

Introduced by

Councilmember

Approved for Form and Legality



City Attorney

OAKLAND CITY COUNCIL

Resolution No. 80071 C.M.S.

**RESOLUTION CONDITIONALLY APPROVING THE FINAL MAP FOR
TRACT 7727 FOR A RESIDENTIAL SUBDIVISION AT 512 HENRY STREET**

WHEREAS, the developer of a residential subdivision, Henry II Developers, a California limited liability company (no. 200508310003), is the Subdivider of three undeveloped parcels, with combined area of one-fifth acre, that are identified by the Alameda County Tax Assessor as APN 004 -0101-022-00, 004 -0101-023-00 and 004 -0101-024-00, by the Alameda County Recorder as Tract No. 7727, and by the City of Oakland as 512, 514, 518, 520, and 524 Henry Street; and

WHEREAS, the Subdivider has acquired by purchase for valuable consideration all real property comprising Tract No. 7727; and

WHEREAS, the Subdivider has previously applied to the City of Oakland to subdivide the three undeveloped parcels into the ten (10) contiguous lots comprising Tract No. 7727; and

WHEREAS, the Planning Commission of the City of Oakland approved the environmental determination (categorically exempted), regular design review, major variance, and major conditional use permit (CM05224) on October 19, 2005, and approved the Tentative Map for Tract No. 7727 on February 1, 2006, which proposed a voluntary merger of three undeveloped parcels and their re-subdivision into ten (10) contiguous lots for single-family dwellings; 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 conditionally approved the Tentative Map for Tract No. 7727, upon which the Final Map for Tract No. 7727 is based; and

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

- the Final Map for Tract No. 7727, 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, 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 No. 7727; 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 Henry Street; and

WHEREAS, the City Engineer has approved infrastructure permit no. PX0600075 and the Subdividers' plans and specifications for construction of the required public infrastructure improvements, included by reference 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 completed 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 B, 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 B, 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 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 No. 7727 is hereby approved, as conditioned by completion by the Subdivider of the obligations identified 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 No. 7727; and be it

FURTHER RESOLVED, that the City Clerk of the City of Oakland is hereby authorized to endorse the Final Map for Tract No. 7727, 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 No. 7727 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; 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 No. 7727 and their homeowners association, both severally and jointly, and their representatives, agents, heirs, successors, and assigns.

IN COUNCIL, OAKLAND, CALIFORNIA, JUL 18 2006, 2006

PASSED BY THE FOLLOWING VOTE:

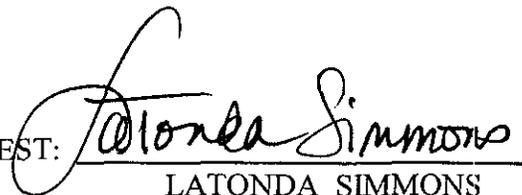
AYES - ~~Brooks~~, BRUNNER, CHANG, KERNIGHAN, ~~Quayle~~, QUAN, REID, and
PRESIDENT DE LA FUENTE - 6

NOES - 0

ABSENT - 2 Brooks, Nadel

ABSTENTION -

ATTEST:


LATONDA SIMMONS

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

OWNER'S STATEMENT

HENRY & DEVELOPERS, LLC HEREBY STATES THAT IT IS THE OWNER OF THE LAND DESCRIBED AND SHOWN WITHIN THE EXTENSIVE BOUNDARY LINES OF THE HEREIN EMBODIED MAP ENTITLED "TRACT No. 7727, OAKLAND, ALAMEDA COUNTY, CALIFORNIA," THAT IT IS THE OWNER OF SAID LAND BY VIRTUE OF THE SAID DEED RECORDED ON APRIL 13, 2005, UNDER SERIES NUMBER 2005-142319, OFFICIAL RECORDS OF ALAMEDA COUNTY, CALIFORNIA, AND THAT IT CONSENTS TO THE PREPARATION AND FILING OF THIS MAP.

THE UNDERSIGNED HEREBY DEDICATES TO THE CITY OF OAKLAND FOREVER THE RIGHT TO CONSTRUCT AND MAINTAIN PUBLIC UTILITIES AND ALL THEIR APPURTENANCES THEREON UNDER, ON AND OVER THE STRIPS OF LAND ON SAID MAP DESIGNATED AS "PUE" (PUBLIC UTILITY EASEMENT) ON SAID MAP AND THE RIGHT TO ENTER UPON SAID LAND FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING, RECONSTRUCTING OR REPAIRING SAID PUBLIC UTILITIES AND THEIR APPURTENANCES.

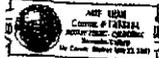
THE AREA DESIGNATED AS "VUE" (WATER UTILITY EASEMENT) IS HEREBY OFFERED FOR DEDICATION TO THE CITY OF OAKLAND FOREVER AS A NON-EXCLUSIVE EASEMENT FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING, REPLACING, OPERATING AND USING WATER TRANSMISSION FACILITIES AND ALL NECESSARY APPURTENANCES THEREON TOGETHER WITH THE RIGHT ON NEEDED TO AND TO BESET FROM SAID EASEMENT, THE CALCULATOR AND THE CALCULATOR'S HEIRS, SUCCESSORS, OR ATTORNEYS SHALL NOT PLACE ANY BUILDING OR STRUCTURE ON SAID EASEMENT.

CONTINUES ON SHEET 2.

OWNER'S ACKNOWLEDGEMENT

STATE OF CALIFORNIA)
COUNTY OF ALAMEDA)

ON THIS 19th DAY OF JUNE 2006, BEFORE ME, DAVID SIMMONS, a Notary Public in and for said County and State, personally appeared BRYAN TAVAT 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 same.



David Simmons
Notary Public

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 MR. BRYAN TAVAT ON FEBRUARY 20, 2006. THE INSTRUMENTS ALL OF THE ENCLOSURES AND ACCURATE THE POSITIONS INDICATED ON SAID MAP AND ARE SUFFICIENT TO ENABLE THE SURVEY TO BE REPRODUCED; I HEREBY STATE THAT THIS FINAL MAP SUBSTANTIALLY CONFORMS TO THE APPROVED OR CONDITIONALLY APPROVED TENTATIVE MAP IF ANY.

Andrew Deak
ANDREAS DEAK
L.S. 4739



EXPIRATION 1-30-2007

TRACT No. 7727

OAKLAND ALAMEDA COUNTY CALIFORNIA

A SUBDIVISION OF LOTS 32, 33 AND 34 BLOCK 495, MAP OF RESUBDIVISION OF CITY BLOCK U.S. 495, 495 AND 496, FILED OCTOBER 9, 1872, MAP BOOK 9, PAGE 31, ALAMEDA COUNTY RECORDS.

FEBRUARY 2006 SCALE 1" = 20'

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, FOR THE PURPOSE OF REVIEWING SUBDIVISION MAPS, DO HEREBY CERTIFY THAT I HAVE EXAMINED THE HEREIN EMBODIED TRACT MAP ENTITLED "TRACT No. 7727, OAKLAND, ALAMEDA COUNTY, CALIFORNIA" THAT THE SUBDIVISION AS SHOWN UPON SAID FINAL MAP IS SUBSTANTIALLY THE SAME AS THAT APPEARING ON THE TENTATIVE MAP AND ANY OTHER APPROVED ALTERATIONS THEREOF, THAT SAID MAP COMPLIES WITH ALL PROVISIONS OF THE SUBDIVISION MAP ACT OF THE GOVERNMENT CODE AND LOCAL ORDINANCES 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, Interim City Engineer and 17815
City of Oakland, County of Alameda, License Number 1-1-1006

CERTIFICATE OF THE CLERK OF THE BOARD OF SUPERVISORS

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

- AN APPROVED BOND HAS BEEN FILED WITH THE SUPERVISORS OF SAID COUNTY AND STATE IN THE AMOUNT OF \$ _____ CONDITIONED FOR THE PAYMENT OF ALL TAXES AND SPECIAL ASSESSMENTS COLLECTED AS DUES WHICH ARE NOW A LIEN AGAINST SAID LAND AND BY PAID THEREOF BUT NOT YET PAYABLE AND WAS IN APPROVED BY SAID BOARD IN THAT AMOUNT.
- ALL TAXES AND SPECIAL ASSESSMENTS COLLECTED AS TAXES HAVE BEEN PAID AS CERTIFIED BY THE SAID TAX COLLECTOR OF THE COUNTY OF ALAMEDA.

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

Crystal K. Hishida Grant BY Deputy Clerk
CLERK OF THE BOARD OF SUPERVISORS OF THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA

SECRETARY OF THE PLANNING COMMISSION'S CERTIFICATE

I, GARY V. PATTON, SECRETARY OF THE CITY PLANNING COMMISSION OF THE CITY OF OAKLAND, STATE OF CALIFORNIA, DO HEREBY CERTIFY THAT A TENTATIVE MAP OF "TRACT 7727, OAKLAND ALAMEDA COUNTY, CALIFORNIA" WAS PRESENTED TO THE CITY PLANNING COMMISSION AS PROVIDED BY THE SUBDIVISION MAP ACT; THAT AT A REGULARLY SCHEDULED MEETING HELD ON FEBRUARY 1, 2006, THE SAID COMMISSION APPROVED SAID TENTATIVE MAP UPON WHICH THIS MAP IS BASED.

IN WITNESS WHEREOF, THE UNDERSIGNED HAS EXECUTED THIS CERTIFICATE ON _____ DAY OF 2006.

DATED _____

Gary V. Patton, Secretary of the City Planning Commission of the City of Oakland, Alameda County, California

CITY CLERK'S STATEMENT

I, LA TRONDA SIMMONS, CITY CLERK AND CLERK OF THE CITY COUNCIL OF THE CITY OF OAKLAND, STATE OF CALIFORNIA, DO HEREBY CERTIFY THAT THE HEREIN EMBODIED MAP ENTITLED "TRACT No. 7727, OAKLAND, ALAMEDA COUNTY, CALIFORNIA" WAS PRESENTED TO THE COUNCIL OF THE CITY OF OAKLAND AT A REGULAR MEETING THEREOF HELD ON _____, 2006 AND THAT SAID COUNCIL DID THEREUPON, BY RESOLUTION, DO APPROVE SAID MAP.

I HEREBY ACCEPT ON BEHALF OF THE CITY OF OAKLAND, THE AREA DESIGNATED "PUE" (PUBLIC UTILITY EASEMENT) AND "VUE" (EMERGENCY VEHICLE ACCESS EASEMENT) AS HEREBY DEDICATED IN ACCORDANCE WITH SECTION 16.12.080, OF THE OAKLAND MUNICIPAL CODE.

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

La Tronda Simmons, City Clerk and Clerk of the Council of the City of Oakland, County of Alameda, California

RECORDERS CERTIFICATE

FILED THIS _____ DAY OF 2006 AT _____ IN BOOK _____ OF MAPS AT PAGE _____ AT THE REQUEST OF _____

FEE: _____
SERIES: _____

Patrick O'Connell BY _____
COUNTY RECORDER IN AND FOR COUNTY OF ALAMEDA, STATE OF CALIFORNIA

OWNERS

HENRY & DEVELOPERS, LLC
500 SANTA RAY AVENUE
OAKLAND, CA 94610

SURVEYOR

ANDREAS DEAK
216 SUEVA VISTA AVE
ALAMEDA CA 94501

Exhibit A

OWNER'S STATEMENT

CONTINUATION FROM SHEET 1

TRACT No. 7727

OAKLAND ALAMEDA COUNTY CALIFORNIA

THE AREA DESIGNATED AS "PAE" (PRIVATE ACCESS EASEMENT) IS HEREBY RESERVED FOR THE OWNERS AND ASSIGNS OF PARCELS LOTS 1 THROUGH 10 OF TRACT 7727 FOR BUT NOT LIMITED TO ACCESS, LANDSCAPING, UTILITIES, DRAINAGE, SANITARY SEWER LATERALS AND PRIVATE SANITARY SEWER MAINS, INGRESS AND EGRESS AND FOR THE USE OF EMERGENCY VEHICLE OF ALL KINDS. THE MAINTENANCE OF SAID PRIVATE ACCESS EASEMENT SHALL BE SHARED BY THE OWNERS OF THE LOTS WITHIN THE EXTERIOR BOUNDARIES OF TRACT 7727.

A SUBDIVISION OF LOTS 32, 33 AND 34 BLOCK 495, MAP OF RESUBDIVISION OF CITY BLOCK NO'S 494, 495 AND 496, FILED OCTOBER 9, 1872, MAP BOOK 7, PAGE 71, ALAMEDA COUNTY RECORDS

FEBRUARY 2006

SCALE 1"=20'

THE AREAS DESIGNATED AS "EVAE" (EMERGENCY VEHICLE ACCESS EASEMENT) ARE HEREBY RESERVED FOR THE INGRESS AND EGRESS OF EMERGENCY VEHICLES.

THE AREAS DESIGNATED AS "PSSE" (PRIVATE SANITARY SEWER EASEMENT) ARE HEREBY RESERVED FOR THE PURPOSE OF CONSTRUCTING AND MAINTAINING PRIVATE SANITARY SEWER MAINS AND ALL APPURTENANCES THERE TO FOR THE BENEFIT OF THE OWNERS OF THE LAND EMBRALED WITHIN THE EXTERIOR BOUNDARY LINES OF THE HEREIN EMBODIED MAP. THE MAINTENANCE OF SAID PRIVATE SANITARY SEWER SHALL BE SHARED BY THE OWNERS OF THE LOTS WITHIN THE EXTERIOR BOUNDARIES OF TRACT 7727.

THE AREAS DESIGNATED AS "PSDE" (PRIVATE STORM DRAIN EASEMENT) ARE HEREBY RESERVED FOR THE PURPOSE OF CONSTRUCTING AND MAINTAINING PRIVATE SANITARY STORM DRAINS AND ALL APPURTENANCES THERE TO FOR THE BENEFIT OF THE OWNERS OF THE LAND EMBRALED WITHIN THE EXTERIOR BOUNDARY LINES OF THE HEREIN EMBODIED MAP.

HENRY II DEVELOPERS, LLC

BY Birli

BIREN TALATI, MANAGING DIRECTOR

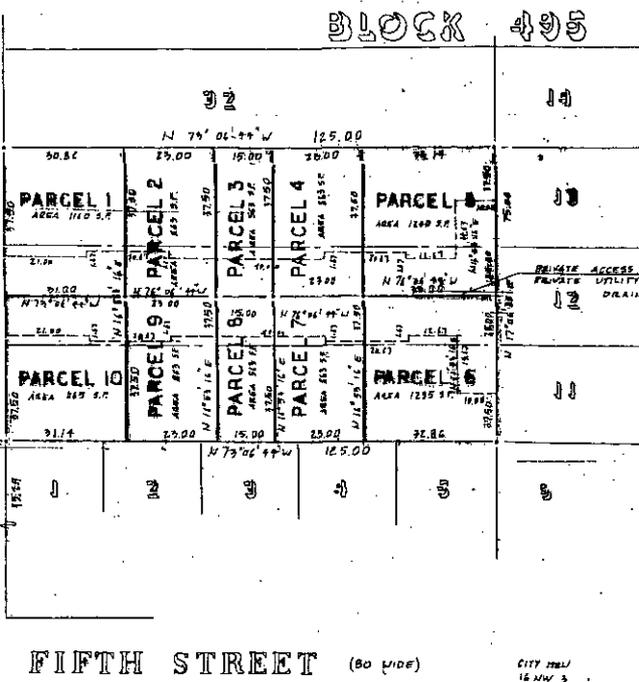
TRACT No. 7727

DARLAND ALAMEDA COUNTY CALIFORNIA

A SUBDIVISION OF LOTS 32, 33 AND 34 BLOCK 495; MAP OF RE-SUBDIVISION OF CITY BLOCK NO'S 444, 445 AND 446, FILED OCTOBER 3, 1972, MAP BOOK 5, PAGE 31, ALAMEDA COUNTY RECORDS.

BLOCK 495

HENRY STREET (60 WIDE)



FIFTH STREET (80 WIDE)

LEGEND

- EVAE EMERGENCY VEHICLE ACCESS EASEMENT
- PSDE PRIVATE STORM DRAIN EASEMENT
- PVE PUBLIC UTILITY EASEMENT
- PAS PRIVATE ACCESS EASEMENT
- PSSE PRIVATE SANITARY SEWER EASEMENT

- EASEMENT LINE
- EXTERIOR BOUNDARY OF THE SUBDIVISION
- NEW SUBDIVISION
- OTHER PROPERTY LINE
- ORIGINAL LOT LINE TO BE ABANDONED
- MONUMENT LINE

- 1/2" LEADER WITH PLASTIC CAP L.S. 4339 SET
- + CUT CROSS IN CONCRETE
- COORDINATED MONUMENT

BASIS OF BEARINGS

THE EAST LINE OF HENRY STREET TAKEN AS NORTH 17° 06' 18" EAST AS SHOWN ON EAST PART OF DAY MAP RECORDED APRIL 17, 1945 IN BOOK 58 PAGE 196 ALAMEDA COUNTY RECORDS

SCALE 1"=20'

COORDINATED MONUMENT AT 7th ST. S.W. 45

COORDINATED MONUMENT AT 9th ST. S.W. 34

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 B

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

APPROVED FOR FORM AND LEGALITY

CITY ATTORNEY

SUBDIVISION IMPROVEMENT AGREEMENT

Deferred Construction of Public Infrastructure Improvements

Final Map - Tract No. 7727

This Agreement is between **Henry II Developers** (DEVELOPER), a California limited liability company (no. 200508310003), and the **City of Oakland** (CITY), a California municipal corporation.

RECITALS

The DEVELOPER is the owner in fee title and subdivider of a three undeveloped parcels, whose combined area totals one-fifth of an acre, that are located within the corporate limits of the City of Oakland and are identified by the Alameda County Assessor as parcel numbers 004 -0101-022-00, 004 -0101-023-00 and 004 -0101-024-00 and by the CITY as 512, 514, 518, 520, and 524 Henry Street, who has presented a proposed Final Map, which is identified by the Alameda County Recorder as Tract No. 7727, to the Council of the City of Oakland that proposes a voluntary merger of three parcels and the re-subdivision of this platted land into ten (10) 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 PX0600075 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 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. 7727 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 warranty 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 \$ 13,540.00, 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 \$ 6,770.00, 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 \$ 3,885.00, 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 in a form provided by Government Code Section 66499.3 by the DEVELOPER 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 which 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** 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** 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**. 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**.

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. 7727, 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 0600075 Planning CM 05224
Creek Protection n.a. Building RB0600813/14/15/18/19/20/22/23/30/31
Grading

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

Subdivision: Final Map - Track 7727 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 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.

HENRY II DEVELOPERS, LLC *

CITY OF OAKLAND

signature

signature

name

DEBORAH EDGERLY
City Administrator

title

date

date

* notary acknowledgement required