OAKLAND, ALAMEDA COUNTY, CALIFORNIA", THAT THE SUBDIVISION AS SHOWN UPON SAID FINAL MAP IS SUBSTANTIALLY THE SAME AS THAT APPEARING ON THE TENTATIVE MAP APPROVED BY THE CITY PLANNING COMMISSION AND ANY APPROVED ALTERATIONS THEREOF; THAT SAID FINAL MAP COMPLIES WITH ALL PROVISIONS OF THE SUBDIVISION MAP ACT OF THE GOVERNMENT CODE AND LOCAL ORDINANCE APPLICABLE AT THE TIME OF APPROVAL OF THE TENTATIVE MAP; AND THAT I AM SATISFIED THAT THE FINAL MAP IS TECHNICALLY CORRECT;

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND THIS ____ DAY OF ____ 2006.

RAYMOND M. DERANIA R.C.E. 27815
Exp. 03-31-08
DIRECTOR OF BUILDING SERVICES, CITY OF OAKLAND
COUNTY OF ALAMEDA, STATE OF CALIFORNIA

OWNER/DIVIDER:
APGAR DEVELOPMENT
CORPORATION
P.O. BOX 7361
MENLO PARK, CALIFORNIA 94026

TRUSTEE STATEMENT

THE UNDERSIGNED CORPORATION, AS TRUSTEE UNDER THE DEED OF TRUST RECORDED MAY 25, 2006, RECORDER SERIAL NO. 2006-208060 OF OFFICIAL RECORDS, ALAMEDA COUNTY, CALIFORNIA, DOES HEREBY JOIN IN AND CONSENT TO THE FOREGOING OWNER'S STATEMENT AND ALL DEDICATIONS SHOWN HEREON.

OLD REPUBLIC TITLE COMPANY

By: _____
TITLE: _____

TRUSTEE'S ACKNOWLEDGMENT

STATE OF _____)
COUNTY OF _____) SS
ON _____, 2006 BEFORE
ME, _____ PERSONALLY APPEARED,
_____ 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
NOTARY'S SIGNATURE _____

PRINTED NOTARY'S NAME _____
EXPIRATION OF NOTARY'S COMMISSION _____

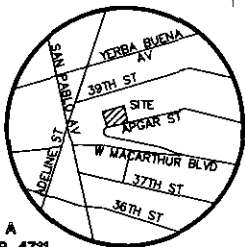
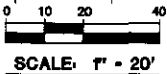
PRINCIPAL PLACE OF BUSINESS _____ COUNTY _____

EXHIBIT A

39TH STREET (60')

NOTES

- LOT 1: 783 SQ.FT. 0.02 ACRES
- LOT 2: 782 SQ.FT. 0.02 ACRES
- LOT 3: 782 SQ.FT. 0.02 ACRES
- LOT 4: 780 SQ.FT. 0.02 ACRES
- LOT 5: 782 SQ.FT. 0.02 ACRES
- LOT 6: 782 SQ.FT. 0.02 ACRES
- LOT 7: 782 SQ.FT. 0.02 ACRES
- LOT 8: 782 SQ.FT. 0.02 ACRES
- LOT 9: 789 SQ.FT. 0.02 ACRES
- LOT 10: 956 SQ.FT. 0.02 ACRES
- LOT 11: 817 SQ.FT. 0.02 ACRES
- LOT 12: 816 SQ.FT. 0.02 ACRES
- LOT 13: 794 SQ.FT. 0.02 ACRES
- LOT 14: 804 SQ.FT. 0.02 ACRES
- LOT 15: 804 SQ.FT. 0.02 ACRES
- LOT 16: 794 SQ.FT. 0.02 ACRES
- LOT 17: 779 SQ.FT. 0.02 ACRES
- LOT 18: 706 SQ.FT. 0.02 ACRES
- LOT 19: 704 SQ.FT. 0.01 ACRES
- LOT 20: 5,862 SQ.FT. 0.13 ACRES



PARCEL A
PARCEL MAP 4711
BOOK 174 OF MAPS,
AT PAGE 52
VICINITY MAP
NO SCALE

LEGEND

- x FOUND CUT "X" PER ①
 - FOUND NAIL PER ①
 - FOUND REBAR PER ①
 - FOUND CUT "L" PER ①
 - SET 3/4" IRON PIPE W/ PLASTIC PLUG AND TAG LS 7623
- ALL DISTANCES ARE IN FEET AND DECIMALS THEREOF
- EXTERIOR BOUNDARY
 - TIE-LINE
 - P.U.E. PUBLIC UTILITY EASEMENT
 - P.A.E. PUBLIC ACCESS EASEMENT
 - P.S.D.E. PRIVATE STORM DRAIN EASEMENT
 - I.E.E. INGRESS & EGRESS EASEMENT

REFERENCES

① PARCEL MAP 4711
BOOK 174 OF MAPS, AT PAGES 52-53

LYON TRACT
BOOK 26 OF MAPS,
LOT 14 AT PAGE 54 LOT 15 LOT 16

BASIS OF BEARINGS

THE BEARING N75°30'00"E THE SOUTHERLY PROPERTY LINE OF PARCEL B AS SHOWN ON THAT CERTAIN MAP ENTITLED "PARCEL MAP 4711" RECORDED IN BOOK 174 OF MAPS, AT PAGES 52-53, ALAMEDA COUNTY RECORDS IS THE BASIS OF ALL BEARINGS SHOWN UPON THIS MAP.

OWNER/DIVIDER:
APGAR DEVELOPMENT
CORPORATION
P.O. BOX 7361
MENLO PARK, CALIFORNIA 94026

LINE TABLE

LINE#	BEARING	DISTANCE
L1	N75°30'00"E	63.60'
L2	N75°30'00"E	79.94'
L3	N75°30'00"E	48.61'
L4	N75°30'00"E	32.62'
L5	N75°30'00"E	48.95'
L6	N72°00'00"E	26.90'
L7	N26°23'00"E	8.50'
L8	N75°30'00"E	32.62'
L9	N75°30'00"E	65.04'

LANDS OF
BANKER TRUST
DEED DOC. NO.
2005539844

LANDS OF
HILL
DEED DOC. NO.
81-297417

TRACT MAP NO. 7672

BEING A SUBDIVISION OF THE LANDS OF APGAR AS DESCRIBED IN DEED DOC. NO. 2005393316 ALONG WITH PARCEL B AS SHOWN ON THAT CERTAIN MAP ENTITLED "PARCEL MAP 4711 CITY OF OAKLAND, ALAMEDA COUNTY CAL." RECORDED IN BOOK 174 OF MAPS, AT PAGES 52-53 ALAMEDA COUNTY RECORDS

CITY OF OAKLAND ALAMEDA COUNTY CALIFORNIA
SCALE 1"=20' APRIL 2006

LEA & BRAZE ENGINEERING, INC.
CIVIL ENGINEERS • LAND SURVEYORS
2495 INDUSTRIAL PARKWAY WEST
HAYWARD, CALIFORNIA 94545

EXHIBIT A

CITY OF EMERYVILLE CITY LIMIT
CITY OF OAKLAND CITY LIMIT

recording requested by:

EXHIBIT C

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

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

APPROVED FOR FORM AND LEGALITY

CITY ATTORNEY

SUBDIVISION IMPROVEMENT AGREEMENT

Deferred Construction of Public Infrastructure Improvements

1000 & 1024 Apgar Street

Final Map - Tract No. 7672

This Agreement is between **Apgar LLC** (DEVELOPER), a California limited liability company (no. 200520710074), 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 two contiguous and undeveloped lots located within the corporate limits of the City of Oakland, which is identified by the Alameda County Assessor as parcel numbers 012-0952-012 and 012-0952-029 and by the CITY as 1000 and 1024 Apgar Street, who has presented a proposed Final Map, which is identified as Tract No. 7672, to the Council of the City of Oakland that proposes a voluntary merger of the previously subdivided lots of this platted land and its re-subdivision into twenty (20) lots.

As a condition precedent to the approval by the Council of the City of Oakland of the proposed Final Map, the CITY requires the irrevocable dedication of public streets, paths, and other rights-of-way and of public easements shown on the proposed Final Map. In addition, the CITY requires construction of public infrastructure improvements within these on-site dedicated rights-of-way and easements and off-site on other CITY rights-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 DEVELOPER has asked the CITY to accept the irrevocable dedication of the public rights-of-way and public easements shown on the proposed Final Map and the permanent maintenance of the required

public infrastructure improvements shown on the construction plans accompanying permit number PX0600078 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 rights-of-way and public easements and acceptance of the permanent maintenance of the improvements, the parties desire to establish an Agreement binding the DEVELOPER to complete the required improvements within one (1) year of the date that this Agreement has been recorded by the Alameda County Recorder.

THEREFORE, it is agreed as follows:

1. Approval of Final Map

Approval of the proposed Final Map for the subdivision of Tract No. 7672 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 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 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 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 all Conditions of Approval for the Prairie Stone I 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 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 (1) year of the date of recordation of this Agreement, except those 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 rights-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 \$ 30,000.00, which is the full amount (one-hundred percent) of the City Engineer's total estimated cost for constructing the on-site and off-site required 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 \$ 15,000.00, which is one-half of the full amount (fifty percent) of the City Engineer's total estimated cost for constructing the on-site and off-site required 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 \$ 7,500.00, which is one-quarter (25%) of the full amount of the City Engineer's total estimated cost for constructing the on-site and off-site required 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 attorneys' 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 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

1. the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the CITY and its officers, officials, employees, agents and volunteers, or
2. 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 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. 7672, 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:	Public Infrastructure	PX 0600078	Planning	CD04070, CD05408, DET040006
	Creek Protection	n.a.	Building	B 0601443, B 0601445, B 0601447,
	Grading	GR 0600066		B 0601450

Resolutions: _____ C.M.S. _____ C.M.S.

Subdivision: Final Map - Track 7672 City Engineer's Estimate of the Cost of Improvements

Insurer: Developer's Surety and Indemnity Co. Surety: Developer's Surety and Indemnity Co.

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.

APGAR LLC *

CITY OF OAKLAND

signature

signature

name

DEBORAH EDGERLY
City Administrator

title

date

date

** notarized acknowledgment required*